



PSI Legal Resources Toolkit

Since 1987, Postpartum Support International (PSI) has provided support to families and training for providers who treat individuals experiencing psychiatric illness during pregnancy and postpartum. Over the last decade, PSI has extended its reach to support women in the legal system by educating and offering resources to attorneys who are called upon to represent them in either family or criminal court and also to first responders who come into contact with mothers in a range of scenarios. In this toolkit, we focus on criminal cases in which the defendants are women suffering from postpartum psychosis.

Approximately 1 in 7 women are affected by perinatal mental illness during or after pregnancy. This translates to over 500,000 American women annually. Maternal mental illness crosses all racial, ethnic, and socioeconomic lines and is considered a medical illness. The perinatal mental illness most people are familiar with is postpartum depression. In fact, postpartum anxiety is even more common, and other diagnoses such as perinatal PTSD and OCD with intrusive thoughts are often in the mix. OCD with the symptom of unwanted, intrusive thoughts of harming the infant is not psychosis, and does not lead to infanticide. The least common but most serious form of perinatal mental illness is postpartum psychosis (PPP) because it involves a complete break from reality and delusions can lead to an increased risk of suicide and infanticide.

This toolkit is for criminal defense attorneys representing mothers who have committed infanticide and/or filicide, attempted infanticide, or caused severe injury to an infant or child. When this happens, it is statistically probable that she has postpartum psychosis, and warrants informed evaluation by a perinatal psychiatric expert.

Some basics:

- PPP is treatable, and women who suffer from it and receive proper treatment are not chronically psychotic for life
- 1 to 2 out of every 1000 new mothers develops PPP
- Out of over 3.5 million births in the US annually, more than 7,000 women develop PPP
- 5% of those die by suicide—at least 360 per year
- 4% of women with PPP, approximately 290 per year, harm or kill their infant, older children, or (occasionally) partner
- Of the over 7,000 women who develop PPP, 3,600 or more have no history of previous psychiatric hospitalizations

Defending a mother who is charged with harming or taking the life of her child is uniquely challenging due to legal and societal factors. The biggest legal factor starts and ends with the jury. It is very hard to align with the mindset of woman who has taken her child's life, but that is exactly what attorneys must do to present an effective defense. This toolkit will help you understand postpartum psychosis in order to navigate such a scenario with empathy and evidence-based information about the illness.

Best practices following the death or serious injury to infant at the hands of a mother:

- Interview your client as soon as possible after her arrest or hospitalization. Time is of the essence.
- Document client's behavior, by filming her if possible, before she is medicated. Medication will stabilize her and change the way she is perceived by a jury.
- Arrange early evaluation by a reproductive/perinatal psychiatrist while your client is still symptomatic. This is where PSI would be most helpful, in being able to make recommendations and connect the legal professional with an informed perinatal psychiatric expert.

- If law enforcement interrogated the client, obtain that discovery early and provide it to your reproductive/perinatal psychiatrist as soon as possible.
- Educate yourself on perinatal mental health disorders, specifically postpartum psychosis. Contact Postpartum Support International to speak to someone about this diagnosis at psioffice@postpartum.net

Tips from perinatal psychosis cases:

- Learn as much as you can from family and friends about your client's personality and behavior prior to the incident. With the perspective of hindsight, people often realize there were changes in behavior or other warning signs.
- Resist prejudging your client based on the horrible nature of her act. As upsetting as these cases are, an open mind is vital to getting at the truth and achieving justice.
- Remember that perinatal mental illnesses, including psychosis, are temporary and treatable.
- Postpartum psychosis can be mercurial in nature and the mother may appear rational at times and delusional at other times. If people you speak with mention inconsistencies, avoid making assumptions.
- Gather the psychiatric history of the client and her family and her obstetric history, especially noting any evidence of birth trauma. If she has been pregnant before, did she experience any perinatal mood disorders?
- At the time of the infanticide or filicide, was your client in psychiatric treatment? If so, what was the diagnosis and were there any recent changes in medication.?
- Find out if the mother has been isolated or lacks a meaningful support system. Mothers with PPP are more likely to fall into that category.
- If the mother was a victim of childhood trauma, a psychologist trained in childhood trauma may be useful in your defense.
- Be aware of other motives that may be raised by the prosecution, such as: spousal revenge, i.e. for infidelity or abuse, monetary gain, i.e. insurance money.
- Postpartum psychosis is not in the DSM. However, "psychosis, with postpartum onset" is.
- Perinatal psychosis cases are not reasonable doubt cases. You will need to put on a defense. Start thinking about this early.
- Where possible, utilize juror focus groups in the county where the case will be tried.

Resources:

- PSI Yates Children Memorial Fund – Legal Justice Program. Contact Postpartum Support International at psioffice@postpartum.net
- PSI VIDEO: Advice for Lawyers – Postpartum Mental Illness and the Criminal Justice System <https://vimeo.com/253536312>
- <https://www.postpartum.net/learn-more/postpartum-psychosis/>
- Feingold, Susan and Barry Lewis. [Advocating for Women with Postpartum Illness: A Guide to Changing the Law and the National Climate.](#) Lanham: Rowman & Littlefield Publishing, 2020.
- Meyer, Cheryl L. and Michelle Oberman. [Mothers Who Kill Their Children.](#) New York: New York University Press, 2001.
- Spinelli, Margaret. [Infanticide: Psychosocial and Legal Perspectives on Mothers Who Kill.](#) Washington, DC: American Psychiatric Publishing, 2003.
- Twomey, Teresa M. with Shoshana Bennett. [Understanding Postpartum Psychosis: A Temporary Madness.](#) Westport: Praeger Publishers, 2009.
- Wong, Gina and George Parnham, eds. [Infanticide and Filicide: Foundations in Maternal Mental Health Forensics.](#) Washington, DC: American Psychiatric Association Publishing, 2021.

Produced by the PSI Legal Justice Committee with help from attorneys George J Parnham, Guy D Smith, and Po Chau.