

ISSUE BRIEF

MANDATORY REPORTERS: How Colorado's mandatory reporter law lacks the necessary infrastructure to support those charged with reporting suspected child abuse.

INTRODUCTION

Olivia Gant was only 7 years old when she died. During her short life, it is alleged that her mother subjected her to five years of countless, unnecessary medical treatments and surgeries which ultimately resulted in Olivia's death in 2017. Her mother has been criminally charged and is pending trial. The allegations are that Olivia was the victim of Factitious Disorder Imposed on Another – a rare psychological disorder in which a caregiver, like Olivia's mother, create symptoms of illness in their children to get attention. Because caregivers often advocate for unnecessary and dangerous treatments, children can be seriously injured and even die.

After Olivia died, questions were raised about how her death could have been prevented. The media and an attorney for the family have raised concerns that Children's Hospital Colorado (CHC), the facility responsible for Olivia's ongoing care, failed to report suspected child abuse as required by law, thereby delaying a child abuse investigation that might have saved her.¹ It is also alleged that the CHC's internal child abuse reporting policy is at odds with Colorado law because it recommends hospital staff members who suspect child abuse to first report their concerns to a lead social worker or the hospital's internal child protection team, before reporting directly to law enforcement, a human service agency or the state's child abuse hotline.²

BACKGROUND

Olivia's case raises long-standing questions about whether Colorado's mandatory reporting law is well understood by the thousands of individuals and institutions in Colorado who are required to make child abuse reports and whether the law has been implemented in a way that ensures the state's children are being protected.

Colorado, like many other states in the country, has had a series of high-profile cases, that raise questions about the effectiveness of mandatory reporting laws. To be clear, many of the headline grabbing cases involve adults, in positions of trust – such as school principals, civic and religious leaders and many others – who deliberately chose not to report child abuse in an attempt to preserve an institution's reputation or to protect a colleague from scandal.² This brief does not address those cases. Those cases are appropriately addressed by the criminal justice system which is tasked with enforcing penalties for these serious breaches of law.



This brief addresses the thousands of other circumstances where well-meaning citizens – teachers, social workers, nurses, coaches and many others – want to do right by kids but are unclear about how to fulfill their responsibilities to report abuse and neglect.

In the past decade, the Office of Colorado’s Child Protection Ombudsman (CPO) has received dozens of calls from mandatory reporters who are unclear on what Colorado law requires them to do. Callers frequently ask:

- *What is the definition of physical and sexual abuse? Does it include bullying? Emotional abuse? Educational neglect? Sexting?*
- *Child abuse is only committed between a parent and their child, right? Or can child abuse be committed by any adult upon a child?*
- *Is it child abuse if one kid sexually or physically assaults another kid?*
- *My agency requires me to report my concerns to my supervisor, is that OK or do I need to call in the report myself?*

These calls and many others like them, indicate there is room for improvement regarding how professionals respond to children they believe are suffering from abuse and neglect. The CPO conducted an in-depth analysis of Colorado’s mandatory reporting law. The CPO spoke with numerous mandatory reporters, including school administrators, teachers, school resource officers, law enforcement, county human service agencies and others whose job it is to report child abuse and neglect. Additionally, the CPO reviewed mandatory reporter laws across all 50 states to gain a better understanding of how Colorado’s law compares to other states.

The analysis revealed an inconsistent understanding of the law by mandatory reporters, a fragmented system of trainings and a general lack of support and resources for mandatory reporters to capably do the job asked of them – namely, to report suspected child abuse and neglect.

Colorado has consistently regarded mandatory reporting as an important child abuse prevention tool. This is evidenced by the numerous amendments that have been made to Colorado’s law during the past 55 years to strengthen it. However, public policy efforts have not gone far enough to create an infrastructure that ensures our mandated reporters are able to both identify and report suspected abuse effectively.

COLORADO’S MANDATORY REPORTING LAW

Mandatory reporting laws have been around nearly five decades.

Colorado was the first state in the nation to adopt a mandatory reporting law in 1963. Since that time, the Child Protection Act of 1987 has been amended at least 31 times.³ The most significant changes over the years have been the addition of specific types of professionals who are required to report suspected child abuse and neglect. None of the statutory amendments have created a cohesive infrastructure to ensure *quality* reporting.

The idea behind mandatory reporting laws is simple – children do not possess the maturity, physical strength, emotional capacity or resources to protect themselves. As such, they rely upon adults to be their voice, to speak on their behalf, to get them help. There are many dynamics that deter children from reporting abuse: fear that they won’t be believed, fear of getting a caregiver in trouble, fear that the abuse will only get worse if it is reported.

Mandatory reporting laws are designed to have adults, who have frequent contact with children, to report suspected abuse and neglect to authorities. While all states have mandatory reporting laws, the details vary from state to state.⁴

¹ Children’s Hospital Colorado has denied these allegations. The hospital’s policy does not prohibit staff from filing reports directly to law enforcement and/or human services agencies.

² See [“Children’s Hospital Colorado chose not to report caregivers’ abuse suspicions before Olivia Gant died, records show”](#) (Denver Post, June 13, 2021).

³ See [“Colorado Public Schools are paying millions to settle lawsuits when educators fail to report sex abuse of student, but those educators avoid legal consequences”](#) (Denver Post, June 15, 2018)

⁴ See C.R.S. § 19-3-301

⁴ Child Welfare Information Gateway, Mandatory Reporters of Child Abuse and Neglect, 2019.

Colorado's mandatory reporting law lists nearly 40 different types of professionals who are required to report suspected child abuse and neglect. The law requires "any person who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect" to immediately report such information to a county human service agency, law enforcement agency or to the state child abuse hotline.⁵ The law also defines what information must be reported. It is a class three misdemeanor for willfully violating the law and reporters will be provided immunity if they make a child abuse report in good faith.⁶ A person cannot be fired for complying with the state's mandatory reporter law.⁷

At first look, Colorado's law appears straightforward. However, in application it challenges those who are bound by it as well as those who are required to enforce it.

WHY IS MANDATORY REPORTING SO HARD?

A quick internet search of child abuse reveals thousands of pictures of children who are bruised and battered. This would lead a person to believe the job of a mandatory reporter is obvious, if not easy. How could a reporter not understand what child abuse is? You know it when you see it, right?

Wrong. These stereotypical images, as well as the nuances surrounding child abuse dynamics, impact citizens' ability to recognize abuse let alone report it. For example, in physical abuse cases, it is not uncommon for abusers to hurt children in places where clothing can hide marks and bruises. Sexual abuse cases, rarely if ever, leave evidence of harm given the broad spectrum of sexual contact that can occur. And in neglect cases, children will frequently deny that they need food, clothing or medical attention. Rather, they adapt to have their needs met – they will surreptitiously steal food and needed articles of clothing or isolate themselves from others to avoid explaining hygiene problems. Studies confirm that children routinely act to protect their abuser, not to expose them. Signs of abuse and neglect are far more likely to be subtle and present in ways that are not immediately obvious, making mandatory reporters' jobs very difficult.

Complicating matters is that Colorado's mandatory reporters do not fully understand how to report child abuse or how their report fits into the broader child protection system's response to children. A 2016 survey conducted by the Colorado Department of Human Services (CDHS) showed that the biggest barriers for reporting child abuse was that many reporters could not identify "next steps" to make a report and were also concerned that they might not have enough information to make a report – confusing their duty to report with the duties of law enforcement and human services agencies whose job it is to assess and investigate whether such abuse has actually occurred.

Misunderstandings around what the law requires, as well as what constitutes child abuse and neglect, help make the case for clearer laws and enhanced training regarding Colorado's mandatory reporters.

THE CHALLENGES WITH COLORADO'S MANDATORY REPORTING LAW

Mandatory reporter laws require that specifically designated people, those who have relationships with children in the community and professional settings, report child abuse in a timely way to interrupt ongoing abuse and to prevent future abuse from occurring. As such, Colorado's law needs to reflect these goals. If the goal is to have mandatory reporters identify possible child abuse – then they must receive appropriate training to identify the signs of abuse and neglect. This is critically important to ensure that reporters have the best information possible when making the important decision to report – or not to report. If the goal is to have possible abuse reported in a timely manner – then the law must ensure reporters are educated regarding who is responsible for making a report, as well as how quickly a report must be made.

Colorado law is needlessly vague in many places and could be enhanced to give mandatory reporters greater support.

⁵ See C.R.S. § 19-3-304

⁶ See C.R.S. § 19-3-309

⁷ See C.R.S. § 19-3-309

Ambiguity in the Law

Colorado law does not define what it means to “immediately” make a report of suspected child abuse and neglect. While this term may be seemingly obvious, the CPO has routinely handled cases in which mandatory reporters waited days before making a child abuse report – delaying because of workday constraints or wanting to run a set of facts by a trusted colleague prior to reporting. Some states define “immediate” as having to make a child abuse report no later than 24 hours,⁸ 36 hours⁹ or 48 hours¹⁰ once child abuse is suspected. Defining this term would give clarity to mandated reporters and would ensure that children who may be in danger are having their needs met in a timely manner.

Another area of confusion is *who* is responsible for making the child abuse report. The mandated reporter or the institution for whom they work? Institutional reporting is one of the issues raised in the Olivia Gant case and is one of the most frequently asked questions that the CPO hears. During the past several years, the CPO has received dozens of calls from mandatory reporters in large organizations, including educators, hospital staff and day care centers. They frequently ask whether the law requires them to make a child abuse report directly to designated authorities or whether it is sufficient to notify their supervisor to satisfy their legal reporting responsibility.

Many individuals who contact the CPO state that their employers have policies that require them to bring child abuse concerns to an agency administrator, who will in turn file a report with the appropriate authorities. In these circumstances, it is unclear whether supervisors are substituting their judgement for that of their employees or whether they simply serve as a pass through for the information. Either way, mandatory reporters have expressed that they are fearful that such practices increase the likelihood that their information is inaccurately relayed or not relayed at all, creating unnecessary delays and possible harm to children.

The CPO has confirmed that there are some large organizations that require employees to report concerns of child abuse to supervisors or administrators first. These organizations articulate several benefits of doing so, including avoiding duplicate reports from an organization, ensuring that such reports are substantiated by facts and not personal bias and the desire to provide their employees with support during the reporting process – including assistance with filling out paperwork and providing them time to make a report.

Colorado law currently imposes the duty to report child abuse on *individuals* who are listed in the statute: doctors, dentists, nurses, teachers and many others. The law does not address how institutions, facilities and other large organizations should report abuse and neglect. There are approximately 32 states with laws that address what is commonly referred to as “institutional reporting.”¹¹

Institutional reporting refers to those situations in which the mandated reporter is working as a staff member at an institution, such as a school or hospital, at the time abuse or neglect of a child is suspected. In these circumstances, many institutions have policies for handling reports, which typically require the person who suspects child abuse to notify the head of the institution of the abuse and the need for a report to be made, in lieu of making the report themselves.

The question about whether institutional reporting is desirable or should be permissible is a critically important conversation that needs to take place, if only because there are already many organizations engaged in the practice. For Colorado’s laws to be effective, and for children to be protected, the law must be clear regarding *who* must make a report so that valuable information does not fall through the cracks and people who fail to report suspected child abuse may be held accountable.

⁸ Georgia, (GA ST § 19-7-5), Vermont, (VT ST T. 33 § 4913), Iowa (I.C.A. § 232.69).

⁹ California (CA Penal § 11166).

¹⁰ Texas (V.T.C.A., Family Code § 261.101), Washington State (West’s RCWA 26.44.030).

¹¹ Child Welfare Information Gateway, Mandatory Reporters of Child Abuse and Neglect, 2019

There are other areas of the law that also confuse reporters, including who can commit child abuse, *what* behaviors constitute child abuse and whether children can commit child abuse on one another. All these questions could be better answered with clearer laws. However, the questions are merely symptomatic of the lack of infrastructure currently in place to support mandatory reporters – namely, a lack of training.

Colorado Lacks a Statewide, Coordinated Infrastructure to Support Mandatory Reporters

In the past five decades, Colorado has grown the list of mandatory reporters from two to nearly 40. What has not kept pace is the corresponding training and infrastructure that is needed to ensure reporters are appropriately informed of their responsibilities.

There is a long-standing national debate as to how effective mandatory reporter laws are in preventing child abuse. In the effort to prevent child abuse and neglect, it is commonly believed that if there are “more eyes and ears” on children, there are more opportunities to detect and investigate reports. However, studies show that more child abuse reports do not necessarily result in a greater number of substantiated child abuse cases and that untrained reporters can contribute to an overabundance of unsubstantiated reports – draining child welfare systems of much needed resources.¹² Additionally, there is a great deal of discussion regarding how mandatory reporter laws disproportionately and unfairly impact disadvantaged families and communities of color. A factor that can only be addressed through cultural competency training.¹³

These studies provide justification for why training mandatory reporters is crucial. Reporters must be able to readily identify the signs of child abuse and neglect, be aware of implicit bias and confidently report their concerns to authorities.

In approximately 2014, the CDHS created an online mandatory reporter training and a public awareness campaign to encourage reporting and training among the public and mandatory reporters. Unfortunately, the training is not required and the public awareness campaign, while successful, was limited in duration.

Mandatory Reporters are Not Informed of Their Legal Obligations

Ultimately, the responsibility for building a strong mandatory reporting infrastructure must lie in a coordinated approach that includes both public and private entities.

Colorado law does not create a statewide notification system that informs new mandatory reporters of their obligations to report suspected child abuse and neglect. As a result, many professionals are unaware of their reporting obligations – particularly if they are not part of a larger community of mandatory reporters such as schoolteachers, physicians and social workers – professionals who work with children every day. Creating a centralized notification system that can track Colorado’s 40 different categories of mandated reporters, who are employed in both the private and government sectors, is not an easy task. However, three states – California, New York and Iowa – have engaged both the government and business communities to educate mandated reporters. Under these states’ laws, any person or institution that employs mandatory reporters, are required to provide a written document that explains to new employees their mandatory reporting responsibilities, as well as the protections they have when they report child abuse and neglect.¹⁴ Such laws provide a more targeted way to educate employees in an ongoing and consistent manner.

¹² Ho, G. W., Gross, D. A., & Bettencourt, A. (2017). Universal Mandatory Reporting Policies and the Odds of Identifying Child Physical Abuse. *American Journal of Public Health, 107*(5), 709-716.

¹³ New York law requires the Office of Children and Family Services to update training to include protocols to reduce implicit bias in the decision to respond to abuse and neglect.

¹⁴ California (CA Penal 11166.5), New York (Ny Soc Serv 413), Iowa (IA ST 232.69).

Colorado Does Not Require Training for its Mandatory Reporters

In addition to having no notification system, Colorado does not require training for any of its mandatory reporters. Nor does it have a continuing education requirement for professionals who are routinely working with youth and are required to have a license to practice, including doctors or therapists. This means that many mandatory reporters are not receiving the valuable training that is required to appropriately respond to suspected child abuse and neglect – even though Colorado has developed an online child abuse reporter training that is free and easily accessible to the public.¹⁵

Of Colorado's mandatory reporters that receive training from organizations, the instruction they receive is not standardized and varies within and across disciplines. For example, the CPO reviewed dozens of school districts' mandatory reporter trainings. They all have different curricula and approaches to teaching requirements for reporters. This may be a factor as to why mandatory reporters have different understandings of what the law requires.

There are at least 10 states that require mandatory reporters to complete training. The approaches vary widely across the country. For example, Iowa requires all its mandatory reporters take a two-hour training once every three years.¹⁶ Pennsylvania requires all its educators and health-related professionals, who require a state license to practice, complete mandatory reporting training.¹⁷ California takes yet another approach, requiring training for educators, school personnel, day care providers and employers who have five or more employees who are minors.¹⁸ Each of these states provide a standard training that mandatory reporters may easily access, free of charge.

Colorado has various state departments that intersect with mandatory reporters on a regular basis, including CDHS, the Department of Regulatory Affairs (DORA), the Colorado Department of Education and the Department of Public Safety. Each of these departments is responsible for regulating child safety in various contexts. These agencies could develop a coordinated, statewide approach to educating and training mandatory reporters to ensure they are provided with the knowledge and support needed to carry out their legal responsibilities in an informed way.

CONCLUSION AND RECOMMENDATION

Decades of public policy efforts in Colorado have continued to prioritize mandatory reporting laws as a tool to prevent child abuse and neglect. While the state has invested considerable resources in creating a statewide training, this is not enough to ensure the state's mandatory reporters can do the job that is asked of them. The law, though well-intentioned, has been poorly executed for years. If Colorado wants its citizens to report suspected child abuse and neglect competently and responsibly, mandatory reporters must be given the tools to do so. To do anything short of this is to risk child safety, overwhelm child welfare services and continue the disparate impact that such laws have on inadequately resourced communities and families of color.

The CPO recommends the Colorado General Assembly and stakeholders work together to amend Colorado's law to create a robust infrastructure that supports the state's mandatory reporters. Considerations should include:

- Update the law to clarify how timely reports must be made and who is responsible for reporting – individuals or institutions;
- Require employers to provide information to their employees that detail their legal obligations to report suspected child abuse and provide them resources for training – including referrals to the state's child abuse reporting training;

¹⁵ See <https://www.coloradocwts.com/mandated-reporter-training>

¹⁶ See IA ST § 232.69

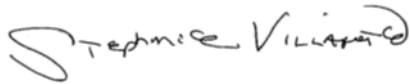
¹⁷ See 23 Pa. C.S.A. § 6383

¹⁸ See CA Penal § 11165.7

- Leverage existing state licensing requirements through DORA to mandate training for professionals who are mandatory reporters including doctors, nurses and psychologists;
- Require statewide trainings to be updated and include information regarding implicit bias and other factors that cause disproportionate representation of certain groups in the child welfare system; and
- Require state departments that are responsible for child safety to develop a coordinated approach to educate the state's mandatory reporters to help establish a substantive and streamlined approach that reaches reporters across the state and across various disciplines.

Child abuse in our community is a serious problem. The mandatory reporting laws created to combat the problem are outdated and not working as effectively as they can to protect our children. However, there are opportunities to make these laws better and more effective. Providing resources to build a proper mandatory reporting infrastructure as well as implementing the considerations above will go a long way to providing additional protection for our children. If we are going to require citizens to help in the fight against child abuse, then we must educate them and equip them to do the best job possible so that they understand the importance of their role in protecting Colorado children.

Pursuant to C.R.S. 19-3.3-103(2), the CPO respectfully submits this report to the citizens of Colorado, child protection stakeholders and the Colorado General Assembly.



Stephanie Villafuerte
Child Protection Ombudsman