



POSTPARTUM SUPPORT INTERNATIONAL LEGAL 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.

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 difficult to align with the mindset of a woman who has taken her child's life, but that is exactly what attorneys must do to present an effective defense. As an attorney, it is critical to fully understand the illness in order to grasp that the perceptions of the mother have been subverted and that she is operating within an altered reality. This toolkit will help you understand postpartum psychosis so you can navigate your attorney-client relationship and your representation of her at trial with empathy and evidence-based information about the illness.

Approximately 1 in 5 women is affected by perinatal mental illness during or after pregnancy. This translates to over half a million American women annually. Maternal mental illness crosses all racial, ethnic, and socioeconomic lines. Of all mental illnesses, maternal mental illness is the most clearly linked to biological causes. 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 are also fairly common. 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.

A mother with postpartum psychosis is in a world dominated by sounds only she can hear and visions only she can see. When she is in this state, nothing much from the outside world can penetrate her reality. At other times, she seems to connect normally to the world, which can be confusing for people around her. This psychosis has distinct precipitants, namely pregnancy and childbirth with symptom onset most commonly soon after birth, but with some women reporting onset up to one year after birth.

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 very likely that she has postpartum psychosis. The situation always 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 psychotic for life.
- Postpartum psychosis occurs in between 0.089 and 2.6 per 1000 births. (VanderKruik et al, 2017)
- The incidence of infanticide, filicide, and suicide is higher among women with PPP than women with other maternal mental illness. Presently there are no good statistics on what those numbers are. Research is ongoing. Many women who develop PPP will have a history of bipolar disorder but many have no known previous psychiatric history. (Perry et al., 2021)

15 best practices following the death of or serious injury to an infant or child at the hands of a mother:

1. Try to interview, and if possible, film your client as soon as you can after her arrest or hospitalization and prior to being medicated. Time is of the essence. Medication will stabilize her and change the way she is perceived by a jury.
2. If your client has already been placed on medication, find out when it was started and who prescribed it. Also get a list of other medical professionals who saw her prior to her being medicated. This allows you to identify potential witnesses, getting a timeline on how and when she presented in certain ways.
3. Arrange early evaluation by a reproductive/perinatal psychiatrist while your client is still symptomatic, if at all possible. PSI can help you with this (legaljustice@postpartum.net). We can make recommendations and connect you to informed perinatal psychiatrists who are expert witnesses willing to do this work for defense counsel.
4. Anyone, including law enforcement, who saw the mother while she was still symptomatic should be interviewed as soon as possible as additional witnesses.
5. If law enforcement interrogated your client, obtain that discovery early and provide it to your consulting reproductive/perinatal psychiatrist as soon as possible.
6. When gathering medical information, include information about previous births (did anything similar happen), previous perinatal mood disorders, obstetric history, and psychiatric history of both your client and her family.
7. Consider hiring a mitigation specialist. They are trained to identify, locate, and interview important witnesses, gather records, and produce a social history that can be useful to your expert, the prosecutor, and the judge.
8. 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.
9. Remember that perinatal mental illnesses, including psychosis, are temporary and treatable. (Danger to the community is critical at a bond hearing.)
10. Mothers with PPP do not always present the same way. The illness can manifest itself differently over a short period of time. If people you speak with mention inconsistencies in your client's affect, recognize that this is potentially a symptom of the illness.

11. Be aware of other motives that may be raised by the prosecution, such as spousal revenge, i.e. for infidelity or abuse, monetary gain, or insurance money.
12. Perinatal psychosis cases are not reasonable doubt cases. You will need to put on an affirmative defense. Start thinking about this early.
13. Whenever possible, use juror focus groups in the county where the case will be tried.
14. Your expert witness is critical. The jury deserves to hear from an expert in maternal mental health as opposed to a generic expert in forensic psychiatry. Put someone on the stand whose expertise allows them to speak authoritatively about postpartum psychosis and its direct effect on the mother's state of mind at the time of the offense.
15. If you do nothing else in the next few hours, read this [*article*](#) from the Cleveland Clinic. It will provide you with fundamental information about perinatal mental health disorders, specifically postpartum psychosis. Contact Postpartum Support International to speak to someone about this diagnosis at legaljustice@postpartum.net and review our list of resources at the end of this toolkit for additional information.

Mothers who kill their children are perceived as monsters. Defense counsel has to show the court that PPP is motherhood turned upside down. Mental illness is the culprit—prove it through your newfound knowledge and the help of an expert who specializes in perinatal mood disorders.

— GEORGE PARNHAM, *Esq.*

*Yates vs. State of Texas, 171 S.W.3d 215 (Tex.App.-Houston [1st Dist.] 2005),
pet denied, [Reversed and remanded to trial court]
The case was re-tried in 2005 and Defendant was found
Not Guilty by Reason of Insanity.*



The Science & Diagnosis of Postpartum Psychosis:

Although postpartum psychosis is not currently included in the DSM, reproductive psychiatrists use the following differential diagnoses that are in the DSM-5:

- Major depressive disorder with psychotic features and peripartum onset
- Brief psychotic disorder
- Bipolar disorder with psychotic features

Although those with schizophrenia can be said to be psychotic during the postpartum period, they are not typically included among “postpartum psychoses” which encompasses the episodic onset of acute psychosis after birth. However, some psychiatrists searching for a diagnosis from the DSM, use a classification for postpartum psychosis in the “brief psychotic disorder” section of the schizophrenia spectrum. (DSM-5)

When a jury is considering the actions of a mother who has this diagnosis, it is vital that they hear from a reproductive psychiatry expert who can explain the mechanisms of the illness and can help them understand that PPP involves the complex interaction of neurochemistry, genetics, and endocrine events. The hormones from childbirth have profound effects on the brain. It is the medical field of neuroendocrinology, a science that studies the effects of hormones on brain chemistry and subsequent possible mental illnesses, that covers this area of specialization.

Hormones that increase hundreds of times during the 40 weeks of pregnancy abruptly drop to baseline within 24 hours of delivery. **The massive hormone withdrawal generates modifications and dysregulation of brain chemicals and sometimes results in psychiatric symptoms in susceptible women.** Postpartum psychosis has a rapid progression from wellness to severe disorder.

In a courtroom, there are never any guarantees, but with strong preparation and the right professional support, these tough cases involving women suffering from postpartum psychosis can have positive outcomes.

Criminal Cases with favorable outcomes:

State of Texas v. Ritika Agrawal, 20-DCR-091073 (Tex. Dist. 240, May 18, 2020)

State of Texas v. Dena Schlosser, 4168246504 (Tex. Dist. 416, Dec. 02, 2004)

State of Texas vs. Deanna Laney, 114-1412-03 (Tex. Dist.114, April 4, 2004)

State of Texas v. Oty Sanchez, 2009CR10731 (187th District Ct., Bexar County, TX) Jun. 30, 2010

People of Michigan vs. Shontelle Cavanaugh, 2006-206367-FC (Oakland Circuit Ct., Judge Mary Ellen Brennan presiding)

State of New York vs. Lisette Bamenga, 16GO485 (Bronx Circuit Court, NY, Apr. 2016)

Other Resources:

Bergink, V., Rasgon, N., & Wisner, K. L. (2016, December). Postpartum Psychosis: Madness, Mania, and Melancholia in Motherhood. *American Journal of Psychiatry*, 173(12), 1179–1188. <https://doi.org/10.1176/appi.ajp.2016.16040454>

Lucchesi, E. L. B. (2022, December 12). *The Role of Postpartum Psychosis in Infanticide*. The Atlantic. <https://www.theatlantic.com/family/archive/2018/09/postpartum-psychosis-infanticide-when-mothers-kill-their-children/569386/>

Meyer, Cheryl L. and Michelle Oberman. *Mothers Who Kill Their Children*. New York: New York University Press, 2001.

Nau, M., McNeil, D. E., & Binder, R. L. (2012). Postpartum psychosis and the courts. *PubMed*, 40(3), 318–325. <https://pubmed.ncbi.nlm.nih.gov/22960913>

Perry A, Gordon-Smith K, Jones L, Jones I. Phenomenology, Epidemiology and Aetiology of Postpartum Psychosis: A Review. *Brain Sci.* 2021 Jan 4;11(1):47. doi: 10.3390/brainsci11010047. PMID: 33406713; PMCID: PMC7824357.

Spinelli, Margaret. *Infanticide: Psychosocial and Legal Perspectives on Mothers Who Kill*. Washington, DC: American Psychiatric Publishing, 2003.

Vanderkruik R, Barreix M, Chou D, Allen T, Say L, Cohen LS; Maternal Morbidity Working Group. The global prevalence of postpartum psychosis: a systematic review. *BMC Psychiatry.* 2017 Jul 28;17(1):272. doi: 10.1186/s12888-017-1427-7. PMID: 28754094; PMCID: PMC5534064.

Wong, Gina and George Parnham, eds. *Infanticide and Filicide: Foundations in Maternal Mental Health Forensics*. Washington, DC: American Psychiatric Association Publishing, 2021.