



## Legal and policy issues from the United States and internationally about mandatory reporting of child abuse

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### ABSTRACT

Laws that mandate reporting of child abuse have stirred global controversy. Mandatory reporting to authorities for different types of child abuse includes physical abuse, sexual abuse, emotional abuse, physical neglect, educational neglect, and emotional neglect. While the definition of child abuse differs from jurisdiction-to-jurisdiction, which covers a wide spectrum of abuse and maltreatment, employees who work in professions required to report child abuse include health care workers, educational employees, social workers, religious leaders, employees of divisions of child protective services, criminal justice and other governmental personnel, and child care professionals. Lack of a uniform definition of what constitutes child abuse causes problems for mandatory reporters, ranging from false arrest and malicious prosecution to failure to investigate ongoing child abuse. This article reviews international norms associated with mandatory reporting of child abuse and assesses court cases within the United States that involve mandatory reporting, identifying important issues and underlying problems with the current mandatory reporting system; it concludes with policy recommendations and suggestions for future research.

### 1. Introduction

Child abuse is defined as “the maltreatment of a child [that] may include physical, sexual or emotional abuse as well as child neglect” (Clark & Clark, 2007, p. 57). The problem of child abuse dates to pre-historic times, and “historians have ... document[ed] the occurrence of various forms of the mistreatment of children back to the beginnings of recorded history” (Clark & Clark, 2007, p. ix). In fact, child protection laws date as far back as 450 BCE, designed as an effort to limit a community's access to children (Sari & Buyukunal, 1991). Child abuse and maltreatment are commonly recognized today as a global societal problem (Butchart & Phinney Harvey, 2006).

Child abuse affects a child's well-being, including their physical, emotional, mental, and social health. There are six major forms of child abuse and maltreatment: physical abuse, sexual abuse, emotional abuse, physical neglect, educational neglect, and emotional neglect (Clark & Clark, 2007, p. xiii).

- Physical abuse include acts that cause physical harm to the child (i.e., death).

- Sexual abuse are acts that include penetration, molestation, and other forms of sexual behaviors where the child is used to pleasure the perpetrator.
- Emotional abuse are acts that one intentionally commits to cause emotional and verbal abuse, confinement, and other types of abuse that deprive the child of food and shelter.
- Physical neglect are acts that deny or delay health care, displace a child from a home, abandon a child, provide insufficient supervision and protection of a child from harm, and fail to provide food and clothing needs.
- Educational neglect include chronic truancy, ignoring educational needs, and failure to enroll a child in school.
- Emotional neglect include failing to nurture children, failing to stop spousal abuse, using alcohol and other controlled substances, and denying psychological care.

In the United States, concern for child welfare increased during the Enlightenment period of the 18th century, raising awareness, providing services, and offering protective measures to children. Later in the mid-1800s, child welfare systems expanded, but they were “church-based

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rather than government-based” (Clark & Clark, 2007, p. x). It was not until 1874 that the first organization in the U.S. to focus on child maltreatment was formed; the New York Society for the Prevention of Cruelty to Children was a stepping stone to improve services and policies regarding child maltreatment. During the late 1940s, technological advancements led to increased findings of child maltreatment (Pfohl, 1977). With the use of radiological technology, doctors were able to study old bone injuries in children to determine if they were properly treated and healed (Kempe, Silverman, Steele, Droegemueller, & Silver, 1962).

Child abuse and maltreatment are commonly associated with physical, emotional, and verbal abuse, but acts of omission for a child's well-being are also considered child abuse and maltreatment. Children who are victims of child abuse and maltreatment are often subjected to one or more forms of abuse. According to a 1996 study by the National Center on Child Abuse and Neglect, the three most common types of child abuse and maltreatment in the U.S. are the following in descending order: physical neglect, neglect, and physical abuse (Clark & Clark, 2007). Data from Australia show that one in 33 children (162,175 children) received child protective services from 2015 to 2016. Among that population, almost three-quarters were repeat clients. Similar to the U.S., child abuse victims in Australia and Ireland often suffer from multiple forms of abuse and neglect (Australian Institute of Health & Welfare, 2017; Pilgrim, 2012).

During 2016 federal fiscal year (FFY), Child Protective Services (CPS) initiated investigations or provided alternative responses (referrals to other agencies) to 3.5 million children across the U.S. – this number represents a 9.5% increase from 2012 (U.S. Department of Health & Human Services, 2018). According to the 2016 *Child Maltreatment* report, 74.8% of child maltreatment victims in the U.S. suffered from neglect, 18.2% suffered from physical abuse, and 8.5% suffered from sexual abuse. Of these children, 86% experienced one type of maltreatment, and 14% suffered a combination of maltreatments, meaning “the child had two different types of maltreatment in a single report [or] the child suffered different maltreatment types in several reports (e.g., neglect in one report and physical abuse in a second report)” (U.S. Department of Health & Human Services, 2018, p. 20).

Child abuse and neglect not only can cause a victim to suffer lifelong emotional and psychological trauma, but they can also lead to death. As documented in the 2016 *Child Maltreatment* report, child abuse and neglect resulted in 1,750 child fatalities in the U.S. – a 7.4% increase from the 2012 national estimate. The increase in number of child fatalities may have resulted from new state laws that require officials to investigate unexplained infant deaths, even if there was no prior allegation of child abuse. Other influences that may have increased reported child fatalities include states' expansion in child death review policies (U.S. Department of Health & Human Services, 2018). Additionally, age is a strong risk factor of child maltreatment; younger children are at greater risk of death from abuse and neglect (Kempe et al., 1962). This trend is also generally reflected in national statistics from European countries and Australia (Australian Institute of Health & Welfare, 2017; Mathews, 2014). According to the 2016 *Child Maltreatment* report published in the U.S.:

- Children younger than three-years of age account for 70% of all child fatalities.
- Children under the age of one represent 44.4% of all child fatalities.
- Children one-year of age represent 14.1% of all child fatalities.
- Boys are at higher risk for child fatality than girls.

The 2016 *Child Maltreatment* report also noted that among child fatalities, 74.6% involved neglect, 44.2% suffered physical abuse, and 1.2% were victims of sexual abuse, either exclusively or in conjunction with other types of maltreatment (U.S. Department of Health & Human Services, 2018).

Broad public awareness of child abuse and child protection are social concepts in the U.S. that did not become prevalent until the mid-20th century. According to Kalichman (1999, p. 13), “increased public awareness of child abuse and the civil libertarian social climate of the 1960s set the stage for child protection legislation.” Although the early established signs of suspected child abuse were difficult for nonmedical observers to identify, the medical field played a crucial role in the establishment of early child abuse reporting laws when pediatricians and physicians constructed “a formal medical profile for abused children... [The] first clinical reports formed much of the groundwork for defining child abuse as a medical problem” (Kalichman, 1999, p. 14). It was also around this time that diagnoses, such as the battered-child syndrome, were published and recognized in the medical field (Kempe et al., 1962).

The advent of x-ray technology helped medical personnel detect a host of hidden clinical problems. Doctors for the first time were able to observe prior and recent patient injuries (Pfohl, 1977). The battered-child syndrome, first published in 1962, “characterize[d] a clinical condition in young children...who received serious physical abuse, generally from a parent or foster parent” (Kempe et al., 1962, p. 17). Children suffering from the battered-child syndrome are typically under three-years of age and oftentimes display signs of significant neglect. The most serious cases of battered-child syndrome include permanent brain injury and death (DeShaney v. Winnebago County Department of Social Services, 1989). Battered-child syndrome is frequently suspected when children present subdural hematoma, “a marked discrepancy between clinical findings and historical data as supplied by the parents,” and evidence of multiple injuries, sometimes at “different stages of healing” (Kempe et al., 1962, p. 18). Knowledge and awareness of child maltreatment allowed medical professionals to help prevent further abuse by reporting it to the appropriate authorities.

Some physicians, however, handled child abuse cases skittishly because they did not want to become an extension of the legal system (Kalichman, 1999). Unlike law enforcement officials and other legal authorities, medical professionals were not trained to investigate crimes. Many physicians were unwilling to consider the child's family members as a source of harm (Kalichman, 1999; Kempe et al., 1962). In addition, listing medical professionals as the only mandatory reporter discouraged family members from seeking medical help for their children. Because of the medical professionals' reluctance to investigate and report suspected child abuse, legislation was enacted to include other mandatory reporters (Kalichman, 1999). Thus, the first child abuse mandatory reporting laws were enacted in the U.S. in the 1960s, after the battered-child syndrome was widely acknowledged.

Legislators noted that many victims of child abuse may come in contact with other professionals – such as school teachers, social workers, and psychologists – before they make contact with medical professionals. Therefore, during the late 1960s and early 1970s, professionals from nonmedical fields were included as mandatory reporters. Around this time, the law also expanded the definition of child abuse to include emotional and nutritional maltreatment, as well as sexual abuse and exploitation. One of the main goals of mandatory reporting was to increase the number of identified child abuse cases. Aside from legislation that contributed to requiring professionals from various fields to report suspected child abuse, the increase of cases was attributed to the rise in social awareness, social consciousness, and encouragement for individuals to report (Kalichman, 1999).

## 2. International child abuse reporting laws

Following the U.S., child abuse mandatory reporting legislation formed in other countries. Canada introduced its first child abuse mandatory reporting laws in the 1960s, and Australia passed its first law in 1972 (Takis, 2008). Moreover, some jurisdictions in Australia recently amended their laws to make educators (in 2004) mandatory reporters, and Western Australia introduced a general reporting model

in 2006 (Mathews & Kenny, 2008). In the United Kingdom (UK), Northern Ireland and Wales (Grayson, 2018) are currently the only jurisdictions with mandatory child abuse reporting laws. Apart from Northern Ireland and Wales, the UK and New Zealand have yet to enact mandatory reporting legislation (Grayson, 2018; Sanders, Munford, Liebenberg, & Henaghan, 2014).

The UK established legislation in the early 2000s that focused on inter-agency cooperation to promote child welfare (HM Government, 2018). The development of the information sharing system in the UK is driven by past negative child abuse case outcomes due to inadequate communication between professionals and governmental agencies (Bunting, Lazenbatt, & Wallace, 2010). Inter-agency information sharing systems allow professionals who work with children, including the National Society for the Prevention of Cruelty to Children (NSPCC) (Lancashire Safeguarding Children Board, n.d.) to flag children who are at risk of “abuse and neglect” (Munro & Parton, 2007, p. 8). These inter-agency information sharing systems also allow law enforcement personnel to access social service files and communicate information about “alleged and suspected abusers ... following an investigation” (Lancashire Safeguarding Children Board, n.d., p. 2).

The relative benefits of introducing mandatory reporting laws for child abuse and neglect have been publicly debated in England over the past several years (Doward, 2016a; Doward, 2016b; Hope, 2014; Khan, 2018). Presently, England uses the information sharing database that serves the UK and the Information Sharing Index (England) (Munro & Parton, 2007). Local authorities in England are responsible for inputting child identification information into the system, such as the child's name, gender, contact information, as well as information about their care giver(s) and educational institutions. Although the database documents children of concern, specific agencies are not cognizant of its contents. Instead, the information is on file and may be utilized by the authorities. While information sharing may be useful for efficiently identifying at-risk children, it is not equivalent to a direct request of a follow-up. Similar to how cases may be overlooked in an overburdened mandatory reporting system, cases in the UK database may be overlooked when no agency is assigned to organize and screen them (Waldfoegel, 2000).

In Ireland, child welfare protection legislation was heavily influenced by public furor over the country's long history of concealed child abuse within the Catholic Church (Ferguson, 1995; Pilgrim, 2012). Church authorities in Ireland failed to disclose to legal authorities numerous cases of child abuse, including instances where religious personnel were the perpetrators. Proper investigations of past abuse did not occur until the 1990s (Pilgrim, 2012). On a broader spectrum, child abuse associated with the Catholic church is not only a problem constrained to Ireland, but has been acknowledged as a global concern across multiple religious faiths (Downen, Olsen, & Tedesco, 2019; Horowitz, 2019).

The 1991 Child Care Act was Ireland's first piece of legislation to improve child welfare; it assigned an agency to identify children in need of welfare services and extended “family support services” (Devaney & Gregor, 2017, p. 1259). Afterwards, the Children First Act 2015 was also enacted, in part, to make ethical and legal obligations for church supervisors to report priest sexual abuse. In addition, the Children First Act 2015 also aimed to improve the nation's child welfare policies by more clearly defining mandatory reporters and requiring organizations to provide services to promote child safety (Department of Children & Youth Affairs, n.d.). Irish mandatory reporting laws align with child welfare laws in other developed Western countries.

In Australia, mandatory reporting legislation aims to promote community concern for child welfare. Similar to the U.S., Australian legislation typically includes medical professionals and others who have frequent contact with children as mandatory reporters (Australian Institute of Family Studies, 2017). Australian legislation heavily focuses on the reporting of child sexual abuse in all jurisdictions (Australian Institute of Family Studies, 2017; Daro, 2008). Unlike the U.S.,

however, many Australian jurisdictions do not mandate reporting of child neglect nor emotional abuse (Mathews, 2014). Mandated reporting of other forms of child maltreatment, such as physical abuse, emotional/psychological abuse, neglect, and exposure to domestic violence, varies by the specification of each jurisdiction's legislation. For example, teachers in Queensland “are required to report all forms of suspected significant abuse and neglect under school policy but are only mandated to report sexual abuse under the legislation” (Australian Institute of Family Studies, 2017, What type of concerns must be reported, and what may be reported? section, para. 2).

More recently, mandatory reporting legislation in some jurisdictions in the U.S. and Australia have expanded to include medical professionals who suspect prenatal exposure to abuse of hard drugs, alcohol, or both (Mathews & Kenny, 2008; see also, Laslett, Dietze, & Room, 2013). Additionally, some jurisdictions extended mandatory reporting requirements to children exposed to domestic violence. Indeed, some states and provinces in Australia, Canada, and the U.S. now include specific language to mandate reports of children at-risk of physical or psychological consequences of exposure to domestic violence. Mandating reports of children exposed to domestic violence may discourage victims of domestic violence, especially women, from notifying the police (Humphreys, 2008). Another concern of mandating domestic violence-related reports is that it could further overburden CPS and jeopardize timely service delivery to high-risk child abuse cases. In this vein, when mandatory reporters overwhelm CPS with a flood of suspected child abuse allegations, the system may not look into legitimate abuse cases or may close legitimate case files too soon without conducting adequate investigations (Takis, 2008).

### 3. Training on mandatory reporting of child abuse

Questions have been raised about the efficacy of mandated reporting of child abuse and whether the laws are effective with identifying abuse and maltreatment (Kenny, 2015). Definitions of child abuse are broad and lead to high rates of unfounded cases, also known as false positives. Broader definitions of child abuse, however, are preferred over narrow definitions because narrow definitions lead to potential child abuse going unreported, also known as false negatives (Kalichman, 1999; Mathews & Kenny, 2008). Palusci, Vandervort, and Lewis (2016) asserted that universal reporting and mandated clergy reporting increased the overall number of reported and confirmed child abuse and maltreatment cases (see generally, White & Terry, 2008; see also, Mathews & Kenny, 2008). The study concluded that although there was an increase in the number of reported and confirmed child abuse cases, it was not certain that “more maltreated children” were identified (Palusci et al., 2016, p. 178).

In many American states, reasonable suspicion is all that is required for a mandatory reporter to alert CPS of suspected child abuse (Dinehart & Kenny, 2015). Studies, however, have found differences in individual interpretation of reasonable suspicion of suspected child abuse among mandatory reporters. Levi and Crowell (2011, p. 321) acknowledged the “variability in how individuals understand, interpret and apply their responsibility to report suspected child abuse is influenced by their personal experience with abuse, the circumstances of individual cases, and perceptions of child protection services.” The inconsistency in mandatory reporting thresholds for individuals suggest that more education and training should be focused on standardizing the interpretation of reasonable suspicion, so that mandatory reporters possess more uniform guidelines for reporting child abuse (Levi & Crowell, 2011). In fact, Takis (2008) identified problems associated with ambiguous statutory language regarding the threshold required to trigger mandatory reporting, including nebulous, abstract, and obscure phrases such as “reasonable suspicion,” “reasonable grounds,” and “reasonable belief.” These terms mean different things to different people, and “have caused confusion for [mandatory] reporters” (Takis, 2008, p. 139). As a result, mandatory reporters in Canada, U.S., and Australia

that use various forms of the “reasonableness” standard operate with ambiguous guidance on when to make a reporting decision about whether a child is at risk of abuse (Takis, 2008, p. 139, citing Matthews & Kenny, 2008, p. 50).

Studies conducted in the U.S. and other countries, however, suggest that professionals are not receiving adequate training on policies regarding mandatory reporting and indicators of child abuse. Dinehart and Kenny (2015) examined the knowledge of child abuse and reporting practices among early care and education providers in Florida. The study suggested that many professionals remained unsure about the legal requirements of mandatory reporting despite receiving bi-annual training. Participants who failed to report expressed their fear of making inaccurate reports, misinterpreting cultural discipline styles, and compounding negative consequences as reasons for their failure to report. Participants also reported that training lacked information on the best methods to work with children from abusive homes, as well as the physical and behavioral indicators of child abuse. Additionally, the study indicated that more than half of the participants were unaware of criminal sanctions, such as fines and possible jail time that can result from failure to report.

Zellman (1990) analyzed a national survey of mandatory reporters and their reasons for failure to report from a sample of healthcare professionals, social workers, educators, and child care providers. Reasons for not reporting included the reporter not having sufficient or clear evidence of child abuse, being unsure about the indicators of abuse, or being afraid to make false reports that would lead to negative consequences and civil liability. Budai (1996) further identified comparable reporting concerns among healthcare professionals in Australia and New Zealand, such as legal liability, disturbance to family dynamics, and risks of escalating harm to children.

One Australian study examined the extent of knowledge university undergraduate student-teachers had about policies and compliance associated with reporting child sexual abuse (Goldman, 2010). Primary school student-teachers who had completed their final year of undergraduate studies said they possessed inadequate knowledge about child sexual abuse and mandatory reporting policies. Additionally, Zellman (1990) indicated that psychologists and psychiatrists tend not to report child abuse because they expect more negative consequences from reporting, such as CPS ineffectively resolving the child abuse case. Mental health providers who worked for CPS were most effective when they focused on family relationships and mental well-being, whereas state intervention created more strain on family relationships and mental stress.

Berlin, Malin, and Dean (1991) reported that mandatory reporting laws deterred patients from seeking help and disclosing information to mental health professionals. These laws question whether ethical codes of conduct regarding confidentiality between patients and mental health professionals lead to patients being less than forthcoming with therapists, which could potentially decrease the number of child abuse victims identified.

In sum, research shows that mandatory reporters have been frustrated about a lack of knowledge of how CPS operates, expressed uncertainty about the requirements of current legislation, confused over burdens of proof required to report suspected child abuse, and demoralized over lack of funding for effective child abuse investigations. Thus, workshops ought to be taught by CPS workers and law enforcement personnel to help bridge gaps between the expectations of mandatory reporters and governmental agencies. Governmental authorities need to provide adequate funding to support robust systems to counter the scourge of child abuse. Training needs to instruct mandatory reporters on when they possess a legal duty to report, what the legal burden of proof is for reporting, and what their liability risks are if they do not report. Training should focus on how to identify child abuse, especially for types of child maltreatment that are more challenging to identify, such as emotional abuse and neglect of supervision (Bryant & Milsom, 2005). Training for mandatory reporters should equip them

with clear, practical indicators of what suspected child abuse looks like, and training programs should provide information on reporting procedures, reporter responsibilities, types of child abuse, and child abuse legislation (Bryant & Baldwin, 2010).

#### 4. Processing child abuse reports

Individuals who work with children must be familiar with the laws regarding mandatory reporting of child abuse, as well as indicators of child abuse (Gullatt & Stockton, 2000; Mathews, 2014). Woika and Bowersox (2013, p. 28) contend that mandatory reporters need to act when there is reasonable suspicion of child abuse, but “there is no requirement that reporters [need to] have conclusive evidence of abuse” to file a report. A main responsibility of mandatory reporters is to report suspected child abuse in good faith, and CPS is responsible for conducting investigations (Woika & Bowersox, 2013).

Even though CPS conducts the investigations into suspected child abuse, they possess discretion as to whether they actually investigate every report they receive (Mathews, 2014). Reports of suspected child abuse “are either ‘screened in’ or ‘screened out’” by CPS (Child Welfare Information Gateway, 2013, p. 3). Reports that meet the jurisdiction’s legal definition of child abuse are “screened in”; and, when “screened in,” an investigation is forthcoming (Child Welfare Information Gateway, 2013, 2017). In FFY 2016, child protective agencies in the U.S. processed an estimate of 4.1 million child maltreatment referrals that involved approximately 7.4 million children (U.S. Department of Health & Human Services, 2018). Of the referrals received, 58% were “screened in” for further action. In most states, child welfare agencies are required to launch an investigation within three days (Child Welfare Information Gateway, 2017; U.S. Department of Health & Human Services, 2018). Additionally, most states require immediate investigation, within two to 24 hours, if a child is believed to be in immediate danger (Child Welfare Information Gateway, 2017). By filtering reports of suspected child abuse, child protective agencies can direct resources to cases that are more likely to present founded abuse or neglect.

The filtering system is not foolproof, however, as such analysis may lead CPS to misdirect resources, contributing to organizational failure where actual child abuse cases are not investigated properly (Munro, 1996, 2005). To combat the dysfunction associated with CPS, management reforms to “improve the efficiency, productivity and effectiveness of the child protection system,” similar to those in New South Wales, Australia, should be introduced (Takis, 2008, p. 127). To make sure CPS investigates cases of suspected child abuse, mandatory reporters should “be advised...of the receipt of their report, the outcome of the initial assessment, and, if referred or forwarded to” CPS investigators for immediate action (Takis, 2008, pp. 148–149).

Today, some U.S. jurisdictions require all adults to report suspected child abuse cases to law enforcement or child protection agencies (Clark & Clark, 2007). The extension of mandated reporting of suspected child abuse cases by all adults is called universal reporting (Palusci et al., 2016). Under the federal Child Abuse Prevention and Treatment Act of 1974, state “child protection laws require the reporting of physical, sexual, and psychological abuse as well as physical, medical, and psychological neglect” of children (Palusci et al., 2016, p. 171). Although not all states require universal reporting, every jurisdiction requires adults in certain professions to report suspected child abuse. Texas laws, for example, require health care, education, child care, and law enforcement personnel to report cases when they suspect a child is being abused and/or maltreated (Texas Department of Family & Protective Services, n.d.).

#### 5. Court cases involving child abuse and mandatory reporting laws in the United States

Every state in the U.S. has adopted an array of mandatory reporting

laws, requiring professionals in the fields of public services, social services, medicine, religion, and education to report to police or CPS suspected child abuse. While the primary legal costs associated with failure to report suspected child abuse remain unclear, this article organizes into a coherent framework situations that lead to these adverse legal consequences. The following is accomplished through an examination of court cases in the U.S. on how mandatory reporting laws influence the duties and actions of mandatory reporters, as well as how mandatory reporters can be legally liable for child abuse. The cases are first organized by the outcomes of mandatory reporting of child abuse lawsuits, in which the court either favored the defendants (state/governmental entity, or individuals who report in good faith) or plaintiffs (individual parties abused, or individuals who engage in bad faith reporting practices); then, cases that follow are categorized by the type of child maltreatment that occurred.

## 6. Good faith reporting or court decisions where defendants' prevail

### 6.1. Potential suicidal student

While mandatory reporters have a duty to report suspected child abuse, parents have filed lawsuits against mandatory reporters for causing familial disruptions when child abuse is unfounded. In *Cox v. Warwick Valley Central School District* (2011), for example, school officials reported suspected child abuse because a student displayed repeated disruptive behavior and wrote a journal about suicide and illegal activities. When the child's teacher saw the journal, he became concerned and showed it to the school's principal. The principal, who was a mandatory reporter, reported the case to the state's Department of Child and Family Services (DCFS). The principal then placed the child in in-school suspension to ensure that the child did not harm themselves or other students. School administrators later had the child undergo psychological evaluations.

The parents of the child filed a lawsuit against the school principal for retaliatory action in violation of the student's right to free speech and in the violation of the parents' due process custody rights. The child's parents were unconcerned about the explicit violence in their child's journal, finding it unnecessary for the school to report the incident. Since the parents had custody throughout the entire investigation, the court dismissed the parents' due process claim of interference with custody rights. In addition, the court ruled in favor of the school district because the principal had no ill-intent when reporting to DCFS. This case shows that parents will file lawsuits against mandatory reporters for following mandatory reporting protocols. Mandatory reporters, however, are protected for reporting child abuse—even when the suspected abuse is unfounded—as long as it was reported in good faith.

### 6.2. Physical abuse

Another case that involved suspected child abuse at school is *Edwards v. County Bd. of Educ. of Richmond County* (2007), in which the plaintiffs, Kayla Edwards (minor) and her legal guardians, as well as Jessica Burrow (minor) and her parents, made abuse-related allegations of retaliation and conspiracy against the County Board of Education of Richmond County and individual staff at Harlem Elementary School (HES). Facts showed that Kayla and Jessica were placed in Ms. Williams' significantly developmentally delayed (SDD) class, designed for students with special needs. Ms. Williams' class was open to parents, staff, and other students; parents could sit in the classroom with their special-needs children. Mrs. Edwards was one of the parents who frequently visited the classroom to accompany Kayla during part of the school day and to administer Kayla's medication.

According to Mrs. Edwards, Kayla would return home with unexplained bruises on her arms. When prompted, Kayla told Mrs.

Edwards that Ms. Towns, the classroom aide, hurt her arm. Although there were no eyewitnesses to the events that caused the bruises on Kayla's arms, a neighbor and friend of the Edwards' testified to seeing Kayla's bruises. In addition, the mother of one of Kayla's classmates claimed that on several occasions her daughter also returned home with unexplained bruises and cuts. Indeed, her daughter once returned home with blood in her hair, and on another occasion her daughter's lips were cut open. Plaintiff David Burrow testified that he witnessed Ms. Towns jerk a student so hard that she caused the girl to hit her head on the wall. Furthermore, Mrs. Edwards saw that other students were denied bathroom privileges, resulting in students soiling their clothes, an allegation that was corroborated by another student's parent.

To support Edwards' lawsuit, the Burrows also alleged that they found small, unexplained bruises on Jessica's arms. Furthermore, Mrs. Burrow saw Jessica slap herself repeatedly on the cheek while saying “Bad Jessica[,] Bad Jessica” (*Edwards v. County Bd. of Educ. of Richmond County*, 2007, p. 5). The plaintiffs also reported that Kayla and Jessica told them that they were locked in a closet when they were bad in class. The children referred to this closet as the “jail room.” The plaintiffs alleged that the children suffered abuse inflicted by HES staff through bruises, denial of bathroom privileges, and the failure of the school to accommodate the students' dietary needs.

During a meeting with HES administrators and Mrs. Edwards to determine Kayla's eligibility for autism services, Mrs. Edwards insisted that Kayla's verbal abilities were significantly lower than what the staff observed at school. The staff found inaccurate information provided by Kayla's psychologist about autistic tendencies in Kayla that were not observed at HES. The school administrators and staff became concerned about Kayla's home life because of the information Mrs. Edwards shared and because Kayla's behavior at school was different than that reported by Mrs. Edwards at home. Following the meeting, the administrators and staff all agreed that a report for possible child abuse should be made to the Department of Family and Children Services (DFACS).

In her lawsuit, Mrs. Edwards claimed that HES made false reports to DFACS in retaliation of her complaints to the school about abuse. Under a variety of state tort and Section 1983 claims, plaintiffs averred that the DFACS's investigation initiated by the school caused intentional infliction of emotional distress and invasion of privacy. The DFACS investigation concluded nevertheless that the school's suspicion of child abuse/neglect in the Edwards' home was unsubstantiated.

The court ruled that the bruises reported in the claims of physical abuse were not enough evidence of wrongdoing to raise a constitutional violation. As for the plaintiffs' retaliation claim, the court ruled that the school made the DFACS report in good faith because education professionals are required to report any reasonable suspicion of child abuse. The *Edwards* case is an example of school administrators reaching a unanimous decision to make a mandatory report in good faith. Had the school administrators not made a report to DFACS, they may have been subject to liability if the student was in the care of an abusive family.

In some jurisdictions, it is required for counseling center personnel to report suspected child abuse (*Child Welfare Information Gateway*, 2017). Another case where a lawsuit was brought against a reporter of child abuse was *Wolf v. Fauquier County Board of Supervisors* (2009). Here, the plaintiff, Wolf, filed a complaint against Chrysalis Counseling Center and their employees. The plaintiff also sued the Center for negligent hiring in violation of her 14th Amendment Due Process rights. The facts showed Wolf was a client at the Chrysalis Counseling Center. A Center employee, Stephens, was a life coach and not a licensed professional. During several sessions, Wolf told Stephens that she was thinking about committing suicide and harming her children. Stephens became concerned, reporting the incident to a psychologist employed at the Chrysalis Counseling Center. The psychologist told Stephens to report to the Department of Social Services (DSS) because Wolf may be a danger to herself and her children.

After receiving Stephens' tip, the DSS investigated Wolf's home

environment. DSS employees made several visits to Wolf's home and met with Wolf and her lawyer to discuss the social workers' concern about the safety of the children. Wolf signed a safety plan with the social workers and wrote a statement that she was not suicidal nor was she going to harm her children. Despite Wolf's claims that she would not hurt her children, the social workers continued to be concerned about her children's safety and put her children under protective custody with one of Wolf's friends. Throughout the investigation, however, Wolf did not lose custody of her children.

Due to the emotional stress caused by litigation, Wolf filed a number of state tort lawsuits and federal civil rights actions under Section 1983, alleging that her federally guaranteed rights were violated since there was no actual abuse of the children. Even though Stephens was not a mandatory reporter because she was not a licensed professional, the court said it was safer to report and investigate suspected child abuse than to risk harm to the children. The court also ruled for the Chrysalis Counseling Center, saying Wolf's due process rights were not violated. This case demonstrates that the law supports good faith reporting of child abuse as a precaution to prevent possible child abuse. Hence, when specific articulable facts exist to form reasonable suspicion for possible child abuse, a mandatory reporter should err on the side of caution and report suspected child abuse to social services. Liability does not attach, however, if no abuse is ultimately found. This case also raises the issue of patient-therapist confidentiality during therapy, potentially chilling the speech of emotionally troubled clients who reveal thoughts of harm and self-harm to therapists.

### 6.3. Sexual abuse

There are also lawsuits against mandatory reporters or institutions that fail to report suspected child sexual abuse. In *Torrez v. Child Protective Services* (2006), a mother brought her child to the Maricopa Medical Center for a vaginal tear, claiming it was an accidental injury. The child went through several medical evaluations, and one of the medical personnel suspected child abuse and contacted the police. The police started an investigation with CPS. After hearing about the incident, the child's biological father suspected the child was sexually assaulted by the mother's live-in boyfriend. CPS, who was the defendant in this case, sent the child to the hospital for another evaluation, where evidence of child sexual abuse was discovered, but the hospital did not report the new finding of sexual abuse to CPS or to the police as required by the mandatory reporting law. Thus, CPS was unaware of the hospital's new finding of sexual abuse. The plaintiffs sued, claiming a violation of the mandatory reporting law.

The child's biological father, plaintiff, later discovered the medical evaluation results, but did not disclose the medical records in a timely manner to CPS. The defendants moved to dismiss the lawsuit because the hospital's medical personnel failed to report the uncovered child sexual abuse evidence. The court ruled that CPS cannot be held liable for abuse of which they did not know. The court said CPS was blameless because the hospital failed to report and the plaintiff failed to grant "authorizations for access to the medical records as requested by defendants" (*Torrez v. Child Protective Services*, 2006, p. 3). This case shows that medical professionals are mandatory reporters, but when plaintiffs fail to share new evidence of abuse with investigators, even mandatory reporters may not be liable for not reporting child abuse. The *Torrez* case additionally highlights the need for medical personnel to undergo extensive training in reporting requirements.

In general terms, there is no liability against police or social services if reasonable suspicion of suspected child abuse leads to an investigation that establishes probable cause, leading to a perpetrator's arrest (del Carmen & Hemmens, 2017). In child abuse cases, police may not have probable cause at the time of the arrest, which generally invokes the charge of false arrest, but some courts have ruled that police may be immune from liability for violating this general rule if done so under state statutory authority. In *Preston v. New York* (2002), for example, a

suspected perpetrator of child abuse was arrested without conclusive evidence of probable cause. Preston was arrested for rape after a girl and her mother filed a criminal complaint. Before any medical examinations were conducted, Preston was charged with multiple sexual offenses. A medical examination of the minor, however, showed no sexual abuse, and the doctor did not inform the police of the examination results.

Because of the rape allegations against Preston, he spent 543 days in jail; but, Preston was acquitted by a jury. Thereafter, Preston sued under state tort law, claiming that the doctor had a duty to communicate the examination results to the police. Preston additionally claimed that the police were negligent because they should have considered the possibility of false rape allegations, meaning that the police did not have probable cause for the arrest. Under the New York Social Service Law, however, "conclusive proof of child abuse is not a requisite threshold to trigger reporting" (*Preston v. New York*, 2002, p. 471). The New York Social Service Law also has a statutory presumption that "actions taken to protect a child are made in good faith" (*Preston v. New York*, 2002, p. 471). Since the sexual abuse report made by the minor and her mother were enough to establish reasonable suspicion of child abuse, conclusive evidence of the alleged assault before arrest was not necessary. Thus, the police were immune from civil liability for arresting Preston because their actions were taken pursuant to state law. The *Preston* case demonstrates the variability in jurisdictional child abuse mandatory reporting laws and the need of training for mandatory reporters regarding the concept of "reasonable suspicion."

### 6.4. Educational neglect

Educational neglect also is encompassed within mandatory reporting laws (Cozza et al., 2017). In *Koger v. New York* (2014), minors Amanda and Megan Koger filed a lawsuit against the state of New York and the state court system for negligent infliction of emotional distress. Plaintiffs averred that the court-ordered parental separation and foster care placement resulted in the girls not being able to attend school. Indeed, starting in December 2002, the minors missed a significant amount of school. In addition, their parents failed to attend the required meetings with school officials regarding the minors' absences and failed to follow the prescribed procedures for home schooling. Thus, the girls' parents were arrested and appeared before a judge for educational neglect, which led to the girls being placed in foster care, resulting in the girls being removed from their parents for 11 days. Besides not attending school, once in foster care, the girls experienced emotional and psychological trauma and were subjected to indifference and neglect. Due to their abusive foster care experience, the plaintiffs required months of medical and psychiatric treatment after reuniting with their parents.

Addressing the lawsuit, the district court concluded that the New York state court system was immune under the Eleventh Amendment, the claims against family court judges were dismissed on the grounds of judicial immunity, and the claims against various case workers were dismissed for failure to state a viable claim for relief. Although the court did not rule for the plaintiffs, this case demonstrates that state-ordered separation of parents and children, even temporarily, can have lasting psychological and emotional impact on children. Judicially-ordered child protective orders can lead to unintended consequences; thus, case workers need to supervise foster care placements and stay attentive to the children's emotional, physical, and educational needs (*Special Feature*, n.d.; Cross, Walsh, Simone, & Jones, 2003).

### 6.5. Summary of good faith reporting or court decisions where defendants' prevail

The *Cox*, *Edwards*, *Wolf*, and *Preston* cases dealt with suspected child abuse reported to authorities by persons who were statutorily bound to report. In the cases with insufficient evidence to show child abuse,

courts immunized mandatory reporters from liability as long as their reports were made in good faith. Moreover, courts reasoned that even if child abuse was unsubstantiated, the potential social harm prevented—minors being free of abusive situations—is worth a false positive report. In sum, these cases show that courts rely on mandatory reporters to protect children from child abuse.

The *Torrez* case demonstrated that mandatory reporters may not be civilly or criminally liable when child abuse is not immediately reported, even in the face of strong evidence that should have triggered swift action to prevent suspected ongoing and future abuse. Lastly, *Koger* showed that child abuse investigations and court-ordered placements need careful monitoring to avoid lasting psychological and emotional damage to children. Although the law requires mandatory reporting and investigations for suspected child abuse, mandatory reporters and judicial personnel are duty-bound to remain mindful of unintended consequences of their actions on children and their families.

## 7. Bad faith reporting or court decisions where plaintiffs' prevail

### 7.1. Deceitful mandatory reporters

When mandatory reporting laws were established, medical professionals were the main reporters of child abuse. As reporting laws evolved in the 20th century, legislation made school employees crucial for identifying child abuse (Kalichman, 1999). In *Mann v. County of San Diego* (2013), Mark and Melissa Mann, plaintiffs, filed a lawsuit against the county and social workers for violating the family's civil rights during a child abuse investigation that led to the removal of children from their home. Evidence showed the parents had trouble supervising their four children. On a night when Mr. Mann was watching the children, he spanked his children when their behavior got out of control. The spanking left a red mark on one of the children's lower back and a red welt on the buttocks of another child. The next day, the children's pre-school director discovered the welts and inquired of Mr. Mann about the injuries.

After Mr. Mann explained what happened, the director reported the incident as possible child abuse. On that same day, a social worker went to the Mann's home to investigate, but no one was home. The social worker later took photographs of the children's injuries and interviewed one of the children about his parents' past disciplinary acts and family dynamics. After additional home visits from the social worker, the Manns agreed to a voluntary safety plan where they cooperated with the agency and allowed their children to be physically examined. The physician who conducted the physical examinations concluded that the children's injuries were consistent with Mr. Mann's story and recommended to the parents to use non-physical disciplinary methods. The social worker later requested that the family receive additional visits and supervision. The continuous investigations and visits made Ms. Mann upset because it disrupted family dynamics.

After denying the social worker home visits, Ms. Mann filed complaints against the social worker. As a result, the social worker drafted an Application for a Protective Custody Warrant, but she omitted facts about Mr. and Ms. Mann's cooperation early in the initial investigation. The warrant was obtained to relocate the Mann's children from their home to the Polinsky Children's Center, where the children were subjected to medical examinations without the parents' consent. During the lawsuit, the court ruled that the social worker used deception to obtain the warrant, and the children were returned to the Mann's home.

In a later proceeding, the parents argued that the children were removed in retaliation for complaining about the caseworker's conduct. The court dismissed the plaintiff's retaliation claims. The court found, however, that the county policy violated the parents' constitutional rights when it excluded them from their children's physical examinations (*Mann v. County of San Diego*, 2016). This case shows that social workers' reports need to be accurate because incomplete and inaccurate affidavits can lead to investigations that are intrusive into family

dynamics. The case is also a cautionary tale about the government's limited power to conduct medical examinations of children who are suspected victims of abuse, as well as the rights parents retain to be present for such medical examinations of their children.

Mandatory reporters need to hue to their statutory role when they become aware of potential child abuse, and they must not conflate their role with CPS. Courts have ruled that it is the job of mandatory reporters to report potential abuse, and it is the domain of CPS to investigate such reports and take children into protective custody if the abuse is confirmed. Mandatory reporters might find themselves in jeopardy of legal liability if they take a child into protective custody, especially if state law reserves that role exclusively for the office of child protective services. Such was the case in *Jones v. County of Los Angeles* (2018), in which an infant was brought into the hospital by the child's mother, saying her infant, G.J., fell down the stairs when she tripped while carrying the child, resulting in fractures to G.J.'s skull and ribs. After a physical examination, doctors confirmed that the injuries were consistent with the mother's story and eliminated child abuse as the cause of injuries.

Even so, Dr. Wang, the defendant, wanted to conduct additional tests and investigate further. Dr. Wang misled G.J.'s parents to believe that it was necessary to hospitalize G.J. or risk the child's detainment due to suspected child abuse. After the parents sued, the court denied Dr. Wang's motion for summary judgement because mandatory "reporter immunity does not extend to conduct by a mandatory reporter that usurps the role of DCFS" (*Jones v. County of Los Angeles*, 2018, p. 639). Thus, a mandatory reporter is not entitled to immunity from a false imprisonment claim for "attempting to take a child into temporary custody... because that is the role of the DCFS" (p. 639). The court concluded that when Dr. Wang "recommended admitting G.J. to the hospital, it was not in furtherance of diagnosing whether abuse occurred"; rather, Dr. Wang wanted "to protect G.J." (p. 639). According to the court, taking a child into "temporary custody in exigent circumstances... is the role of the DCFS, not the role of a mandatory reporter" (*Jones v. County of Los Angeles*, 2018, p. 639). This case demonstrates that mandatory reporters and government workers will not be immune from liability for reporting and investigating child abuse if they do not follow state law. Training must occur for mandatory reporters to possess a working knowledge of the state's statutory requirements and case law in their jurisdiction (Russo, 2015).

### 7.2. Sexual abuse

Mandatory reporters are in legal jeopardy if they report child abuse in bad faith or intentionally advocate for investigations where there was no reasonable suspicion of child abuse. This occurred in *Wenk v. O'Reilly* (2015), where Peter Wenk, the father of M.W., filed a Section 1983 lawsuit against Schott, Director of Pupil Services. M.W. was intellectually disabled and required special education instruction at school. Mr. Wenk discussed M.W.'s education plan with Schott, ultimately changing her education plan against Schott's wishes.

After they disagreed over the most appropriate education for Wenk's daughter, Schott reported to child protective services that Wenk was committing sexual abuse. Schott's erroneous charges of sexual abuse included Mr. Wenk showering naked with his daughter and inserting tampons in his daughter's vagina during menstruation. Mr. Wenk alleged that Schott reported child sexual abuse in retaliation of his First Amendment right to speak for the betterment of his daughter's education. Agreeing with Mr. Wenk, the court found that Schott fabricated many of the allegations, saying that Schott made the child abuse report in retaliation to Wenk's effort to change his daughter's education plan.

Moreover, Schott did not report the child abuse allegations immediately after allegedly discovering them. In ruling against Schott, the court stated that mandatory reporters must be cautious not to violate the constitutional rights of parents and guardians who vocally advocate for their special-needs children. Regarding First Amendment lawsuits,

mandatory reporters can only rely on their statutory reporting obligations as a defense if their allegations of child abuse are truthful. In addition, mandated reporting laws are only available as a defense if mandatory reporters immediately report suspected child abuse, all which Schott failed to do. This case shows that mandatory reporters cannot make child abuse allegations with ill-intent and/or bad faith. Mandatory reporters who maliciously manufacture allegations of suspected child abuse are subject to civil liability.

It is important for education professionals to receive extensive training for mandatory reporting and for identifying signs of child abuse. Children are vulnerable and often do not realize they are being abused. Moreover, children often do not confide in adults about abuse because the abuser may have threatened the child, or the child may feel embarrassed about disclosing the abuse (Hines & Brown, 2012). In addition to lawsuits filed against mandatory reporters for making child abuse reports, there are also lawsuits filed against mandatory reporters who failed to report suspected child abuse. A case that involved the failure of mandatory reporters to report suspected child sexual abuse is *Baumgardt v. Wausau School District Board of Education* (2007). In this case, a 14-year-old girl was sexually assaulted over the course of several months by her basketball and golf coach, defendant King. In the beginning, King spent an excessive amount of time with the minor. The interactions between King and the minor developed into sexual harassment when King texted, called, cupped the minor's buttocks during a basketball game, rubbed her leg, and kissed her cheek and neck while they were in his car. The sexual harassment later escalated to sexual assault of the minor when King performed oral sex on her, penetrated her vagina with his finger, and sexually assaulted her twice before he drove her home from golf practice.

As evidence of abuse mounted, the school principle, Brusky, discussed with King about his inappropriate relationship with the minor. Despite Brusky's confrontation with King, King continued to assault the minor. King sent the minor graphic sexual messages and raped her during an overnight golf outing. King also booked himself adjoining hotel rooms with the minor in a separate wing from the golf team, with the school being aware of this arrangement. King's assaults escalated to inappropriate kissing and touching of the minor inside her home and in public. Brusky again confronted King, telling him that he received information about his inappropriate relationship with the minor from outside sources. It was only later that the minor's family learned about the abuse and reported King to the police.

Along with the Title IX and negligence lawsuit, King was charged with criminal sexual assault of a minor. According to the district court, members of the school board, Brusky, and King's direct supervisor were aware that King had been sexually assaulting the minor. The school board and school officials, however, did not investigate King's misconduct nor report their suspicions to county or state authorities. Accordingly, the court allowed the Title IX lawsuit to proceed against school board members and the school because officials had "actual notice" of and [were] "deliberately indifferent" to" the child abuse victim (*Baumgardt v. Wausau School District Board of Education*, 2007, p. 804). Moreover, evidence showed that the school board failed to inform its employees about mandatory reporting requirements and procedures. The *Baumgardt* case highlights the importance of educating mandatory reporters of their duties to report, requiring school employees to timely report suspected child abuse and inappropriate contact with minors, and demonstrating that it is critical for mandatory reporters to be trained in reporting protocols consistent with state law.

In addition to a rigorous background investigation, criminal record checks should occur for all potential employees who are statutorily required to report suspected child abuse. Likewise, school systems need to train staff about reporting suspected child abuse to appropriate authorities. These issues were highlighted in *Doe YZ v. Shattuck – St. Mary's School* (2016), where child abuse occurred at Shattuck, a private boarding school for grades 6th through 12th. In this case, three former students brought sexual abuse allegations against the school and sought

to hold the school liable for abuse. Evidence showed students were supervised by dorm parents in the residence halls—dorm parents were teachers or coaches at the school who also served as on-site parents. In this case, the theater teacher and dorm parent, Mr. Seibel, committed child abuse. At the time of Seibel's employment interview at Shattuck, he did not disclose his prior conviction for lewd conduct. In like manner, Shattuck failed to conduct a criminal record check and a background investigation before hiring Seibel.

During Seibel's employment at Shattuck, he allowed male students to have nude dance parties in the showers. At these dance parties, "students would jump around, slap each other on the buttocks, and stretch their penises" (*Doe YZ v. Shattuck – St. Mary's School*, 2016, p. 771). Seibel would walk into the student showers and comment on students' penises and physiques. Additionally, Seibel held an AP drama class where he taught students "penis enlargement techniques" (*Doe YZ v. Shattuck – St. Mary's School*, 2016, p. 772). On occasion, Seibel would measure students' penises with a ruler and touch their penises during penis enlargement classes.

When a student reported these inappropriate activities to the Shattuck Headmaster, Kieffer, Kieffer simply told Seibel to discontinue inappropriate acts without investigating nor reporting the abuse to authorities. Even when more staff at Shattuck became aware of Seibel's inappropriate behaviors, no formal actions were taken to ensure that the abuse stopped. In fact, many Shattuck staff reported they received no training on child abuse and mandatory reporting.

A formal investigation finally took place when a former student returned to the school to inform the administration about Seibel's misconduct. Seibel was criminally charged with multiple counts of sexual conduct, and plaintiffs brought a state tort lawsuit under theories of negligence, negligent supervision, and negligent retention. The court ruled that Shattuck had custody of the students; thus, Shattuck had a legal duty to provide for their general welfare. The court also denied the defendant's motions for summary judgement, concluding that a jury could find Shattuck's negligence in supervising Seibel and retaining him as a teacher. Furthermore, the court allowed one of the plaintiffs to plead for punitive damages because the plaintiff suffered from Seibel's abuse after several staff members, who were mandatory reporters, failed to report Seibel's misconduct and sexual interest in students.

The *Doe YZ* case demonstrates the importance of child abuse training for education providers, as well as the necessity of criminal record and background checks of potential school employees. Seibel's abuse could have been prevented had Shattuck conducted a background check prior to his hire. The case also shows staff training must occur for mandatory reporters. All school boards should have an ongoing pre-service and in-service training program for all employees regarding state laws and the school district's policies and protocols on reporting child abuse and neglect.

Military agents are involved in child abuse investigations when military personnel are suspected of committing child abuse. Cases involving military officials, however, are more complicated than civilian cases; various agencies and authorities are involved with investigations of allegations under which criminal defendants are charged. While operating within the confines of the U.S. Constitution, members of the military are subject to the Uniform Code of Military Justice (UCMJ). Conversely, civilians are governed under a diverse set of local, state, and federal laws. Due to the different systems and organizational structures under which civilian and military investigators operate, military investigators who have worked on the same case as civilian detectives usually do not share any case information or investigative details with their civilian counterparts. Such was the case in *Cline v. United States* (2014), where JMC, an active duty soldier in the U.S. Army, was investigated by the Army and other federal agencies in March 2008 for possession and distribution of child pornography. Around the time the Army started its investigation, JMC returned to his wife, KC, in Tennessee from Iraq for two-weeks of rest and relaxation (R & R). During JMC's R&R, he created videos and photographs of him

raping and sodomizing his stepdaughter, EC, who was six-years-old at the time. In September 2008, the Army's Criminal Investigation Division (CID) interviewed JMC for suspicion of possession and distribution of child pornography. JMC admitted to the possession of child pornography, stating he was interested in pornography of children between ages seven and 10.

The CID took no action against JMC and did not contact KC, Tennessee law enforcement, Tennessee Department of Children's Services (DCS), or any authority regarding JMC's admission related to child pornography. In October 2008, "the Army confiscated JMC's computer, which contained photographs and videos of JMC raping and sodomizing EC" (Cline v. United States, 2014, p. 1). Soon after, JMC called KC, telling her of the investigation and not to answer any questions from the Army. The Army later contacted KC about the investigation against JMC, but failed to warn her about the nature of the investigation. Again, KC asked Army personnel if JMC should be allowed to return home and be alone with EC. The Army informed KC there was no problem with JMC returning home, but that JMC's time with EC should be limited.

In November 2008, JMC returned home from his deployment in Iraq, and the Army again did not warn KC or any Tennessee authority about the danger JMC posed to EC. In December 2008, JMC repeatedly raped and sodomized EC at home while KC was giving birth in the hospital to a son. Thereafter, JMC attempted to sell videos and photographs of his abuse of EC. In late January 2009, KC was contacted by DCS and was told for the first time that JMC was being investigated by the Army for possession of child pornography; however, she was not informed that EC was also a victim of JMC's abuse. It was not until March 2010 that KC learned about EC's victimization by JMC from EC's psychologist.

The plaintiffs sued the Army for failing to warn KC, EC, as well as federal and local law enforcement of the dangers JMC posed. The plaintiffs claimed that the Army's "omissions were negligent, willful, deliberate, knowing, and malicious,... [and] that the defendant's actions resulted in pain, suffering, emotional distress, and a variety of other losses" (Cline v. United States, 2014, p. 2). The plaintiffs argued that based on Tennessee's mandatory reporting statute, the government was liable because it failed to report the abuse immediately.

In defense, the Army claimed that Tennessee's mandatory reporting law did not apply because the government's acts and omissions occurred in Iraq and Tennessee. In 2016, the court denied the federal government's motion for summary judgement, saying the federal government was potentially liable because "CID and the Army '... failed to warn... [EC's] mother... of the danger and likelihood of the abuse if [JMC] was left alone with [EC]'" (Cline v. United States, 2014, p. 4). The court held that the plaintiffs' case had satisfied the legal basis for a claim of liability under the Federal Tort Claims Act (FTCA).

Further, the district court found that the Army's investigators were reckless when they failed to alert local authorities and the plaintiffs after they learned about JMC's preference for young girls and his possession of child pornography. According to a federal statute titled "Child Abuse Reporting," federal agents who learn of suspected child abuse on federal land have a duty to report the abuse to appropriate agencies "as soon as possible" (Cline v. United States, 2015, p. 6). The Army base in Iraq was considered federally operated land, which made the federal statute for reporting child abuse applicable to Army personnel. The Army's failure to promptly alert law enforcement and child welfare agencies allowed JMC to further abuse EC.

The Cline case demonstrates that civilian and military investigators need to cooperate and maintain open lines of communication to avoid negative outcomes for children and to mitigate legal liabilities for failing to report child abuse. Indeed, Cline is "the epitome of administrative breakdown and managerial disorganization" (Dias & Vaughn, 2006, p. 552), since military CID never spoke with their civilian counterparts for a two-year period during their child sexual abuse investigation where they shared mutual jurisdiction. To avoid this lack of

communication, an "effective information sharing...[system between] ...government agencies...[needs to be developed to]...transform the situation where 'nobody wants to share information' to the situation where 'everybody wants to proactively share information,' so that... mutual trust can be...built among agencies, differences between agencies can be tolerated, misunderstandings among agencies can be minimized, conflicts can be resolved, and effective information sharing can be achieved" (Liu & Chetal, 2005, p. 296).

### 7.3. Emotional abuse

In another case of abusive behavior by a school official, *Doe v. Darien Bd. of Education* (2009), the plaintiffs (minor students through their parents) filed a lawsuit against the employees at Hindley Elementary School for various allegations of assault and battery, intentional infliction of emotional distress, negligence, and recklessness. Facts showed that from November 2003 to April 2004, minors, Doe, were ages three-to-five in the Early Learning Program (ELP) – a pre-school program that combines students with special needs with regular education students. The teacher for this program was Wilson, assisted by ELP aides Galiatsos and Granite.

In March 2004, an ELP aide, Fisher, resigned and explained that she could not tolerate the unprofessional and inappropriate behavior of Galiatsos and Granite toward the students. Fisher noted that Wilson left the classroom frequently, and without the supervision of Wilson, Galiatsos and Granite would humiliate and bully the children. The Board of Education soon launched an investigation and suspended Granite and Galiatsos. The Board also reported the alleged abuse to the Department of Children and Families (DCF). At the conclusion of the investigation, Granite and Galiatsos were terminated, and parents of the students involved were contacted. The court determined that Granite and Galiatsos were subjected to liability for negligence, assault and battery, excessive force, false imprisonment, intentional infliction of emotional distress, and recklessness. Additionally, the court stated that Wilson was liable as a supervisor because she was negligent in supervising subordinates who committed unlawful acts. Wilson was not, however, liable for intentional infliction of emotional distress.

In subsequent litigation involving the same litigants, in *Doe v. Wilson* (2010), the court dismissed the negligence claims against Granite and Galiatsos because the defendants were entitled to statutory immunity, explaining that "state employees cannot be held individually liable for negligent conduct performed within the scope of their employment" (*Doe v. Wilson*, 2010, p. 3). In addition, the court reversed its earlier ruling, finding Wilson liable on the claims of intentional infliction of emotional distress and recklessness because Wilson had knowledge of Granite's and Galiatsos's misconduct, and yet failed to prevent future harm to the students under her supervision. This case shows that supervision of teacher's aides or paraprofessionals is critical within the school environment. Moreover, prompt action to investigate alleged child abuse is crucial to prevent the continuance of abuse. Equally important, child abuse reporting laws can be violated by an educator's commission of abuse or omission to report abuse. Finally, to appropriately address situations of child abuse, teachers, teaching aides, paraprofessionals, and school volunteers who work with children need education, appropriate supervision, and training about the school system's policies and about the contours of the state law under which they operate.

### 7.4. Summary of bad faith reporting or court decisions where plaintiffs' prevail

The *Wenk* and *Jones* cases are examples where child abuse reports were made in bad faith or where mandatory reporters tried to elevate unfounded child abuse to a crime. Cases like these typically cause families unnecessary stress and legal problems from unfounded child abuse accusations. Additionally, intentional accusations of unfounded

child abuse can damage family dynamics and well-being, as well as result in legal consequences for the reporter.

*Baumgardt* involved a mandatory reporter who failed to report suspected child abuse. The case indicates that all school officials, including teachers and staff, need appropriate education and training on how to report suspected child abuse. Additionally, case law shows that mandated reporters who take appropriate actions will be immune from civil liabilities. When a mandatory reporter fails to report suspected child abuse and is indifferent to evidence of abuse, however, that individual will not be immune from liability. The *Mann* case shows that mandatory reports of child abuse need to be accurate because inaccurate reporting leads to legal liability and traumatic experiences for the family and children.

The *Cline* case shows that military investigators, similar to civilian authorities, need to have annual employee training, so that suspicions of child abuse are appropriately reported in a timely manner. *Cline* also highlights a frequent complication when multiple investigators, who represent different governmental agencies, are involved in a child abuse investigation. “Much of the information that each agency carries is highly sensitive, so agencies find it difficult to simply let another agency gain access or observe its sensitive information” (Liu & Chetal, 2005, p. 284). As a result, in *Cline*, the military investigators “acted as stovepipes, or rigid functionally organized departments,” never telling the civilian investigators for two years about their child sexual abuse investigation (Liu & Chetal, 2005, p. 283).

*Doe YZ* and *Doe* show that school employees can be perpetrators of child abuse. Therefore, it is crucial for school officials to recognize signs of child abuse and timely report incidents to authorities. It is also important for education professionals to be familiar with state mandatory reporting laws on child abuse and on policies and procedures of their school districts. Although suspicions of child abuse are often reported to school administrators, teachers should directly report suspicions to CPS concomitantly with reporting to school administrators or to the police (Dinehart & Kenny, 2015).

## 8. Conclusion

Over the years, U.S. and international child protection legislation have evolved, being marginally effective in catching child abusers and even less effective at preventing child abuse. Mandatory reporting laws in the U.S., Northern Ireland, Australia, and Wales, have broadened definitions of child abuse, which have helped to increase the number of identified abuse cases. Case law from the U.S. and various international countries with mandatory reporting of child abuse shows that current reporting guidelines are not standardized across jurisdictions (i.e., Canada and Australia), resulting in mandatory reporters interpreting reasonable suspicion of child abuse based on subjective and individualized evaluations. Differing thresholds among mandatory reporters create confusion over the decision to report, resulting in both the over-reporting and under-reporting of child abuse. Over-reporting can overload the justice system, especially CPS, where there are simply not enough personnel to do adequate individual case investigations, running the risk of legitimate abuse cases being missed. On the other hand, under-reporting may place children at risk of potential or future abuse, as real child abusers are left to their own devices (Waldfoegel, 2000).

A judicial or legislative roadmap that establishes more objective and standardized conditions to report can lead to more accurate reports of actual child abuse. Although broad definitions of child abuse allow for more discovery of suspected abuse, definitions should be limited to focus available resources on the most serious cases (Dinehart & Kenny, 2015; Levi & Crowell, 2011). Both pre-service and in-service training programs should provide statutory definitions of child abuse and examples of child abuse to help professionals recognize signs of abuse and to enable them to establish early detection systems for minimizing abuse (Bryant & Baldwin, 2010). Abstract terms such as “reasonable

suspicion,” “reasonable grounds,” and “reasonable belief” should be clarified and operationally defined so mandatory reporters do not rely on their subjective beliefs about what these concepts mean. Establishing “reasonable suspicion” that child abuse has occurred, for example, must be based on specific, objective indicia of abuse that the mandatory reporter can articulate and describe.

Case law is clear that mandatory reporters must report suspected child abuse in good faith (Mathews & Kenny, 2008), and bad faith reporting leads to legal liability and/or criminal prosecution. Moreover, the law penalizes mandatory reporters who fail to report suspected child abuse. Legislation also relieves mandatory reporters of the duty to conduct affirmative investigations. As discussed, abuse can occur by parents, school employees, and other adults who are near children; therefore, there should be criminal record and background checks for potential employees who work around children. Mandatory reporting laws exist, in part, because children are often incapable of seeking help or recognizing child abuse. Mandatory reporters play a crucial role in preventing child abuse and its associated damage to a child's overall well-being. All over the world, there needs to be much more information sharing and communication between mandatory reporters and CPS agencies.

Additionally, U.S. and international studies suggest that there should be frequent in-service training to update mandatory reporters on the latest developments in the law (Mathews, 2014), meaning that training should occur more frequently than annually. Likewise, schools and other institutions should consider regular workshops with CPS and law enforcement agencies to improve inter-agency communication and to promote better understanding of investigative processes and protocols (Bryant & Baldwin, 2010). In doing so, professionals may develop a more uniform understanding of child abuse, helping to improve the accuracy and timeliness of reports.

While individual mandatory reporters need additional supervision and training on “best practices” with respect to child abuse case processing and investigations, from an organizational perspective, CPS agencies also need to adopt better case management processes, managerial strategies, administrative practices, and leadership roles. Takis (2008, p. 125) recommends that CPS agencies need sweeping reforms with respect to “greater resourcing..., comprehensive training, public education, and the implementation of more efficient methods of intake, screening, and assessing of reported cases.” If the mandatory reporter does everything correctly, the system may still fail if CPS is not performing optimally (Jagannathan & Camasso, 2011).

Future research should focus on assessing the efficacy of international mandatory reporting laws regarding the identification of perpetrators and the reduction of overall child abuse. While this article focused on litigation in U.S. federal courts about civil and criminal liabilities of mandatory reporters, future research should analyze mandatory reporting systems under state tort law, specifically focusing on litigation in state courts of appeals and state supreme courts. Likewise, an analysis of international case law, legislation across national jurisdictions, and U.S. states' statutes on mandatory reporting should occur, identifying trends and specifying types of mandatory reporters most likely to be held legally accountable for failure to report suspected child abuse. More research needs to occur to streamline reporting protocols and maximize efforts of law enforcement entities, social workers, and agencies of child protective services.

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