



SMOKE-FREE FOSTER CARE: A POLICY OVERVIEW

The scientific debate about the risks of secondhand smoke ended years ago. Medical studies have exhaustively detailed the ways exposure to secondhand smoke damages the human body and directly leads to chronic disease, such as cancer, heart disease and stroke.¹ Children are especially susceptible to the toxic chemicals in tobacco smoke, and those whose health may already be compromised, such as the vast majority of foster children, are disproportionately affected by exposure to secondhand smoke. More than a third of all U.S. states have smoke-free foster care policies, covering foster care homes and often vehicles when transporting foster children.² By ensuring that foster children live in a smoke-free environment, these policies help state and local communities protect the best interests of this uniquely vulnerable segment of the population.³

How does exposure to secondhand smoke harm children?

Cigarette smoke contains more than 7,000 chemicals, hundreds of which are hazardous and at least 69 of which are known to cause cancer.⁴ Exposure to secondhand smoke is particularly dangerous to infants and children, whose bodies are still developing, especially those who already suffer from serious health conditions. It is a known cause of:

- Sudden Infant Death Syndrome⁵
- Potentially fatal respiratory tract infections, such as bronchitis and pneumonia⁶
- Respiratory symptoms, including cough, phlegm, wheezing, and breathlessness⁷
- Frequent and severe asthma attacks⁸
- Ear infections, which are often related to hearing problems⁹

Children exposed to secondhand smoke are also more likely to be at risk for type 2 diabetes and to experience heart disease, stroke, and lung cancer during their lifetimes.¹⁰ They tend to experience more learning and behavioral problems than children in nonsmoking households⁹ and are more likely to become smokers in adolescence or adulthood.¹²

What other health risks do tobacco products pose to children?

Children in households with smokers are exposed to **toxic litter** caused by cigarette butts, which are not only poisonous, but can be fatal when ingested by children.¹³ Also, **fires** started by lighted tobacco products, often involving children, constitute the leading cause of fatal home fires in the U.S.¹⁴ In addition, the residual contamination that can linger on surfaces long after cigarettes have been extinguished (known as “**thirdhand smoke**”) can be hazardous to children. Studies have shown that days, weeks and even months after a cigarette was smoked, harmful particulates remain on countertops, floors, upholstery, carpets, clothing and other surfaces and fabrics.¹⁵ Infants and children are especially vulnerable to thirdhand smoke exposure because of their immature respiratory and immune systems, lower metabolic capacity and tendencies to crawl, play on, breathe near, touch, and mouth contaminated surfaces, such as floors and fabrics.



Why are foster children so susceptible to the health risks of secondhand smoke?

Foster children are a uniquely vulnerable population. Approximately 80 percent of the over 400,000 foster children in the U.S. have at least one chronic medical condition, with serious respiratory illness highly common.¹⁶ Exposure to tobacco smoke can cause health problems and exacerbate acute health conditions prevalent among foster children.

Does the government have authority to regulate smoking within a foster home?

Foster children are considered “wards of the state.” The state has the legal responsibility and moral obligation to ensure that, once it removes children from unsafe or unstable environments, it places them in safe and healthy foster care settings. Under the legal doctrine of *parens patriae*, the state acts as the “ultimate parent” of children under its jurisdiction, and can exert its legal authority to ensure that their best interests are met. A growing number of family courts, applying the “best interest of the child” standard in custody cases, have been willing to take judicial notice of the negative impact of secondhand smoke exposure on children, and are awarding custody based on a child’s likelihood of harm in being exposed to secondhand smoke.¹⁷ Moreover, legislatures across the U.S. are exercising their authority to protect public health and safety by passing laws prohibiting smoking in vehicles when *any* child is a passenger.¹⁸ When an important public interest is at stake, the government has the power to regulate private conduct, including within a foster care environment.

Do smoke-free foster care policies have any economic impact on a state?

Health care expenditures related to secondhand smoke exposure in the U.S. have been shown to cost the nation over \$5 billion in direct medical costs and over \$5 billion in indirect costs each year.¹⁹ Since medical costs for foster children are covered by the state and federal government, it makes financial sense to ensure that foster children do not reside in environments where their health can be compromised by exposure to secondhand smoke, resulting in costly tobacco-related health care expenses.

Is a smoke-free foster care policy burdensome to enforce? Are there compliance issues?

The government requires foster parents to meet certain standards and health and safety requirements to obtain and renew a foster care license or retain custody of a foster child. Enforcing and monitoring compliance with a smoke-free policy is similar to the process for overseeing other foster care regulations. Social service personnel are not required to conduct any additional tests to ensure adherence to the smoke-free policy. A recent survey of fifteen states with smoke-free foster care policies found that smoking foster parents complied with these policies without problems.²⁰

Have states with smoke-free foster care policies seen any decline in the number of foster care parents as a result of these policies?

Interviews with foster care managers in states with smoke-free foster care policies show no decline in the number of foster care parents or in recruitment resulting from these policies.²¹

What are some guidelines for developing effective smoke-free foster care policies?

- Conduct background research.
- Draft a policy with concise definitions and language.
- Plan a strategic enforcement and implementation process.
- Educate prospective and current foster parents, social service, and related personnel about the health risks of exposure to tobacco smoke and the benefits of a smoke-free foster care policy.
- Clarify the policy goal: to prevent children’s exposure to tobacco smoke. And keep the policy focus on—
 - The health benefits of smoke-free environments
 - The legal duty of the state to protect children in its care
 - The state’s legal and moral obligation to ensure that the best interest of the child is paramount in any licensing or foster care setting.

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Endnotes

- ¹ U.S. DEP'T OF HEALTH & HUMAN SERVS., HOW TOBACCO SMOKE CAUSES DISEASE: THE BIOLOGY AND BEHAVIORAL BASIS FOR SMOKING-ATTRIBUTABLE DISEASE: A REPORT OF THE SURGEON GENERAL (2010) [hereinafter SURGEON GENERAL REPORT 2010], available at http://www.surgeongeneral.gov/library/tobaccosmoke/report/full_report.pdf.
- ² By early 2011, at least eighteen states had passed laws or regulations regulating smoking in foster care homes: Alaska, Arizona, Colorado, Illinois, Iowa, Kansas, Maine, Maryland, Montana, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Washington, and Wyoming.
- ³ U.S. Dep't of Health and Human Servs., *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*, Fact Sheet (2010), available at <http://www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html>.
- ⁴ See SURGEON GENERAL REPORT 2011, *supra* note 1.
- ⁵ *Children and Secondhand Smoke Exposure*, CDC.GOV [hereinafter CDC, *Children and Secondhand Smoke Exposure*], <http://www.cdc.gov/Features/ChildrenAndSmoke/> (last visited Feb. 20, 2011).
- ⁶ *Id.*
- ⁷ *Id.*; see also Michael Weitzman et al., *Tobacco Smoke Exposure is Associated with the Metabolic Syndrome in Adolescents*, 10 CIRCULATION 1161 (2005).
- ⁸ See CDC, *Children and Secondhand Smoke Exposure*, *supra* note 5.
- ⁹ See *id.*
- ¹⁰ See *id.*; see also Campaign for Tobacco-Free Kids, *Tobacco Harm to Kids Fact Sheet* (2009), at <http://www.tobaccofreekids.org/research/factsheets/pdf/0077.pdf> (containing cites to dozens of studies and source materials).
- ¹¹ Kimberley Yolton et al., *Exposure to Environmental Tobacco Smoke and Cognitive Abilities of U.S. Children and Adolescents*, 113 ENV. HEALTH PERSP. 92 (2005).
- ¹² Margaret Becklake et al., *Childhood Predictors of Smoking in Adolescence: A Follow-up Study of Montreal Schoolchildren*, 173 CAN. MED. ASS'N. J. 377 (2005).
- ¹³ Alvin Bronstein et al., *2008 Annual Report of the American Association of Poison Control Centers' National Poison Data System*, 47 CLINICAL TOXICOLOGY 911, 1039 (2009). In 2008, for example, the American Association of Poison Control Centers received 7,310 reports of potentially toxic exposures to tobacco products among children younger than six years of age in the U.S. *Id.* See also AM. LEGACY FOUND., *THE IMPACT OF TOBACCO ON THE ENVIRONMENT* (2010), available at <http://www.cigwaste.org/images/stories/environmentalimpactapr2010.pdf> (containing cites to dozens of studies and source materials).
- ¹⁴ JOHN R. HALL, JR., NAT'L FIRE PROT. ASS'N., *THE SMOKING-MATERIAL FIRE PROBLEM 1* (2007), available at <http://www.nfpa.org/assets/files/PDF/OS.SmokingMaterials.pdf>.
- ¹⁵ See, e.g., Georg E. Matt et al., *Households Contaminated by Environmental Tobacco Smoke: Sources of Infant Exposures*, 13 TOBACCO CONTROL 29 (2004); see also Mohamed Sleiman et al., *Formation of Carcinogens Indoors by Surface-mediated Reactions of Nicotine with Nitrous Acid, Leading to Potential Thirdhand Smoke Hazards*, 107 PROC. NAT'L ACAD. OF SCI. 6576 (2010); Jonathan P. Winickoff, et al., *Beliefs About the Health Effects of "Thirdhand" Smoke and Home Smoking Bans*, 123 PEDIATRICS e74 (2009).
- ¹⁶ U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING, NO. 7: SPECIAL HEALTH CARE NEEDS AMONG CHILDREN IN CHILD WELFARE – FINDINGS FROM THE NSCAW STUDY (2010) [hereinafter DHHS NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING], available at http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/special_health/special_health.pdf.
- ¹⁷ See Kathleen Dachille & Kristine Callahan, Tobacco Control Legal Consortium, *Secondhand Smoke and the Family Courts: The Role of Smoke Exposure in Custody and Visitation Decisions* (2005), available at <http://publichealthlawcenter.org/sites/default/files/resources/rcl-syn-family-2005.pdf>. For examples of child custody cases in which the court took judicial notice of secondhand smoke evidence, see Edward Sweda, *Lawsuits and Secondhand Smoke*, 13 TOBACCO CONTROL i61–i66 (2004), available at http://tobaccocontrol.bmj.com/content/13/suppl_1/i61.full.pdf.
- ¹⁸ See Susan Weisman, Public Health Law Center, *Kids, Cars and Cigarettes: Policy Options for Smoke-free Vehicles* 9 (2010), available at http://publichealthlawcenter.org/sites/default/files/resources/phlc-policybrief-kidscarssmoke-2010_0.pdf.

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- ¹⁹ DONALD F. BEHAN ET AL., SOCIETY OF ACTUARIES, ECONOMIC EFFECTS OF ENVIRONMENTAL TOBACCO SMOKE (2005), *available at* <http://www.soa.org/research/research-projects/life-insurance/research-economic-effect.aspx> (last visited Mar. 7, 2011).
- ²⁰ Hennepin County (Minnesota) Human Servs. & Public Health Dep't, Public Health Promotion, *Effects of Other States' Smoking Prohibitions on Child Foster Care 2-6* (2011), *available at* <http://www.hennepin.us/files/HennepinUS/HSPHD/Community%20Services/Public%20Health%20Promotion/Health%20at%20the%20Community%20Level/Report%20on%20Smoking%20in%20Child%20Foster%20Care%20Facilities.pdf>.
- ²¹ *Id.* at 3-4.