

Mandatory Reporting Laws in Your Jurisdiction – Questions to Ask



*Victim Law Practice:
Determining Mandatory Reporting Obligations for Child and Vulnerable Adult
Abuse*

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**UNDERSTANDING MANDATORY REPORTING LAW IN YOUR JURISDICTION:
QUESTIONS TO ASK**

1. Who is a mandatory reporter under state law?
 - Everyone. *See, e.g.,* Tex. Fam. Code Ann. § 261.101(a) (“A person having cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.”).
 - Certain identified professions. *See, e.g.,* Cal. Penal Code § 11165.7(21) (clinical social workers, professional clinical counselors, or any other person who is currently licensed under the Healing Arts Division of the Business and Professions Code); Colo. Rev. Stat. Ann. § 19-3-304(2)(w) (victim advocates).
 - Institutions. *See, e.g.,* Alaska Stat. Ann. § 47.17.020(6) (paid employees of domestic violence and sexual assault programs); 325 Ill. Comp. Stat. Ann. 5/4 (domestic violence program personnel).

NOTE: A collection of the 50 states’ mandatory reporting statutes can be found at <https://www.childwelfare.gov/pubPDFs/manda.pdf>.¹ In addition to these statutes, some professional codes of conduct may impose a duty to warn and protect that requires disclosure of abuse in certain circumstances. *See, e.g.,* Minn. Stat. Ann. § 148E.240(6) (providing that a licensed social worker must comply with the duty to warn of a specific serious threat of physical violence against an identifiable victim).

2. Are there exceptions to the mandatory reporting obligation?
 - Legal privileges. *See e.g.,* D.C. Code § 4-1321.02(b) (“[Mandatory reporters] are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for

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the suspicion arises solely in the course of that representation.”); Ky. Rev. Stat. Ann. § 620.030(4) (“Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section . . .”).

NOTE: Even where a confidentiality statute or privilege exist that facially creates an exception to mandatory reporting, the mandatory reporter may still have a duty to report the abuse as some states find that the privilege does not apply to information regarding abuse/neglect. *See* 2 Leg. Rts. Child. Rev. 2D § 16:17 (2d ed.) (“Many professionals believe they cannot report abuse because of a common law or statutorily recognized privilege. Such privileges supposedly permit the holder of the privilege . . . to prevent the professional from revealing confidential communications. Most states, however, in their reporting laws have specifically abrogated these privileges for reporting purposes.”) *See also, e.g., Dill v. People*, 927 P.2d 1315, 1319 (Colo. 1996) (finding that the state’s mandatory reporting statute listing psychologists as mandatory reporters provides that the psychologist-client privilege does not exempt a psychologist from reporting suspected child abuse that is disclosed during a therapy session with a client); Ga. Code Ann. § 19-7-5(g) (“Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law[.]”); Tex. Hum. Res. Code Ann. § 48.051(c) (“The duty [to report elder abuse] applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person’s employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, employee or member of a board that licenses or certifies a professional, and mental health professional.”). *But see* Or. Rev. Stat. Ann. § 419B.010(1) (“Any [attorney] having reasonable cause to believe that any child with whom the [attorney] comes in contact has suffered abuse or that any person with whom the [attorney] comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015. Nothing contained in [lawyer-client privilege] affects the duty to report imposed by this section, except that a[n] . . . attorney . . . is not required to report such information communicated by a person if the communication is privileged under [lawyer-client privilege]. An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.”).

3. Is the abused/neglected person a member of a protected class for purposes of mandatory reporting?
 - Vulnerable adults. *See e.g.,* Alaska Stat. Ann. § 47.24.010(a) (mandatory reporting when reasonable belief of undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults); Tex. Hum. Res. Code Ann. § 48.051(a)

(mandatory reporting when cause to believe that a person with a disability is in the state of abuse, neglect, or exploitation).

- Seniors (individuals over a certain age). *See e.g.*, Colo. Rev. Stat. Ann. § 18-6.5-108(1) (mandatory reporting when reasonable cause to believe abuse of any person who is seventy years of age or older); Ga. Code Ann. § 30-5-4(a)(1)(A) (mandatory reporting when reasonable cause to believe abuse of person 65 years of age or older who is not living in a long-term care facility).

4. In addition to physical and sexual abuse, what must be reported?

- Mental or Emotional Abuse. *See, e.g.*, Alaska Stat. Ann. § 47.24.900(2)(A) (elder or vulnerable adult abuse includes “the intentional, knowing, or reckless nonaccidental and nontherapeutic infliction of . . . mental or emotional distress, or fear, including coercion and intimidation”); Minn. Stat. Ann. § 626.556 Sub.2(g)(9) (neglect of children encompasses: “emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child’s behavior, emotional response, or cognition that is not within the normal range for the child’s age and stage of development, with due regard to the child’s culture”).
- Neglect. *See e.g.*, D.C. Code § 4-1321.02(a) (neglected child as defined in § 16-2301(9)(A)).
- Financial harm (vulnerable and/or senior adults). *See, e.g.*, 320 Ill. Comp. Stat. Ann. 20/2(a) (“Abuse” includes exploitation of financial resources of an adult with disabilities aged 18 through 59 or a person aged 60 or older who resides in a domestic living situation).

5. What is the legal standard for reporting?

Person(s) who:

- “have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect[.]” Alaska Stat. Ann. § 47.17.020(a).
- “has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect[.]” Cal. Penal Code § 11166(a).
- “has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report[.]” Colo. Rev. Stat. Ann. § 19-3-304(1)(a).
- “[has] reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report[.]” 325 Ill. Comp. Stat. Ann. 5/4 § 4.
- “knows or has reason to believe a child is being neglected or physically or sexually abused, . . . or has been neglected or physically or sexually abused within

the preceding three years, shall immediately report[.]” Minn. Stat. Ann. § 626.556(Sub. 3).

- “have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child[.]” N.Y. Soc. Serv. Law § 413(1).
- “[has] cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report[.]” Tex. Fam. Code Ann. § 261.101(a).
- “knows or has reasonable cause to believe or suspect that a child has been abused or neglected or who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, shall immediately report[.]” Wyo. Stat. Ann. § 14-3-205 (a).

FACTORS TO CONSIDER WHEN STAFFING A VICTIM INTAKE/SERVICES PROGRAM

Based on the answers to the questions above, when setting up a victim intake and services program, two of the decisions in staffing the program that may impact mandatory reporting obligations are:

1. Does the individual performing the victim intake have a professional license or certification? For example, in some states a licensed social worker will have a mandatory duty to report even if she/he is not acting in that capacity.
2. Is the organization housing the intake personnel an institutional reporter? For example, if the intake is housed in a domestic violence program in Illinois there may be a duty to report; however, if the intake was housed in a legal aid office that duty may not be implicated.

FORMULATING AN INTERNAL NETWORK POLICY REGARDING REPORTING

- Victim Notification. Craft wording and identify the medium that you will use to inform every victim seeking assistance of the organization’s and/or Network’s mandatory reporting obligations.
- Consistent reporting. If victim intake is occurring at various organizations within a Network, establishing guidelines for what factual circumstances meet the legal requirement for reporting may be useful to: (1) establish consistent reporting within an organization; and (2) aid understanding of the reporting guidelines at fellow Network organizations.
- If an organization and/or Network is set up so that there are no mandatory reporting obligations, are there behaviors or situations that should be reported on a voluntary

basis if it would not violate laws governing confidentiality such as the Violence Against Women Act (VAWA)?²

- Identify which person(s) in the organization determine(s) whether a report should be filed (e.g., the individual doing the intake, a supervisor, or another designated individual).
- Craft a clear procedure for notifying victims if a report is going to be made.
- If the individual performing intake is not a mandatory reporter, but others in the Network may be, craft a clear procedure for how information regarding abuse is to be handled, understanding that as information makes its way through the Network it may come into the possession of an individual who is a mandatory reporter.
- All individuals performing victim intake should receive mandatory reporting training. For example, Minnesota offers an online course: “Vulnerable Adults Mandated Training” located at <http://registrations.dhs.state.mn.us/WebManRpt/>.

² VAWA confidentiality has an exception for limited sharing of information when mandated by state statute. *See* 42 U.S.C.A. §§ 13925(b)(2)(C) (“If release of [any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees’ and subgrantees’ programs] is compelled by statutory or court mandate--(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and (ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.”).