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Rebekah L. Meier

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## COMMENT

### WHEN AM I MY BROTHER'S KEEPER? A DISCUSSION OF CHILD ABUSE, UNIVERSAL MANDATED REPORTING, AND HOW TO PROTECT THE CHILDREN AMONG US

*Rebekah L. Meier*<sup>†</sup>

#### ABSTRACT

*Child abuse is a problem that has plagued societies across the globe and has continued to be prevalent here in the United States of America. Our recognition of the weakness and vulnerability of children should motivate us to provide effective safeguards against abuse.*

*Varying opinions exist among legal scholars, researchers, and legislators as to the most effective way to prevent child abuse through mandated reporting. While most states have implemented mandated reporting for certain classes of professionals who are deemed to be the individuals required to report signs of child abuse (based on state-specific criteria), many states have expanded those classes to include anyone who suspects child abuse. These types of laws are sometimes referred to as “universal” mandated reporting laws. But despite the efforts to combat child abuse, abuse is still a widespread national issue. Many different components go into addressing the problem, aside from simply prosecuting abusers. One issue legislators face is how to effectively implement reporting laws among the states in order to ensure that individuals are following laws that require them to report any reasonable suspicions that arise.*

*Some states propose fines or choose to classify failures to report as misdemeanors, while others choose to impose a higher classification and define failure to report as a felony, which results in increased fines and longer prison sentences. As with most criminal statutes, the established consequences cannot act as a deterrent unless there is a substantial certainty that a person will be caught—and punished—for violating the statute.*

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<sup>†</sup> Rebekah L. Meier, Juris Doctor Candidate, Liberty University School of Law, May 2020. A special thank you to Judge Paul M. Spinden, who was instrumental in the inception of this Comment, and who encouraged me to research and write on a topic that I hope will aid, even if in the smallest way, the fight to end child abuse in America. Thank you to my incredible parents, my wonderful fiancé, and my dear friends who have encouraged me and supported me through law school. All the glory to Christ my Savior who was and is the perfect example of selfless love and who brings hope to a broken world.

*The best way to effectuate change in a society is to reach the hearts and minds of individuals. Compassion is the driving force that motivates most upstanding citizens to obey mandated reporting laws. The majority of individuals do not comply with mandated reporting laws because they could face fines or prison time, but because they have the opportunity to offer support and protection to a child by simply contacting authorities or filing a report.*

*In order to increase protection for children, states should consider using mandated reporting laws to effectuate change through enactment, education, and enforcement. Enactment would mean passing laws with stricter penalties for those who violate those laws. The legislature should review and analyze data between states and conduct research to see whether harsher penalties affect the number of reports and referrals that come into a hotline. Education means that the individual states, and perhaps the federal government (if Congress decides to pass a bill which creates a federal universal mandated reporting law), would better educate citizens about their legally imposed duty under universal mandated reporting laws. Finally, enforcement refers to the enforcement of the penalties associated with violating universal mandated reporting laws. Law enforcement and child protection services should establish a strong partnership in order to ensure that when an individual makes a call or files a report of suspected abuse, there will be action taken to investigate the situation and protect the abused child from further harm. Further, legislative efforts must make clear that there are protections for individuals who make such reports. In an ideal scenario, compassion and awareness will be the driving force to encourage action. But if compassion for abused children is not enough of an encouragement, then stricter penalties should be imposed.*

## I. INTRODUCTION

Throughout history, child abuse has been a prevalent problem around the world.<sup>1</sup> Children in the United States are not unscathed but remain highly affected.<sup>2</sup> As America grew in its awareness of the problem and responded on a national level, many individuals and organizations joined the fight to protect children. Today, however, far too many children remain overlooked. As proven over time, there remains a lack of participation from society, as a whole, in protecting the innocent among us. Too often, unless forced or required to by law, many will overlook their responsibility or choose not to

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1. Mason P. Thomas, Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293, 293 (1972).

2. See discussions *infra* Sections II.B.1.b., II.B.2.b.

make reports of known or suspected child abuse. This inaction could be for various reasons, but regardless of the explanation, such inaction is not justice for children. Children often do not have a voice to speak for themselves, nor do they have the strength to fight against those who prey on their vulnerability. Children may not know who to turn to for help and often remain silent victims out of fear for their safety or the safety of others. Consequently, the government has been forced to step in and act where society has remained apathetic to the problem. Governments at both federal and state levels have introduced a series of legislative acts, varying in strength and effect, to end the suffering that so many children endure daily. The questions now needing to be addressed are: 1) Are the government's efforts working? 2) Have mandated reporting laws curbed the problem of child abuse? 3) Has implementing universal mandated reporting laws brought about any change in the fight against child abuse and those who fail to report it?

The goal of this Comment is to raise awareness of a national issue and to prompt further discussion of whether universal mandated reporting laws are more effective than profession-based mandated reporting laws. Section II of this Comment provides a background of the topic and lays the foundation to showcase the nation's response to the problem of child abuse. Section III discusses two cases of egregious child abuse and hypothesizes as to whether a different outcome would have occurred if the state had utilized universal mandated reporting laws. Section III also presents an analysis of two states that have enacted universal mandated reporting laws and discusses each state's legislation and the results manifested through statistical data from reports filed in each state. Section IV proposes three ways—the Three Es—to increase protection for children in states that have implemented universal mandated reporting laws.

## II. BACKGROUND: MANDATED REPORTING—A NATION'S RESPONSE TO CHILD ABUSE

Children comprise a class of innocent and defenseless members of our society.<sup>3</sup> Children are vulnerable and deserving of the utmost protection and care. Protection will allow them to be nurtured and raised in a way that will prompt them, in turn, to grow and contribute to society. Yet though the innocence and vulnerability of children should be self-evident, there are still

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3. See Margaret Paul, *Protecting Your Child's Innocence*, HUFFPOST (Mar. 13, 2010), [https://www.huffpost.com/entry/protecting-your-childs-in\\_b\\_1200163](https://www.huffpost.com/entry/protecting-your-childs-in_b_1200163).

many individuals who do not protect but rather prey on such innocence. Child abuse is not a novel issue. For centuries, members of society have mistreated children.<sup>4</sup> As such, it is commonly known and understood that as long as evil exists in the world, children will continue to suffer at the hands of those intent on abusing and exploiting this precious class of human beings.<sup>5</sup> The need to protect “our most vulnerable” and to combat child abuse is well-recognized in our communities.<sup>6</sup> Research shows that local communities are the most affected by the crimes of trafficking and other forms of child abuse, and therefore are “the first line of defense.”<sup>7</sup> As Secretary of State Michael R. Pompeo stated in the *2018 Trafficking in Persons Report*: “[I]ndividuals closest to a problem are often the best resource to solving it.”<sup>8</sup>

While the role that society plays in protecting children is better understood today than it was centuries ago, there was a time in our nation when no required protection for children was offered by either the community, state, or federal government. It is significant to note that the first specialized groups to prevent cruelty were organized on behalf of animals.<sup>9</sup> Although governments used criminal law to punish egregious acts against children, there were no organizations established to protect children until 1875, when the New York Society for the Prevention of Cruelty to Children (NYSPCC) was founded.<sup>10</sup> This organization was created only after an incident in 1871, where a concerned church worker convinced Henry Bergh of the American Society for the Prevention of Cruelty to Animals (ASPCA) to help solve the devastating plight of a 10-year old girl who was constantly abused by her caretakers.<sup>11</sup> Mr. Bergh’s legal counsel for the ASPCA, Elbridge

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4. Matthew Johnson, *Mandatory Child Abuse Reporting Laws in Georgia: Strengthening Protection for Georgia’s Children*, 31 GA. ST. U. L. REV. 643, 646 (2015).

5. Leonard G. Brown, III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States’ Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania*, 59 VILL. L. REV. TOLLE LEGE 37 (2013).

6. U.S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT* (2018), <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf> (message from Secretary of State Michael R. Pompeo).

7. *Id.*

8. *Id.*

9. Thomas, *supra* note 1, at 307.

10. John E.B. Myers, *Golden Anniversary Issue, A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 452 (2008).

11. Thomas, *supra* note 1, at 307.

T. Gerry, devised a *writ de homine replegiando* (similar to a writ of habeas corpus) and convinced a New York judge to allow these concerned citizens to save the child.<sup>12</sup> As news of the NYSPCC spread, the following era brought about a newfound awareness of child abuse issues, and roughly 300 nongovernmental child protection societies began popping up across America.<sup>13</sup> But though the American people began to recognize the need for organized protection, state governments had not yet acted. For nearly one hundred years following the organization of the NYSPCC, up until 1963, California was the only state whose legislature acted upon the American people's awareness and explicitly criminalized child abuse.<sup>14</sup>

In 1962, another shift occurred in the consciousness of the American people. This push towards activism was brought about by the seminal medical study conducted by C. Henry Kempe and his colleagues, who published an article entitled "The Battered-Child Syndrome" in the *Journal of the American Medical Association*.<sup>15</sup> The article gave an "official, clinical name to child abuse and[] . . . created an air of legitimacy to child abuse as a national problem."<sup>16</sup> In 1963, the Children's Bureau of the United States Department of Health, Education, and Welfare (Children's Bureau) issued a publication which stated that "[c]hild neglect and abuse are not new phenomena in our society, or in any society. What is new is the increase and violence in the attacks on infants and young children by parents and other caretakers."<sup>17</sup> The Children's Bureau, together with the Council of State Governments, the American Humane Association, and the American Medical Association, proposed model legislation to enable state legislatures to combat child abuse.<sup>18</sup>

In the years following the Children's Bureau's publication and C. Henry Kempe's article, states began to create legislation to combat child abuse, and by 1967, every state had implemented some form of reporting for suspected

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12. *Id.* at 308.

13. Myers, *supra* note 10.

14. Brown & Gallagher, *supra* note 5, at 38.

15. C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 JAMA 17 (1962).

16. Johnson, *supra* note 4, at 649.

17. Brown & Gallagher, *supra* note 5, at 39 (citing CHILDREN'S BUREAU, U.S. DEPARTMENT OF HEALTH, EDUC., & WELFARE, *THE ABUSED CHILD: PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD* 1 (1963)).

18. *Id.*

child abuse.<sup>19</sup> The type of legislation that soon followed is what many commonly refer to as mandated reporting laws—laws that identify which individuals are deemed mandated reporters.<sup>20</sup> However, most of the statutes enacted focused on a small group of professionals, usually physicians and other health workers, who were required to report.<sup>21</sup>

It was not until 1974, when Congress passed the Child Abuse Prevention and Treatment Act (CAPTA), that the federal government took the initiative to become involved in the fight against child abuse.<sup>22</sup> The Act “established a federal office of Child Abuse and Neglect, created a minimum definition of child abuse, mandated the creation of the Child Welfare Information Gateway (which compiles data related to child abuse), and authorized research into the incidents, causes, and treatments of child abuse.”<sup>23</sup> CAPTA provided generous financial support for state governments and other organizations to combat child abuse and neglect in each respective state and across America as a whole.<sup>24</sup> However, for a state to be deemed eligible to benefit from these federal grant funds, each state must identify a law that provides “procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances.”<sup>25</sup> CAPTA’s

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19. Megan Clemency, *Child Abuse Law: Criminal and Civil Liability for Failure to Report Suspected Child Abuse in South Carolina*, 68 S.C. L. REV. 893, 896 (2017).

20. See, for example, the Mandatory Reporters of Child Abuse and Neglect report published by the Child Welfare Information Gateway. *State Statutes: Mandatory Reporters of Child Abuse and Neglect*, CHILD WELFARE INFORMATION GATEWAY (2019), <https://www.childwelfare.gov/pubPDFs/manda.pdf> (last visited Mar. 4, 2020).

21. Johnson, *supra* note 4, at 650.

22. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified as amended at 42 U.S.C. §§ 5101–5119c (2020)). Section 5119, relating to reporting child abuse crime information, was transferred to 34 USCS § 40101 by the compilers of the United States Code.

23. Johnson, *supra* note 4, at 650.

24. *Id.* (Under 42 U.S.C. § 5106, there are three main types of grants to the states. First, a grant for the purposes of training a variety of professionals who work with children or in legal or health fields to improve the identification, prevention, and treatment of abuse victims. 42 U.S.C.A. § 5106(a)(1)(A) (West 2020). Second, grants issued for developing and operating child abuse prevention and treatment programs. 42 U.S.C.A. § 5106a(a)(1)–(14) (West 2020). Third, grants that provides states funds for programs that investigate and prosecute child abuse cases. 42 U.S.C.A. § 5106c(a)(1)–(4) (West 2020).).

25. 42 U.S.C.A. § 5106a(b)(2)(B)(i) (West 2020).

enaction highly incentivized states to enact mandated reporting laws.<sup>26</sup> Initially, in the aftermath of Dr. Kempe's article, physicians were the only class of professionals required to report abuse; however, in the following years, many states began to increase and expand the list of mandated reporting professionals.<sup>27</sup>

As reporting laws were introduced and passed, awareness of the prevalence of child abuse came into focus. By 1974, when Congress passed CAPTA, "some 60,000 cases were reported. In 1980, the number exceeded one million. By 1990, reports topped two million, and in 2000, reports hovered around three million. In the early twenty-first century, reports declined but remained high."<sup>28</sup>

There is not only a moral component to protecting children from abuse, but also a sociological need. "[S]ignificant psychosocial and economic damage [occurs] to both the child victim and to society [as a whole] once [the] abuse occurs."<sup>29</sup>

Child abuse and neglect have known detrimental effects on the physical, psychological, cognitive, and behavioral development of children. These consequences . . . include physical injuries, brain damage, chronic low self-esteem, problems with bonding and forming relationships, developmental delays, learning disorders, and aggressive behavior. Clinical conditions associated with abuse and neglect include depression, post-traumatic stress disorder, and conduct disorders. Beyond the trauma inflicted on individual children, child maltreatment has also been linked with long-term, negative societal consequences. For example, studies associate child maltreatment with increased risk of low academic achievement, drug use, teen pregnancy, juvenile dependency, and adult criminality. Further, these consequences cost society by expanding the need for mental health and substance abuse treatment

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26. Johnson, *supra* note 4, at 652 n.63.

27. *Id.* at 654.

28. John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 456 (2008).

29. Brief of Amicus Curiae the National Association of Social Workers at 6, *Piro v. McKeever*, 369 N.C. 291 (2016) (No. 93A16).



programs, police and court interventions, correctional facilities, and public assistance programs, and by causing losses in productivity.<sup>30</sup>

Today, while there is some degree of variance regarding who is listed as a mandated reporter in each respective state, all state statutes share certain elements.<sup>31</sup> The elements include: “(1) [the] purpose of the statute[,] (2) definitions[,] (3) professionals required to report[,] (4) standard of certainty reporters must attain[,] (5) penalties for failure to report[,] (6) immunity for good faith reports[,] (7) abrogation of certain communication privileges[,] and (8) reporting procedures.”<sup>32</sup>

While creating mandated reporting laws reflects a movement in the right direction by state governments, child abuse remains a prevailing problem in America. Mandated reporting statutes largely limit the class of mandated reporters to certain professionals. However, abused children may not often come into contact with such mandated reporters in a way that would confirm suspicions of child abuse. What can be done to combat the prevailing abuse and further the opportunity for protection of the most vulnerable among society? One answer that some state legislators have come up with is to create laws putting *anyone* into the category of mandated reporters. These statutes have become known as universal mandated reporting laws.

### III. UNIVERSAL MANDATED REPORTING LAWS

Although many mandated reporting statutes do not extend a duty to report to persons outside of specific professions, a growing number of states have adopted “universal” mandated reporting laws.<sup>33</sup> Recognizing the problem of child abuse, one attorney<sup>34</sup> wrote: “. . . it’s urgent that we engage

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30. *Id.* (citing Nat’l Clearinghouse on *Child Abuse & Neglect Info., Preventing Pays: The Costs of Not Preventing Child Abuse and Neglect* (2001) (internal citations omitted)).

31. Clemency, *supra* note 19, at 896.

32. *Id.*

33. *State Statutes: Mandatory Reporters of Child Abuse and Neglect*, CHILD WELFARE INFORMATION GATEWAY (2019), <https://www.childwelfare.gov/pubPDFs/manda.pdf> (last visited Feb. 7, 2020).

34. “Marci A. Hamilton . . . [is] the founder, CEO, and Academic Director of CHILD USA, a 501(c)(3) nonprofit academic think tank at the University of Pennsylvania dedicated to interdisciplinary, evidence-based research to prevent child abuse and neglect . . . [She] is the leading expert on child sex abuse statutes of limitations and has submitted testimony and advised legislators in every state where significant reform has occurred.” (This is an excerpt

in a national discussion about the law regarding the reporting of . . . abuse.”<sup>35</sup> She further stated that the ideal solution is universal mandated reporting:<sup>36</sup> “Without such [universal mandated reporting] requirements, abuse will flourish.”<sup>37</sup>

Therefore, if society at its core believes that child abuse is wrong and that something more must be done to circumvent the continuation of child abuse, then it can be reasoned that “to the extent our laws should reflect the core values of our society, it is fundamental that anyone with knowledge of a child’s abuse should be compelled to report that abuse.”<sup>38</sup>

If we accept that child abuse is an evil and children are ill-equipped to care for themselves, it is irresponsible, even cruel to make a child’s protection dependent on whether the first adult to learn of the abuse is mandated to report. Requiring all persons with knowledge of abuse to report does not unfairly burden any member of society. The proposal does not require anyone to investigate the possibility of abuse but simply requires that when, through happenstance, a citizen acquires knowledge of abuse, a report must be made.<sup>39</sup>

Many state legislators appear to have followed this reasoning, and many have understood the importance of protecting children. Additionally, some research indicates that “states that have universal mandated reporting laws have higher rates of abuse substantiation”<sup>40</sup> thus further indicating that

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from the webpage showcasing Hamilton’s biography.) *Marci A. Hamilton*, JUSTIA: VERDICT, <https://verdict.justia.com/author/hamilton> (last visited Feb. 8, 2020).

35. Marci A. Hamilton, *The Universal Need for the Mandatory Reporting of Child Sexual Abuse*, JUSTIA: VERDICT (Nov. 17, 2011), <https://verdict.justia.com/2011/11/17/the-universal-need-for-the-mandatory-reporting-of-child-sexual-abuse>.

36. *Id.*

37. *Id.*

38. Victor I. Vieth, *Passover in Minnesota: Mandated Reporting and the Unequal Protection of Abused Children*, 24 WM. MITCHELL L. REV. 131, 158 (1998).

39. *Id.*

40. Basyle J. Tchividjian, *Catching American Sex Offenders Overseas: A Proposal for a Federal International Mandated Reporting Law*, 83 UMKC L. REV. 687, 700–01 (2015).

universal mandated reporting “results in a higher discovery of actual abuse.”<sup>41</sup>

The Child Welfare Information Gateway, a service of the Children’s Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, provides resources that compile information regarding the scope of each state’s child abuse reporting laws.<sup>42</sup> “In approximately [eighteen] States and Puerto Rico, *any person* who suspects child abuse or neglect is required to report. Of these [eighteen] States, fifteen States and Puerto Rico specify certain professionals who must report, but also require all persons to report suspected abuse or neglect, regardless of profession.”<sup>43</sup>

But before advocating for the adoption of universal mandated reporting laws, an important question to ask is whether these laws have effectuated change on the frontlines of the battle against child abuse by resulting in greater prevention.

A. Oxendine v. State *and* People v. Jennings: *Would There Have Been a Different Outcome in a Universal Mandated Reporting State?*

The sobering truth is that textbooks are filled with cases containing horrific facts and accounts of children being abused in every sense of the word. Whole areas of law exist specifically dedicated to child sexual abuse, physical abuse, psychological abuse, neglect, etc.<sup>44</sup>

Two specific cases used in Jens David Ohlin’s criminal law textbook,<sup>45</sup> although not used to specifically discuss crimes against children, prompts the reader to ponder: Why did these witnesses not report? Why were they not required to say anything? Would there have been a different outcome if the witnesses were *required by law* to report what they observed and heard?

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41. *Id.* at 701.

42. *State Statutes*, CHILD WELFARE INFO. GATEWAY (2019), <https://www.childwelfare.gov/pubPDFs/manda.pdf> (last visited Feb. 7, 2020).

43. *Id.* (emphasis added). Those fifteen states are Delaware, Florida, Idaho, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, and Utah. *Id.*

44. See Ronald J. Yengich, *Child Sexual Abuse Cases*, 1986 UTAH L. REV. 443 (1986); see J. Robert Shull, *Emotional and Psychological Child Abuse: Notes on Discourse, History, and Change*, 51 STAN. L. REV. 1665 (1999).

45. JENS DAVID OHLIN, *CRIMINAL LAW: DOCTRINE, APPLICATION, AND PRACTICE* 211, 215 (2d ed. 2018).

In 1984, Delaware was not a universal mandated reporting state.<sup>46</sup> Therefore, when Jeffrey Oxendine, Sr. beat his son so harshly that his son died, the neighbor who overheard the abuse was neither required nor compelled to report the situation.<sup>47</sup> On January 19, 1984, Oxendine went into his six-year-old son's bedroom and "began screaming at him to get up."<sup>48</sup> A neighbor in the same apartment building testified to hearing a commotion coming from Oxendine's apartment.<sup>49</sup> The neighbor heard sounds coming from the room of "blows being struck" and obscenities shouted by "a male voice" and "cries from a child saying, 'Please stop, Daddy, it hurts.'"<sup>50</sup> The text of the opinion states that the neighbor heard these sounds continue for what "seemed like five to ten minutes."<sup>51</sup> The neighbor then heard a "final noise, consisting of a loud thump, as if someone had been kicked or punched 'with a great blow.'"<sup>52</sup> What was the neighbor thinking at this time? Based on the neighbor's testimony, it would appear the neighbor knew or had good reason to know exactly what was going on—some sort of abuse was occurring. Jeffrey, Jr., the six-year-old little boy in the same apartment building was being abused at the hands of his father.

Because this took place prior to the passing of Delaware's Child Abuse and Prevention Act in 1997, the neighbor was under no obligation to make a report, despite the good faith suspicion most likely formed after hearing the heart-breaking noises coming from the next-door apartment. Some may argue that because the neighbor only heard noises that sounded like abuse but did not have visual proof or indication of abuse, the neighbor was reasonable in doing nothing. After all, is it not possible that the neighbor was mistaken? Perhaps that is so. But even in situations where a party is mistaken, is it not better to call the authorities to investigate and conclude that it was a

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46. Delaware statutorily created the Child Protection Accountability Commission (CPAC) in 1997, entitled the Child Abuse Prevention Act of 1997. *Child Protection Accountability Commission (CPAC)*, DEL. COURTS, <https://courts.delaware.gov/chiladvocate/cpac/> (last visited Feb. 29, 2020). Delaware's current legislation requires that "[a]ny person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report in accordance with § 904 of this title." DEL. CODE ANN. tit. 16, § 903 (2020).

47. Because Delaware was not a universal mandated reporting state, the neighbor was not required to report any good faith suspicions of child abuse.

48. Oxendine v. State, 528 A.2d 870, 871 (Del. 1987).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

mistake, than to let the matter go and allow a child to suffer further abuse? What about situations where there actually are witnesses to the abuse, the abuse is corroborated by the abuser's own admission, and the witnesses still choose to remain silent?

Such was the situation in 1995, in the California case of *People v. Jennings*.<sup>53</sup> The case presents yet another sobering fact pattern of a child abused at the hands of his parents. Arthur Jennings had been living with relatives since the age of four months, but in early November 1995, when Arthur was five years old, Martin Jennings, Arthur's father, asked to take him home.<sup>54</sup> Arthur's biological parents began to abuse him within a few weeks of Arthur's return to live with them.<sup>55</sup> The case opinion states that a "number of neighbors noticed signs of abuse."<sup>56</sup> In December 1995, Phillip and Kevin Orand visited the Jennings's home and observed that Arthur had "two black eyes and a mark on his mouth."<sup>57</sup> After inquiring what was wrong with the child, his parents said that Michelle, the mother, had "knocked him out."<sup>58</sup> The defendant herself declared to the neighbors that she had "socked the damn little brat between the eyes, knock[ing] him out."<sup>59</sup> Multiple people witnessed that the little boy looked as if he had been beaten.<sup>60</sup> Others described him as looking "whipped and unhappy."<sup>61</sup> One witness, Bernard Romaine, saw Arthur in early January 1996 and stated that he had looked "pretty beat up" due to his thin and undernourished appearance and as well as his two black eyes, one of which was "swollen shut and seeping blood."<sup>62</sup> "Pauline Morris, an acquaintance of the Jenningses', saw Arthur in early January 1996" with "bandages on his head and hands, dried blood on his face, and blood in the whites of his eyes."<sup>63</sup> The case continues with many more disturbing facts of the abuse, ultimately resulting in Arthur's death.<sup>64</sup> Again,

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53. *People v. Jennings*, 237 P.3d 474 (Cal. 2010).

54. *Id.* at 485.

55. *Id.* at 486.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Jennings*, 237 P.3d at 486.

60. *Id.*

61. *Id.* (internal quotation marks omitted)

62. *Id.*

63. *Id.*

64. *Id.* at 487.

another young life was lost because knowledgeable observers seemingly did not care enough to report the abuse. That is, all except for one: Pauline Morris. She did make a report to Child Protection Services, but unfortunately CPS did not follow up on that report.<sup>65</sup>

Of the six people who witnessed Arthur's beaten state, only one person made a report. An unfortunate truth implied by this case is that many people who suspect or have reason to suspect child abuse do not, and will not, make reports unless required. California's law does not require an individual to report child abuse unless that individual is statutorily deemed to be a mandated reporter.<sup>66</sup> While the list of persons deemed to be mandated reporters is large, such reporters are limited to individuals within certain professions.<sup>67</sup> While individuals who do not belong to a specified profession *may* still report abuse, they are not legally *required* to do so. But what if California did have a universal mandated reporting statute? What if California's statute required that *any* person who reasonably suspects child abuse be required to make a report? If reporting had been required by law in the *Jennings* case, there would have been at least six individuals required to make a report of the Jennings' abuse of Arthur.<sup>68</sup>

Likewise, if the *Oxendine* case had occurred in 1997, after the Delaware legislature had passed the Child Abuse Prevention Act, perhaps there *would* have been a different outcome. Currently, Delaware law contains a list of professionals required to report,<sup>69</sup> but also includes a provision that states, "[a]ny person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report in accordance with § 904 of this title."<sup>70</sup> Delaware law also includes a provision for the penalty for violating the statute: "[w]hoever violates § 903 of this title shall be liable for a civil penalty not to exceed \$10,000 for the first violation, and not to exceed

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65. *Jennings*, 237 P.3d at 486.

66. CAL. PENAL CODE § 11165.7 (Deering 2020).

67. *Id.* Author sometimes refers to this kind of reporting as "profession-based" mandated reporting.

68. *See Jennings*, 237 P.3d at 486–87.

69. Such professionals include physicians, interns, residents, nurses, or medical examiners; other persons in the healing arts, including persons licensed to render services in medicine, osteopathy, or dentistry; school employees, social workers, or psychologists; hospitals or health-care institutions; the Medical Society of Delaware; and law enforcement agencies. DEL. CODE ANN. tit. 16, § 903 (2018).

70. *Id.* at § 903.

\$50,000 for any subsequent violation.<sup>71</sup> Additionally, the statute allows for the court to award costs and attorneys' fees in any action brought under § 914 if the court finds a violation.<sup>72</sup> If these requirements were codified and in effect in 1985, would Jeffrey Oxendine, Jr. still be alive? If California law included language requiring all six individuals to make a report on behalf of Arthur Jennings, would Arthur still be alive?

B. *Comparison Between States Based on Levels of Punishment*

One factor to consider in the discussion of universal mandated reporting laws is whether the level of punishment for failing to report child abuse effectuates the goal of the law put in place. Optimistically, one would hope that individuals make child abuse reports out of the goodness of their hearts and are compelled through a sense of justice and morality. Compassion should be the driving force; citizens should obey the mandated reporting laws, not because of the threat of a fine or time in prison, but because they have the opportunity to save a child from harm by simply contacting authorities or filing a report.

1. North Carolina

North Carolina is one of the states that has crafted the framework of its Juvenile Code to protect children by implementing universal mandated reporting laws. While some may argue that universal mandated reporting laws are more invasive and cause over-reporting, North Carolina's purpose in drafting its legislation was to ensure that each reporting case reflects consideration of the facts and provides protection for children while respecting both the family's right to autonomy and the child's need for safety.<sup>73</sup> Additionally, the General Assembly noted that "[i]t is the expressed intent of [Article 13 of the Juvenile Code] to make the prevention of abuse and neglect, as defined in G.S. 7B-101, a priority of this State. . . ."<sup>74</sup>

North Carolina's universal mandated reporting statutes are codified in the Juvenile Code of North Carolina's General Statutes.<sup>75</sup> The law requires that "[a]ny person or institution who has cause to suspect that any juvenile is

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71. *Id.* at § 914.

72. *Id.*

73. N.C. GEN. STAT. § 7B-100(2)-(3) (2020).

74. *Id.* at § 7B-1300.

75. *Id.* at § 7B-301, 310.

abused [or] neglected . . . shall report.”<sup>76</sup> The General Assembly is serious about protecting children and has established the provision from the understanding that children are generally unable to seek help and those who are in positions of abusing such children will not seek help voluntarily.<sup>77</sup> Furthermore, the North Carolina General Assembly addressed certain privileged, or non-privileged, communication regarding failure to report by stating:

No privilege shall be grounds for . . . failing to report . . . even if the knowledge or suspicion is acquired in an official professional capacity, except when the knowledge or suspicion is gained by an attorney from that attorney’s client during representation only in the abuse, neglect, or dependency case. No privilege, except the attorney-client privilege, shall be grounds for excluding evidence of abuse, neglect, or dependency.<sup>78</sup>

Additionally, the North Carolina General Assembly included a provision imposing criminal liability for failing to report.<sup>79</sup> Subpart (b) of § 7B-301 states that any person or institution “who knowingly or wantonly fails to report the case of a juvenile as required by subsection (a) of this section, or who knowingly or wantonly prevents another person from making a report as required by subsection (a) of this section, is guilty of a Class 1 misdemeanor.”<sup>80</sup>

North Carolina case law recognizes that the “[g]overnment has no nobler duty than that of protecting its country’s lifeblood—the children. For this reason, all fifty states have codified mandatory reporting statutes that impose a duty to report suspected or observed child abuse upon specified persons or institutions, particularly those that work regularly with children.”<sup>81</sup> However, the General Assembly set a higher standard on its citizens by codifying “reporting statutes, [which] impose this duty [to report child abuse] universally—everyone, not just officers of the state, physicians, teachers, administrators, social workers or clergy, shares the state’s role as *parens*

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76. *Id.* at § 7B-301.

77. *See generally* Dobson v. Harris, 530 S.E.2d 829 (N.C. 2000).

78. *Id.* at § 7B-310.

79. *Id.* at § 7B-301(b).

80. *Id.*

81. *Dobson*, 530 S.E.2d at 833.



*patriae* in this regard for all North Carolina children.”<sup>82</sup> Thus, the statutes provide procedures that are “clearly intended to encourage the participation of all citizens in swiftly detecting and remedying child abuse or neglect.”<sup>83</sup> Indeed, the Supreme Court of North Carolina understood that the “legislative intent of these statutes is that citizens are vigilant in assuring the safety and welfare of the children of North Carolina.”<sup>84</sup>

a. Punishment for failure to report suspected child abuse

States vary on the severity of the penalties for failure to report child abuse by a mandated reporter. In North Carolina, because the state has created and imposed by statute a duty on everyone who suspects child abuse,<sup>85</sup> everyone becomes a mandated reporter. The penalty in North Carolina, as codified by statute, for failure to report is that

[a]ny person or institution who knowingly or wantonly fails to report the case of a juvenile as required by subsection (a) of this section, or who knowingly or wantonly prevents another person from making a report as required by subsection (a) of this section, is guilty of a Class 1 misdemeanor.<sup>86</sup>

“A person acts ‘knowingly’ when the person knows what he or she is about to do and, with that knowledge, proceeds to act.”<sup>87</sup> Additionally, “[a] person acts ‘wantonlly’ when he or she acts with conscious and intentional disregard of and indifference to the rights and safety of others.”<sup>88</sup> However, “[c]ourts have said that ‘wantonlly’ has essentially the same meaning as ‘willfully,’ which means ‘the wrongful doing of an act without legal excuse or

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82. *Id.*

83. *Id.* at 833–34.

84. *Id.* at 832.

85. This includes maltreatment, sexual abuse, and other crimes against children. See N.C. GEN. STAT. § 7B-101 (2020).

86. N.C. GEN. STAT. § 7B-301(b) (2020).

87. JANET MASON, REPORTING CHILD ABUSE AND NEGLECT IN NORTH CAROLINA 87 (3d ed. 2013). See, e.g., *State v. Williams*, 741 S.E.2d 9, 19 (N.C. Ct. App. 2013).

88. Mason, *supra* note 87, at 87.

justification, or the commission of an act purposely and deliberately in violation of law.”<sup>89</sup>

In North Carolina, the General Assembly describes the level of punishment and the limits for each class of offenses. For a Class 1 misdemeanor, which is the highest level of misdemeanor in the state, “[i]f a community punishment is authorized, the judgment may consist of a fine only.”<sup>90</sup> Additionally, “[t]he amount of the fine for a Class 1 misdemeanor . . . is in the discretion of the court.”<sup>91</sup>

b. Results

Overall, since the enactment of North Carolina’s universal mandated reporting law in October of 2013, there has been a decrease in investigated reports of child abuse.<sup>92</sup> From July 2013 to June 2014, there were a total of 131,030 children with investigated reports of abuse and neglect in North Carolina.<sup>93</sup> This number was a slight increase in investigated reports compared to the year before the universal mandated reporting law was enacted.<sup>94</sup> However, since the first year after the enactment, the number of reports has continued to decrease each year.<sup>95</sup> From July 2014 to June 2015, the number decreased to 130,713.<sup>96</sup> From July 2015 to June 2016, the number again decreased to 129,270.<sup>97</sup> From July 2016 to June 2017, and July 2017 to June 2018, the numbers continued to decrease with the results showing that 128,536 and 120,105 children, respectively for those years, had investigated reports in North Carolina.<sup>98</sup> The latest statistic from the Child Welfare in

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89. *Id.* at 87–88.

90. N.C. GEN. STAT. § 15A-1340.23 (2020).

91. *Id.*

92. D. F. Duncan et al., *North Carolina: Number of Children with Investigated Reports of Abuse and Neglect*, CHILD WELFARE N.C. (2019), [http://sasweb.unc.edu/cgi-bin/broker?\\_service=default&\\_program=cwwweb.graReport.sas&county=North%20Carolina&label=&fn=ALLCHILD&format=html&entry=11](http://sasweb.unc.edu/cgi-bin/broker?_service=default&_program=cwwweb.graReport.sas&county=North%20Carolina&label=&fn=ALLCHILD&format=html&entry=11). This is a live report that continues to be updated; therefore, the numbers may vary as the data is updated.

93. *Id.*

94. *Id.* There were 130,345 investigated reports of child abuse from July 2012 to June 2013.

95. *Id.*

96. *Id.*

97. *Id.*

98. Duncan et al., *supra* note 92.

North Carolina Report states that from July 2018 to June 2019, there were 102,337 children with investigated reports of abuse and neglect.<sup>99</sup>

Additionally, another report by Child Welfare in North Carolina, which details the type of finding and decision in an investigated report, indicates that there has been a decrease in each category between July 2013 and June 2019.<sup>100</sup> The number of cases of abuse,<sup>101</sup> neglect,<sup>102</sup> and abuse and neglect,<sup>103</sup> as well as the number of cases where services are needed,<sup>104</sup> where services were provided and are no longer needed,<sup>105</sup> and where services were recommended,<sup>106</sup> have all decreased from July 2013 to June 2019.<sup>107</sup>

The decrease in the number of child abuse reports is an interesting result. While a causal link cannot be proven just by the number of investigated reports, it is puzzling that a lesser amount of investigated reports corresponded with the passage of a law that requires everyone “who has cause to suspect that any juvenile is abused or neglected”<sup>108</sup> to report. It would seem that there would be an increase in the number of people reporting child abuse. Are community members so afraid to get involved that they willfully turn a blind eye to any activity that could possibly fall within the realm of child abuse?

When analyzing the data, one can readily identify that the majority of investigated reports are found to be unsubstantiated, or services are not recommended.<sup>109</sup> This is true for the years both before and after North Carolina’s universal mandated reporting laws were enacted.<sup>110</sup> Some may

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99. *Id.*

100. D. F. Duncan et al., *North Carolina: Investigated Reports of Abuse and Neglect: Type of Finding/Decision (Exclusive: Most Severe Finding), Number of Children (Longitudinal Data)*, CHILD WELFARE N.C. (2019), [http://sasweb.unc.edu/cgi-bin/broker?\\_service=default&\\_program=cwweb.tbReport.sas&county=North%20Carolina&label=&type=CHILD&fn=FRST&vtype=find&format=html&entry=11](http://sasweb.unc.edu/cgi-bin/broker?_service=default&_program=cwweb.tbReport.sas&county=North%20Carolina&label=&type=CHILD&fn=FRST&vtype=find&format=html&entry=11). This is a live report that continues to be updated; therefore, the numbers may vary as the data is updated.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Duncan et al., *supra* note 100.

107. *Id.*

108. N.C. GEN. STAT. § 7B-301 (2020).

109. Duncan et al., *supra* note 100.

110. *Id.*

argue that the number of unsubstantiated reports is a negative and harmful result of implementing universal mandated reporting.<sup>111</sup> However, keeping in mind the purpose of child abuse reporting statutes—to protect children—when considering the data, it is better to have overreporting resulting in unsubstantiated cases than underreporting of actual child abuse.

Notably, although there still seems to be a large number of unsubstantiated reports of child abuse, this number has decreased as well as the total number of reports of abuse in North Carolina. The decrease could mean several things. Perhaps the universal mandated reporting system has been effective in North Carolina and has resulted in less child abuse. If citizens are aware that the government is increasing its efforts to eliminate child abuse, and is investigating each report, then potential abusers might be dissuaded from carrying out their abhorrent acts. However, the decrease in reports could also mean that there are individuals who refuse to report any known or suspected cases of child abuse because they are aware that there is not a strong likelihood of being caught violating the universal mandated reporting statute. A deliberate decision to *not* file a report of known or suspected abuse is the opposite result of what these universal mandated reporting laws intend to accomplish.

However, when one looks at the total number of reports being filed and compares that with the number of reports that are substantiated, it appears that people are overreporting rather than underreporting. According to the Child Maltreatment Report for the year 2018, published by the U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, and the Children's Bureau, approximately 4.3 million children across the United States of America were the subjects of reports.<sup>112</sup> From these reports, DHHS stated that a "total of 16.8 percent of children [reported] [were] classified as victims with dispositions of substantiated (16.1%) and indicated (0.7%)."<sup>113</sup>

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111. See Amanda Regis, *Mandatory reporting: A study on the effect of universal mandated reporting*, UNIV. N.H. SCHOLARS' REPOSITORY: THESES & CAPSTONES (2012), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1014&context=honors>.

112. CHILD MALTREATMENT 2018, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, CHILDREN'S BUREAU 18 (2018).

113. *Id.* "Substantiated" is defined by the report as "[a]n investigation disposition that concludes the allegation of maltreatment or risk of maltreatment is supported or founded by state law or policy." *Id.* at 16. Additionally, "indicated" is defined as "[a] disposition that

Particularly in North Carolina, 130,554 children received an investigation or alternative response by disposition in 2018.<sup>114</sup> Of those children, there were 6,725 whose investigations were substantiated, 103,220 children who received alternative responses, and 19,946 whose investigations were unsubstantiated.<sup>115</sup>

This high rate of unsubstantiated reports, both nationally and within the state of North Carolina, seems to indicate that many individuals contact the authorities or file reports out of concern, despite not having concrete evidence of child abuse. As stated previously, this seems to indicate that there is more overreporting than underreporting. While many children unfortunately endure undetected abuse, authorities and child protection services do a significant amount of work to launch investigations into these thousands of cases in order to discover who truly needs protection. This often includes having to sift through cases that end up being unsubstantiated.

## 2. Florida

Florida, like North Carolina, is a universal mandated reporting state. The legislature codified the requirement that: “Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent . . . shall report such knowledge or suspicion to the department in the manner prescribed.”<sup>116</sup> The statute includes other provisions distinguishing the type of abuse and whether it comes from a parent, from another adult who is not a parent, or from a juvenile sex offender.<sup>117</sup> Regardless of the type of abuse or who the perpetrator is, all citizens are required by law to report suspected abuse.<sup>118</sup> Such suspicion imposes the responsibility to report.

An individual is required to report suspected abuse to the department’s central abuse hotline immediately if the child’s parent, legal custodian, caregiver, or any other person responsible for the child’s welfare, as defined

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concludes maltreatment could not be substantiated under state law or policy, but there is a reason to suspect that at least one child may have been maltreated or is at risk of maltreatment. This disposition is applicable only to states that distinguish between substantiated and indicated dispositions.” *Id.*

114. *Id.* at 30.

115. *Id.*

116. FLA. STAT. ANN. § 39.201 (LexisNexis 2019).

117. *Id.*

118. *Id.*

by statute, is the perpetrator of the suspected abuse.<sup>119</sup> An individual can report by calling the single statewide toll-free telephone number or can report via fax, web-based chat, or file a web-based report.<sup>120</sup> “Personnel at the department’s central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect.”<sup>121</sup> The department official will then determine the action needed.<sup>122</sup> However, if another person other than the parent, legal custodian, caregiver, or any other person responsible for the child’s welfare is the perpetrator of suspected abuse, “[s]uch reports or calls shall be immediately electronically transferred to the appropriate county sheriff’s office by the central abuse hotline.”<sup>123</sup>

a. Punishment for failure to report suspected child abuse

The Florida legislature included a series of provisions containing penalties for those who fail to report child abuse. Unlike North Carolina, however, Florida classifies the failure to report as a third-degree felony.

House Bill 1355, “Protection of Vulnerable Persons,” which went into effect on October 1, 2012, revised the language concerning child abuse reporting under Fla. Stat. § 39.205.<sup>124</sup> The law requires specified educational institutions and their respective law enforcement agencies to report known or suspected child abuse, abandonment, or neglect in certain circumstances and provides financial penalties for violations, even up to one million dollars.<sup>125</sup>

The current Florida statute in Title V, Chapter 39 states:

A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a felony of

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119. FLA. STAT. ANN. § 39.201(2) (LexisNexis 2020).

120. *Id.*

121. *Id.* at § 39.201(2)(a).

122. *Id.*

123. *Id.* at § 39.201(2)(b).

124. H.B. 1355, 2012 Leg., 114th Reg. Sess. (Fla. 2012).

125. FLA. STAT. ANN. § 39.205(3)–(4) (LexisNexis 2020).

the third degree, punishable as provided in [section] 775.082, [section] 775.083, or [section] 775.084.<sup>126</sup>

Upon conviction of a third-degree felony, a person may be punished by a term of imprisonment not to exceed five years.<sup>127</sup> Further,

A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in [section] 775.082 . . . . A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed . . . \$5,000, when the conviction is of a felony of the third degree.<sup>128</sup>

The statute also includes a provision for habitual offenders.<sup>129</sup>

#### b. Results

Undoubtedly, while some people viewed Florida's universal mandated reporting statutes as a welcome improvement to the state and the efforts to combat child abuse, one Florida lawyer's perspective was that the new law resulted in "unintended consequence[s]."<sup>130</sup> He stated that the reporting obligations could create significant liability exposure for both individuals and their employees.<sup>131</sup>

On top of the liability imposed:

The statute is problematic from an enforcement perspective because it is written in broad terms and is susceptible to diverse interpretations and conclusions by both law enforcement and the courts. Very little practical guidance is provided with respect to the specific type of

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126. *Id.* at § 39.205(1).

127. FLA. STAT. ANN. § 775.082(3)(e) (LexisNexis 2020).

128. *Id.* at § 775.083(1)(c).

129. *See id.* at § 775.084 (LexisNexis 2020).

130. Michael J. Roper, *Florida's New Child Abuse Reporting Requirements, A Law of Unintended Consequences*, PREFERRED NEWS (Preferred Governmental Ins. Tr., Lake Mary, Fla.), Winter 2012, at 1, 3.

131. *Id.* at 2.

conduct which will be considered to be “abuse” or “neglect”,  
[sic] which would trigger the obligation to report.<sup>132</sup>

According to the report *Child Maltreatment 2016*, published by the U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, and the Children’s Bureau, in Florida alone there were 53,341 child victims in the year 2012, 48,457 in the year 2013, 45,738 in the year 2014, 43,775 in the year 2015, and 41,894 in the year 2016.<sup>133</sup> According to the report, there was a decrease of 21.5% in the number of child victims from the year 2012 to 2016.<sup>134</sup> Similar to North Carolina, there has been a decrease in reports and child abuse victims since the implementation of steeper fines and stricter laws.

Notably, the number of child victims since the Florida legislature implemented stricter penalties decreased by 21.5%.<sup>135</sup> In contrast, while the number of reports has decreased in North Carolina since the legislature passed its universal mandated reporting laws, the numbers have only decreased by approximately 8.1%.<sup>136</sup> Of the states that have passed universal mandated reporting laws, Florida is one of the states that holds the strictest penalties for those who fail to report suspected child abuse. While it is debated whether harsher laws can definitively be said to curb crime,<sup>137</sup> it appears that—at least in the state of Florida—these stricter laws have had an effect. Although the number of overall reports has decreased, so has the number of substantiated cases with child victims. Thus, although this is not an exhaustive study, after analyzing two states that have both implemented universal mandated reporting laws, it appears that the state with the more aggressive reporting laws has had a greater effect on the decrease of child abuse throughout the state.

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132. *Id.*

133. See U.S. DEP’T OF HEALTH & HUMAN SERVS. ET AL., *CHILD MALTREATMENT 2016*, at 32 tbl.3-3 (2018).

134. *Id.*

135. *Id.*

136. See Duncan et al., *supra* note 100.

137. Cf. Gary Kleck, Tomislav Kovandzic & Jon Bellows, *Does Gun Control Reduce Violent Crime?*, 41 CRIM. JUST. REV. 488, 488 (2016).



## IV. PROPOSAL

If a state decides to adopt legislation that requires universal mandated reporting, then implementing the “Three Es”: Enactment, Education, and Enforcement, is a way to effectively combat child abuse within the state. First, enactment: This would entail enacting stricter penalties for those who violate the laws. The legislature should look at data between states and conduct research to see whether harsher penalties affect the number of reports and referrals that come into a hotline. Second, education: The individual states, and perhaps the federal government (if Congress decides to pass a bill which creates a federal universal mandated reporting law), must better educate citizens of their legally imposed duty under universal mandated reporting laws. Finally, enforcement: This, of course, refers to the enforcement of violations of universal mandated reporting laws. It is not the severity of the penalties for committing a crime that alone acts as a deterrent, rather, it is the severity together with the substantial likelihood that a person will get caught.<sup>138</sup>

A. *The First E: Enactment of Stricter Laws and Penalties in Universal Mandated Reporting Laws*

There is certainly plenty of opportunity for enacting stricter penalties for failure to report child abuse among the states that require universal mandated reporting. For instance, Delaware law provides that any person who violates the mandated reporting law will at most pay \$10,000 for the first violation and \$50,000 for the second violation.<sup>139</sup> Idaho holds that failure to report as required by law is merely a misdemeanor.<sup>140</sup> Kentucky, however, lists violation penalties in a sequence of first offense (Class B misdemeanor), second offense (Class A misdemeanor), and each subsequent offense (Class

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138. A maxim often quoted by the author’s law school Criminal Law professor; see Champe S. Andrews, *The Importance of the Enforcement of Law*, 34 ANNALS AM. ACAD. POL. & SOC. SCI. 85 (1909). “[W]e must not stop with the mere enactment of the law. We must also provide a means for its enforcement.” *Id.* at 85. “What makes citizens obey the law is not always their sterling character. Instead, fear of punishment—the shame of arrest, fines, or imprisonment—more often makes us comply with laws.” Victor Davis Hanson, *If We Don’t Enforce the Law, We Get Anarchy*, DAILY SIGNAL (Nov. 2, 2018), <https://www.dailysignal.com/2018/11/02/if-we-dont-enforce-the-law-we-get-anarchy/>.

139. DEL. CODE ANN. tit. 16, § 914(a) (2020).

140. IDAHO CODE § 16-1605(4) (2020).

D felony).<sup>141</sup> In Maryland, the penalties for violating the statute increase slightly more than the previous states listed: although an individual who fails to report or interferes with a report of suspected child abuse is guilty of a misdemeanor, on conviction, the individual is subject to imprisonment up to five years or a fine not to exceed \$10,000, or both.<sup>142</sup> In Mississippi, a person who willfully violates the law, if found guilty, may be punished by a fine of up to \$5,000 or by imprisonment (not to exceed one year), or both.<sup>143</sup> In Nebraska, a person who willfully fails to make any report of child abuse or neglect required by law shall be guilty of a Class III misdemeanor.<sup>144</sup> Similar to many other states, New Hampshire only classifies violation of the law to report child abuse as a misdemeanor.<sup>145</sup> Although New Mexico classifies violation of its state laws on mandated reporting as a misdemeanor, if a person is convicted, the person shall be imprisoned in the county jail for a definite term that is less than one year, be fined not more than \$1,000, or, at the judge's discretion, both.<sup>146</sup> Oklahoma, too, classifies failure to report as a misdemeanor.<sup>147</sup> Rhode Island classifies failure to report as a misdemeanor but caps the fine at \$500, or imprisonment up to one year, or both.<sup>148</sup> In Tennessee, a person who knowingly fails to make a report as required by law commits a Class A misdemeanor and shall be brought before the court.<sup>149</sup> If the defendant pleads not guilty, the person shall be brought before a grand jury, and if the person pleads guilty, the judge shall sentence the defendant with a fine not to exceed \$2,500.<sup>150</sup> Texas law states that a person commits an offense if they knowingly fail to make a report as required.<sup>151</sup> An offense by a person is a Class A misdemeanor unless the child was a person with an intellectual disability and resided in a state-supported living center or another type of medical assistance program, and the person knew that the

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141. KY. REV. STAT. ANN. § 620.030(7) (LexisNexis 2020).

142. MD. CODE ANN., FAM. LAW § 5-705.2 (LexisNexis 2020).

143. MISS. CODE ANN. § 43-21-353(7) (2020).

144. NEB. REV. STAT. ANN. § 28-717 (LexisNexis 2020).

145. N.H. REV. STAT. ANN. § 169-C:39 (LexisNexis 2020).

146. N.M. STAT. ANN. § 32A-4-3(F) (LexisNexis 2020); N.M. STAT. ANN. § 31-19-1(A) (LexisNexis 2020).

147. OKLA. STAT. tit. 10A, § 1-2-101(C) (2020).

148. 40 R.I. GEN. LAWS § 40-11-6.1 (2020).

149. TENN. CODE ANN. § 37-1-412(a)(1)-(2) (2020).

150. *Id.* at § 37-1-412(b)(2).

151. TEX. FAM. CODE ANN. § 261.109(a) (West 2020).

child had suffered serious bodily injury as a result of the abuse or neglect.<sup>152</sup> In such a case, the offense is a state jail felony.<sup>153</sup> Utah lists the violation of the statute as a Class B misdemeanor.<sup>154</sup> However, in addition to the classification as a misdemeanor, the statute creates a statute of limitations and requires that an action for failure to report commence “within four years from the date of knowledge of the offense and the willful failure to report.”<sup>155</sup>

Florida and Delaware hold the strictest penalties for failure to report. Some may argue that a higher penalty will not change whether an individual decides to report.<sup>156</sup> While enacting higher penalties on its own may not effectuate change, if states combine this effort with a greater attempt to educate the public and enforce the laws in place, then continued child abuse will likely become less prevalent as individuals begin identifying risks and areas of harm.<sup>157</sup> The question then turns to: how are we supposed to educate the general public about their duty to protect children if they live in a universal mandated reporting state, such as the ones listed above?

B. *The Second E: Educating Citizens of the Legally Imposed Duty Under Universal Mandated Reporting Statutes and How to Respond*

Educating citizens about universal mandated reporting laws involves a two-step process: Citizens must be aware of the law and their duty to report known or reasonably suspected cases of child abuse, and they must also know how to recognize suspected cases of child abuse and how to make a report.

Even back in 1998, Victor Vieth presented much insight into the realm of mandated reporting. He noted:

Expanding the mandated reporting law is of no consequence if those obligated to act do not comprehend what is expected of them. Indeed, many current mandated reporters remain unaware of their obligations. Jurisdictions that conduct mandated reporter training have improved

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152. *Id.* at § 261.109(b).

153. *Id.* at § 261.109(c).

154. UTAH CODE ANN. § 62A-4a-411 (LexisNexis 2020).

155. *Id.*

156. To see a change in society, we cannot stop with simply enacting laws. There has to be enforcement. *See Andrews, supra* note 138. *Cf. Gary Kleck, Tomislav Kovandzic & Jon Bellows, Does Gun Control Reduce Violent Crime?*, 41 CRIM. JUST. REV. 488, 488 (2016).

157. *Cf. Hanson, supra* note 138.

their ability to protect children. Accordingly, any expansion of the mandated reporting law must include the marshaling of state and local resources to educate citizens about the law.<sup>158</sup>

One would hope that compassion and the desire to protect the most vulnerable members of society would be the driving force behind citizens wanting to file reports. However, perhaps a lack of compassion stems from a lack of knowledge. Because a vast majority of statutes appear vague to the average citizen, one might feel ill-equipped to meet the law's standards.

In previous decades, there was a problem with mandated reporting laws being too vague and citizens not understanding their duty to report. "Due to the expansive definitions and lenient reporting requirements of many reporting laws, combined with the potential for civil liability for failure to comply, these laws encourage[d] reports from mandated reporters that [were] often unsubstantiated."<sup>159</sup> In 1996, the National Committee to Prevent Child Abuse stated that "[t]he 1996 rate is based on data from 37 states averaging a 31% substantiation rate."<sup>160</sup>

One argument explaining why so much overreporting and unsubstantiated reporting occurred is that mandated reporting statutes contain "vague definitions of reportable conditions."<sup>161</sup> "Vague definitions are not helpful to most mandated reporters. Uncertainty about what is reportable, when combined with fear of liability for not reporting, results in a greater amount of reports and, consequently, unfounded reports."<sup>162</sup> The argument continues that the "reasonableness" standard that most statutes impose creates vagueness and an unclear standard for most mandated reporters. "[M]andated reporters who are unclear about the legal meaning of 'reasonable' will be inclined to report, perhaps based on questionable evidence, to shield themselves from liability."<sup>163</sup>

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158. Victor I. Vieth, *Passover in Minnesota: Mandated Reporting and the Unequal Protection of Abused Children*, 24 WM. MITCHELL 131, 163 (1998).

159. Steven J. Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. JUV. L. 236, 239 (1998).

160. *Id.* (citing National Committee to Prevent Child Abuse, *Current Trends in Child Abuse Reporting and Fatalities: NCPA's 1996 Annual Fifty State Survey 3* (1997)).

161. *Id.* at 240.

162. *Id.* at 240-41.

163. *Id.* at 241.

[I]mposing civil liability for failing to report contributes to the high number of unsubstantiated reports. . . . Generally, absent a special relationship, the common law imposes no duty to act on behalf of one in need of assistance. Reporting statutes, however, supersede common law doctrines. [E]very state imposes some form of liability for failing to report suspected child abuse or neglect.<sup>164</sup>

Even if the vagueness in the statutes does lead to overreporting, overreporting seems to be a better alternative than underreporting. Most people do not intentionally make false reports, but simply do not understand what constitutes abuse and neglect.<sup>165</sup> Although a reporter's concerns may be unfounded, it is better that concerns are taken seriously, and that cases are investigated by proper authorities and turn out to be false, than actual abuse not being reported or investigated at all.

If the average citizen does not comprehend the mandated reporting statute and does not appreciate the duty to report, one might feel ill-equipped to meet the statute's standards. An individual could easily second guess what he or she saw if that person was unaware of the warning signs. "Few people fail to report because they want children to suffer abuse and neglect. Likewise, few people make deliberately false reports. Most involve an honest desire to protect children coupled with confusion about what conditions are reportable."<sup>166</sup> Any confusion caused by the vagueness of reporting laws is "aggravated by the failure of child protective agencies to provide realistic guidance about deciding to report."<sup>167</sup> In contrast, if state governments or private organizations educated individuals about the specific signs to look for, such as what actions the abuse hotlines or child protection services consider to be abusive, then perhaps more citizens would feel better prepared to take action and make a call to report such abuse. The way to combat confusion harbored by some citizens is to educate them about the law.

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164. *Id.*

165. See KATHERINE HUNT FEDERLE, CHILDREN AND THE LAW: AN INTERDISCIPLINARY APPROACH WITH CASES, MATERIALS, AND COMMENTS 461 (2013) (coursebook including and referencing text from Douglas J. Besharov's article, *Child Abuse Realities: Over-Reporting and Poverty*).

166. *Id.*

167. Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL'Y & L. 165, 195-196 (2000).

The goal is to provide clear guidance about what the law is, where to find additional resources, and how to implement this knowledge and training in order to make accurate reports of known or suspected child abuse. To accomplish this objective, the general public must first be made aware of the laws. This could be carried out through periodic announcements in newspapers or journals, on the radio, through social media marketing, television commercials, or through pamphlets. It does not seem right to call it “advertising,” so much as a campaign to raise awareness among the various communities within a state.<sup>168</sup> Consider, for example, drunk driving campaigns, or anti-smoking or anti-vaping campaigns. These campaigns have proven successful in spreading awareness of a dangerous activity, reducing participation in the dangerous activity, and encouraging others to take action to prevent the dangerous activity.<sup>169</sup> Studies in the aftermath of drunk driving awareness campaigns have shown that “seven out of every ten Americans at some point since the campaign was initially launched have attempted to stop another person from driving after drinking.”<sup>170</sup> Likewise in the context of child abuse, such awareness campaigns would remind individuals that they have a legal duty to report suspicions of child abuse and neglect, and that they are potentially liable for not reporting their suspicions. Such awareness campaigns could encourage whole communities to be vigilant in reporting suspected abuse. Additionally, awareness campaigns could also benefit the state, as it is more likely that local citizens will hold a more positive view of their state government knowing that it heavily advocates for protecting children.<sup>171</sup>

Once the public is made aware of the duty to report, the next step is to educate citizens about how to receive training and take steps to actively combat child abuse through filing reports. There could be campaigns and

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168. See Janet A. Weiss & Mary Tschirhart, *Public Information Campaigns as Policy Instruments*, 13 J. POL'Y ANALYSIS & MGMT 82, 82–84 (noting critiques of public awareness campaigns but ultimately concluding that they are effective).

169. See Jonathan Rosenfeld, *Impact of Safety Campaigns on Reducing Drunk Driving*, NAT'L L. REV. (Oct. 16, 2017), <https://www.natlawreview.com/article/impact-safety-campaigns-reducing-drunk-driving>.

170. *Id.*

171. Citizens are likely to make value judgments of their local governments based off public awareness campaigns. See Mihir Zaveri, *Meth. We're on It: South Dakota's Anti-Meth Campaign Raises Eyebrows*, N.Y. TIMES (Nov. 18, 2019), <https://www.nytimes.com/2019/11/18/us/south-dakota-meth.html> (describing the reactions of citizens following South Dakota's controversial 2019 anti-drug campaign).

publications about the different training resources available online and in-person at various locations within the communities. If an individual knows “I have a duty to report suspected child abuse,” but does not know the warning signs, what conduct meets the statutory definitions of abuse or neglect, or how to even file a report to make a referral, then that individual may not truly understand their duty and the implication of a possible encounter with child abuse.<sup>172</sup> In consumer-minded societies like America, people are ready to consume whatever is at their fingertips.<sup>173</sup> “Driven by technology and an on-demand culture, younger generations of consumers have grown up with media and services that are available at the push of a button, anytime and anyplace.”<sup>174</sup> Free resources readily available are more likely to be accepted and “consumed” by individuals ready for the intake of information. Announcements, which could also be through social media platforms, on the radio, and in television commercials, are more likely to effectively reach individuals after they have come to realize the need for such information.

There are many free training resources available both online and at physical locations within different communities. For instance, North Carolina residents who have heard about universal mandated reporting laws but wish to educate themselves further, could conduct a quick Google search and visit Prevent Child Abuse North Carolina’s (PCANC) website to find many different resources for training and professional development.<sup>175</sup> On this website, there is a specific webpage titled “Online Trainings.”<sup>176</sup> The

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172. See *supra* notes 168–69 and accompanying text (demonstrating that awareness campaigns (i.e., drunk driving) proved to be effective). However, there needs to be more than just awareness of a law. Individuals aware of a law must know and understand how to comply with the law. In cases of universal mandated reporting statutes, this can sometimes be tricky. See Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL’Y & L. 165, 195–196 (2000) (noting that non-reporting among teachers was due to “a lack of knowledge for detecting symptoms of child abuse and neglect”).

173. Jeff Fromm, *Marketing Convenience to the Modern Consumer*, FORBES (Jan. 4, 2019), <https://www.forbes.com/sites/jefffromm/2019/01/04/marketing-convenience-to-the-modern-consumer/#7ce76cda127f>.

174. *Id.*

175. *Recognizing and Responding Online Course*, PREVENT CHILD ABUSE N.C., <https://www.preventchildabusenc.org/recognizing-responding-online-course/> (last visited Feb. 7, 2020).

176. *Online Trainings*, PREVENT CHILD ABUSE N.C., <https://www.preventchildabusenc.org/online-trainings/> (last visited Feb. 20, 2020).

PCANC website relays information about the mission of the organization and how PCANC is “dedicated to making sure North Carolina’s citizens and professionals have the most effective and up-to-date tools possible to prevent child abuse and neglect before it occurs.”<sup>177</sup> The page further shows a variety of opportunities available in what PCANC calls its “Professional Education Program.”<sup>178</sup> The list of training resources includes information about webinars, specific online training programs with certifications, and other training and networking events.<sup>179</sup> One specific course that PCANC provides is called “Recognizing and Responding to Suspicions of Child Maltreatment,”<sup>180</sup> a self-guided course that takes about two hours to complete and may be completed on any device.<sup>181</sup> If one completes the course with a score of at least 80%, the PCANC will provide a certificate of completion.<sup>182</sup> The learning objectives include: understanding the signs and symptoms of child maltreatment; North Carolina mandatory reporting laws; the legal definitions of abuse and neglect; how and where to make a referral of suspected child maltreatment; barriers to reporting and some strategies for overcoming them, and where to find additional resources.<sup>183</sup>

Similarly, other states (e.g., Florida) also have online resources available for free download.<sup>184</sup> The Florida Department of Children and Families provides training through a one-hour-long online course or free PowerPoint downloads on various topics: Florida Statutes and non-caregiver abuse calls; protection of vulnerable persons; summary of the Protections of Vulnerable Persons Document (HB 1355); law enforcement tutorial and the implementation of HB 1355; and a hotline counselor implementation tutorial.<sup>185</sup>

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177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Recognizing and Responding Online Course*, PREVENT CHILD ABUSE N.C., <https://www.preventchildabusenc.org/recognizing-responding-online-course/> (last visited Feb. 7, 2020).

182. *Id.*

183. *Id.*

184. *See Abuse Hotline*, FLA. DEP’T CHILD. & FAMILIES, <https://www.myflfamilies.com/service-programs/abuse-hotline/training.shtml> (last visited Feb. 8, 2020).

185. *Id.*



Additionally, some organizations, (for example, Mary Lee's House<sup>186</sup>) provide in-person mandatory reporter training.<sup>187</sup> Mary Lee's House partners with the Department of Child and Families to provide mandatory reporter training which the Florida Abuse Hotline leads.<sup>188</sup> The training "reviews how to identify risk factors of child abuse, what occurs once a call has been made to the hotline and how cases are handled through the Child Protection Investigation Department."<sup>189</sup>

Based on the remaining prevalence of child abuse across the country, despite the resources available online, there still seems to be a missing link between the information and the minds of individuals who either report or do not report. It is not necessarily the case that every adult capable of understanding child abuse will sit down and do a Google search and seek out training on their own. If universal mandated reporting states better publicized the requirement that any person who has a suspicion of child abuse or neglect is now under a duty to report such suspicions, perhaps citizens would be more inclined to seek additional training. For this reason, states must implement the two-step education initiative.

Teaching citizens about the laws and equipping them with the tools necessary to report child abuse could prove to be very powerful in the ultimate prevention of child abuse.

### C. *The Third E: Enforcing Enacted Laws*

Even if stricter laws are enacted, higher penalties are written into law, and larger fines implemented, such change may not have real impact without effective enforcement of the laws already enacted.<sup>190</sup> As it is, "[m]andatory

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186. Mary Lee's House is a child protection and advocacy center that provides "a child-friendly," loving environment for child victims of abuse and neglect. MARY LEE'S HOUSE, <http://maryleeshouse.org/> (last visited Feb. 8, 2020).

187. *Community Outreach*, MARY LEE'S HOUSE, <https://maryleeshouse.org/community-outreach/> (last visited Feb. 8, 2020).

188. *What We Do*, MARY LEE'S HOUSE, <https://maryleeshouse.org/what-we-do/> (last visited Feb. 8, 2020).

189. *Id.*

190. Champe S. Andrews, *The Importance of the Enforcement of Law*, 34 ANNALS AM. ACAD. POL. & SOC. SCI. 85 (1909). "[W]e must not stop with the mere enactment of the law. We must also provide a means for its enforcement." *Id.* at 85. "What makes citizens obey the law is not always their sterling character. Instead, fear of punishment—the shame of arrest, fines, or imprisonment—more often makes us comply with laws." Victor Davis Hanson, *If We*

reporting law[s] [are] poorly understood and seldom enforced.”<sup>191</sup> Too often, laws are ignored, even when the laws are made clear. Even when people know that they have a duty, they ignore that duty. Indeed, one investigation “found that [Colorado’s] mandatory reporting law is seldom enforced and often results in leniency for violators. Those convicted of breaking the law face a penalty as low as a \$50 fine.”<sup>192</sup> In Colorado, “[s]ince 2010, prosecutors have brought just 46 criminal cases of failing to act as a mandatory reporter . . . . Only about half of those cases resulted in a conviction.”<sup>193</sup> The report further stated that of the cases that did result in a conviction, “virtually all of the convictions eventually were dismissed by a judge after the defendant served a short stint on probation.”<sup>194</sup>

Colorado is not alone in recognizing the lack of enforcement of mandated reporting statutes in its state. Citizens of California have likewise noticed the lack of enforcement of their state’s laws.<sup>195</sup> While California does not have universal mandated reporting like North Carolina or Florida, California requires individuals to report suspected child abuse if they work with children in their profession.<sup>196</sup> However, from 2012 to 2017, less than a dozen workers in Los Angeles, Orange, San Bernardino, and Riverside counties were charged with violating the state’s mandated reporting laws.<sup>197</sup> Rightfully so, one article posed the question: “If child abuse is so rampant, why are prosecutions so rare for those who fail to report it?”<sup>198</sup> “Despite the proliferation of child abuse cases in the four-county region, law enforcement agencies rarely seek criminal charges for violations of the mandated reporter

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*Don't Enforce the Law, We Get Anarchy*, DAILY SIGNAL (Nov. 2, 2018), <https://www.dailysignal.com/2018/11/02/if-we-dont-enforce-the-law-we-get-anarchy/>.

191. Denver Post, *Mandatory Reporting Law Poorly Understood and Seldom Enforced*, STERLING J.–ADVOC. (May 18, 2019, 1:01 AM), <https://www.journal-advocate.com/2018/06/15/mandatory-reporting-law-poorly-understood-and-seldom-enforced/>.

192. *Id.*

193. *Id.*

194. *Id.*

195. See Beau Yarbrough, *If Child Abuse Is So Rampant, Why Are Prosecutions So Rare for Those Who Fail to Report It?*, SAN BERNARDINO SUN (Aug. 29, 2018, 1:20 PM), <https://www.sbsun.com/2018/05/11/if-child-abuse-is-so-rampant-why-are-prosecutions-so-rare-for-those-who-fail-to-report-it/>.

196. *Id.*

197. *Id.*

198. *Id.*

law under California Penal Code 11166, which calls for a penalty of up to six months in jail and a \$1,000 fine.<sup>199</sup> Additionally, in Los Angeles County, the District Attorney's Office only charged three people from January 1, 2013, to April 16, 2018, with violating the mandated reporting law.<sup>200</sup> Of those three, only two charges resulted in convictions.<sup>201</sup>

One of the cited attributable reasons for lack of prosecution is that mandated reporting laws are difficult laws to investigate.<sup>202</sup> A city prosecutor of Long Beach stated:

While I'd like to believe the scarcity of cases is the result of perfect compliance by mandated reporters, it is also possible the nature of the law is part of the reason[.] . . . The truth is that law enforcement is not likely to know when a mandated reporter has reasonable suspicion of child abuse and fails to report it.<sup>203</sup>

Although mandated reporting laws, and specifically universal mandated reporting laws, may be difficult laws to enforce, some kind of enforcement must exist. "[W]e must not stop with the mere enactment of the law. We must also provide a means for its enforcement."<sup>204</sup> For example, a new standard for constructive notice could be imposed in order to effectively enforce universal mandated reporting laws. This could potentially allow a new means for enforcement.

Regardless, enforcement alone is not going to solve the problem of child abuse. But even though one of the aforementioned "E's" might not be enough on its own, enactment, education, and enforcement all acting together could be the first step in the right direction headed for change.

D. *Oxendine v. State: What Might Have Happened if the State Implemented the "Three Es"*

While Delaware's penalties for failure to report child abuse are now on the stricter end of the spectrum of states' response to child abuse, at the time the case of *Oxendine v. State* occurred, Delaware did not have such child abuse

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199. *Id.*

200. *Id.*

201. Yarbrough, *supra* note 195.

202. *Id.*

203. *Id.*

204. Andrews, *supra* note 138, at 85.

reporting laws.<sup>205</sup> Recall the brief facts of *Oxendine*, where a neighbor overheard commotion of a father screaming at and beating his six-year-old son.<sup>206</sup> The neighbor stated that the noises sounded like “blows being struck” and that the neighbor heard a child say, “Please stop, Daddy, it hurts.”<sup>207</sup> For the sake of argument, imagine that this neighbor is now living in the year 2020, where the law requires reports of known or suspected child abuse, and these same facts are in play (i.e., the facts regarding Oxendine’s abusive behavior towards his child).

Imagine that the state of Delaware decided to implement the “Three Es”: enactment, education, and enforcement. Imagine that the legislature had recently enacted stricter penalties for those who violate the universal mandated reporting law. Imagine that the neighbor had been reading online news sources and shared Facebook announcements over the last several months and had seen information regarding the state’s goal of preventing child abuse. Imagine the announcement was as a result of the government’s efforts to create awareness about the issue; it had recently launched a state-wide awareness campaign about child abuse and universal mandated reporting. As seen in the context of drunk driving awareness campaigns, such campaigns are effective tools to create a shift in the hearts and minds of individuals.<sup>208</sup> Awareness campaigns for the prevention of child abuse would likely have a similar effective result.

Imagine the announcement stated what the laws were in Delaware, reminding the reader that *any* person who had a reasonable suspicion—and included a definition of reasonable suspicion—was under obligation to report, and the penalties were listed below the reminder. Imagine the announcement also listed information on how to report and what hotlines to call. Due to the awareness campaigns and government advertising, information about where to obtain further training was readily available. Imagine that the awareness campaigns sparked discussion within the community, and how to recognize signs of child abuse was a topic of conversation. Moreover, many conversations focused on the government’s well-publicized intent to enforce the mandated reporting laws.

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205. See *State Statutes*, *supra* note 33, at 15.

206. *Oxendine v. State*, 528 A.2d 870, 871 (Del. 1987).

207. *Id.*

208. *Supra* Section IV.B.

Imagine that after having all this information readily available, at the time the neighbor heard the sounds coming from Oxendine's apartment, the neighbor could then consider whether a reasonable person in the same circumstances would think that abuse was occurring. The neighbor would likely know, based off the noises she heard, that she possessed a reasonable suspicion. Mandated reporting laws do not require that a person be able to prove that child abuse is occurring through direct evidence. Most laws even allow reporting on a good faith assumption. Many universal mandated reporting laws provide some protection from liability for those who make reports in good faith. Because of the state's education initiative, the neighbor knew all of this information.

Thus, equipped with the applicable law, the available resources, and the tools to act, the neighbor in the hypothetical scenario would have been much more likely to file a report, had the neighbor been in a situation similar to the one that occurred in *Oxendine v. State*. While the neighbor may not be certain of whether abuse exists, the legislature does not require certainty but only a reasonable suspicion, which of course, thanks to the announcement and the state's implementation of the "Three Es," the neighbor was now aware. If the facts in this hypothetical case were all true, and the state actually implemented the Three Es, imagine how different the scenario in *Oxendine v. State* might have been.

## V. CONCLUSION

It is no secret that child abuse has a detrimental effect on societies and is a prevalent issue in the United States. Despite efforts made by state and federal legislators to end child abuse through creating classes of mandatory reporters, these laws have not been effective enough. Since the first mandated reporting laws went into effect, the classes of responsible persons have grown from certain professions to any person who has a reasonable suspicion of child abuse and neglect.

But what happens when required individuals refuse to make reports and violate the statutes that are already in place? Some states have legislated penalties for failing to report, but that has not seemed to be effective. State legislatures should conduct analyses based on the data in their state to determine if stricter penalties for failing to report would lead to more—or less—reporting within the state.

As stated previously, states should consider effectuating change through universal mandated reporting laws through enactment, education, and

enforcement. While each step may not provide a complete solution to the problem in and of itself, if governments and communities implement each step together, the results could have great significance, and would be an influential next step towards achieving greater and more effective protection for more children.

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*“Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.”<sup>209</sup>*

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209. *Matthew 25:40* (New International Version).