

INTERNATIONAL LEGAL NOTE

Should social workers be mandated reporters of child maltreatment?

An international legal perspective

● Daniel Pollack

The *Canton Repository* newspaper reported on February 16, 2006 that Elaine Thompson, a licensed social worker, was charged with aiding in the abuse of special-needs children whose parents were themselves accused of keeping the children in cages. Among others, Thompson was charged with eight counts of failure to report child abuse. (Mabin, 2006)

The World Health Organization (WHO) concludes in its recent 'World Report on Violence and Health' (2002: 59) that:

[a]ny approach to child abuse must take into account the differing standards and expectations for parenting behaviour in the range of cultures around the world . . . Some researchers have suggested that views on child-rearing cut across cultures might diverge to such an extent that agreement on what practices are abusive or neglectful may be extremely difficult to reach . . . It appears that there is general agreement across many cultures that child abuse should not be allowed, and virtual unanimity in this respect where very harsh disciplinary practices and sexual abuse are concerned.

A mandated reporter is a person who is required by law to make a report of child maltreatment under certain circumstances. It is challenging to assess the difficulties associated with detection and reporting of child abuse in a social work setting:

- What are the operational definitions of abuse or neglect?
- Are the organization's definitions and procedures clear to all of its social workers?

- Are social workers sufficiently trained in the identification of child abuse signs?
- What are the attitudinal and institutional barriers to reporting?
- Do social workers feel uncertain about the effectiveness of the child protective services response and therefore feel a report may be a waste of time?
- Are there exceptions to the general rule that reports of suspected cases of child maltreatment supersede a social worker's duty of privacy, confidentiality and privileged communication?
- Do social workers with training and experience in maltreatment identification make more accurate reports than those with less training and experience?

Each of these important questions deserves a lengthy answer. Due to space restrictions, this Legal Note confines itself to looking at: the general policies and statutes of mandated reporting in a sample of countries; how capable we are of self-reporting; and arguments for and against social workers being mandated reporters.

A sample of mandatory reporting laws

In many countries the law requires certain people, such as health-care professionals, educators, clergy, law enforcement officers and social workers to report signs of child abuse to the proper authorities. Some countries even require social workers to be trained to detect child abuse as a condition for receiving or renewing their social work license. Social workers who are mandatory reporters of child maltreatment may face lawsuits if they willfully fail to fulfill their legal responsibility. Usually, the same law which requires mandatory reporting gives reporters immunity from prosecution even if the report turns out to be incorrect.

Australia

In South Australia social workers are required to report if there are 'reasonable grounds that a child has been or is being abused or neglected' (Australian Institute of Family Studies, 2005). In New South Wales they are required to report if any child under age 16 is 'at risk of harm'. Similar language exists for social workers in Victoria. In Western Australia, the Discipline of Social Work and Social Policy at the University of Western Australia was asked to determine whether the evidence supported reporting as optional or mandatory. Their final report 'declined to recommend that the

legislation be amended to create any category of professionals or individuals for whom reporting should become mandatory' (Crime and Misconduct Commission, Queensland, 2004: 189).

Canada

Some provinces in Canada (Walters, 1995) have enacted both civil and criminal penalties for failure to report child abuse. For instance, in Newfoundland and Labrador the failure to report may result in imprisonment of up to six months and a fine of up to \$10,000; in Saskatchewan it is punishable by a prison term of up to 24 months and a maximum fine of up to \$25,000 (Canadian Centre for Justice Statistics, 2003: 29). In contrast, Prince Edward Island, Ontario, Manitoba, New Brunswick and other provinces provide no penalty since reporting is voluntary.

France

Since 1971, France has had a mandated reporting statute, though Stretch (2003) points out that neglecting to report will only be punishable if the non-reporter knows that the child maltreatment would be characterized as a crime. Furthermore, 'a potential reporter might not know who was responsible for the abuse and whether the abuser was related to the victim or had a responsibility for the victim which would aggravate the seriousness of the offence' (pp. 140–1).

United Kingdom

Social workers are not mandated reporters in the United Kingdom. Stretch (2003: 139) writes: '[P]rofessionals working with children are expected to co-operate with each other and to exchange information, and social service departments are also expected to report abuse to the police whenever a criminal offence has been or may have been committed. Nevertheless, the crucial difference between this approach and using mandatory reporting is that a non-reporter does not risk a criminal punishment.'

USA

The USA has mandated reporting statutes with attendant criminal sanctions a possibility. The failure to report in Tennessee is a misdemeanor. A maximum fine of \$50 may be imposed if the defendant pleads guilty (Tenn. Code Ann. (Supp. 2001)). Mississippi's law is more severe. It imposes a fine up to \$5000 or imprisonment for up to one year, or both (Miss. Code Ann. (Supp. 2004)). Almost

every state has enacted statutes specifying the penalties for failure to report child abuse or neglect. At the federal level, 18 U.S.C. 2258 requires that social workers, upon learning of facts that give reason to suspect that a child has suffered an incident of child abuse, must make a timely report.

Other countries

WHO (2002: 74) summarizes mandatory and voluntary reporting requirements in other countries: 'The reporting by health professionals of suspected child abuse and neglect is mandated by law in various countries, including Argentina, Finland, Israel, Kyrgyzstan, the Republic of Korea, Rwanda, Spain, [and] Sri Lanka. Even so, relatively few countries have mandatory reporting laws for child abuse and neglect. A recent worldwide survey found that, of the 58 countries that responded, 33 had mandatory reporting laws in place and 20 had voluntary reporting laws.' Those having voluntary reporting systems include Barbados, Cameroon, Croatia, Japan, the Netherlands, Romania and Tanzania (WHO, 2002: 74). Kwok and Tam (2005: 344) report that 'there are no mandatory laws for reporting child abuse in Hong Kong, Taiwan, Singapore and China'.

Is the social work profession capable of self-reporting?

One of social work's principal points of pride is our profession's claim to self-regulation. Yet many of us are hesitant to report a colleague to an outside authority especially when the culture of the agency in which we work stresses loyalty and support. We should be hesitant to place too much emphasis on the fact that there are few instances in which social workers have been publicly held accountable for failure to report. The mere fact that few have been sanctioned may simply mean that few of us have taken the reporting statutes seriously. Some would conclude that without the threat of enforcement social workers are likely to ignore reporting laws.

Does reporting by one mandated reporter absolve another mandated reporter of the duty to report? In the USA, the United Kingdom and France, hundreds of clergy have been removed from the Catholic Church since the early 1990s due to child sexual abuse allegations. In many of these cases, colleagues of the abusive clergy failed to report the suspected abuse to the appropriate authorities. In theory, notwithstanding what our colleagues do, each social worker is charged with reporting suspected abuse and each must

make an independent report. Common sense would seem to dictate that if all of the social workers are employed by the same agency a single representative report should suffice.

Whether by design or coincidence, our professional organizations have been relatively silent when it comes to providing specific guidance regarding self-monitoring. With the profession alerted to this need for self-policing, perhaps now may be the time for action in those jurisdictions where reporting is mandatory.

Arguments for and against social workers being mandated reporters

Mandatory reporting laws have engendered much controversy and so, the principal question remains: should social workers be mandated to report child maltreatment? Arguments opposed to mandatory reporting include the following.

- There is no conclusive evidence that children would be better served.
- Mandatory reporting will not necessarily mean more resources will be available to help abused children.
- 'It is a well-known fact that when mandatory reporting laws, public education campaigns, and other measures are implemented to increase awareness, reporting will increase' (Durrant, 2003). Our efforts would be better spent by ensuring that the profession is aware of what child abuse is and how it can help.
- Singling out certain professionals absolves society as a whole from its oversight responsibilities.
- Mandatory reporting burdens child welfare workers with collecting unnecessary data.
- It is unnecessary to shame social workers into doing their jobs.
- Unwarranted or malicious reports may be made, leading to an erosion of civil rights.
- Even if unproven, allegations of abuse are difficult to expunge from databases.

Those favoring mandatory reporting include these arguments.

- Children are particularly vulnerable because of their age and need legislative assurances that social workers are obligated to watch out for them.

- Positive peer pressure to report is created among social work professionals.
- Mandatory early intervention by judicial authorities is essential.
- More accurate data on child maltreatment may result.
- Children are not capable of making decisions about their own safety and need professional advocates.
- Children are not able to remove themselves from dangerous or abusive situations and therefore need professional social workers to know it is part of their job to report child maltreatment.
- Children are often dependent on the person who is doing the abusing and therefore they need designated professionals to act on their behalf.

Conclusion

Article 19 of the United Nations Convention on the Rights of the Child (1990) mandates that:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, **reporting** (emphasis added), referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

It seems clear that, whether reporting is mandated or optional, the profession and the United Nations have both endorsed the idea that a proactive, organized reporting mechanism should not be optional.

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Daniel Pollack is Professor, Wurzweiler School of Social Work, Yeshiva University, New York City, and Senior Fellow, Center for Adoption Research, University of Massachusetts Medical School. Address: Wurzweiler School of Social Work, Yeshiva University, 2495 Amsterdam Ave, Suite 818, New York, NY 10033-3201, USA. [email: dpollack@yu.edu]
