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OUR VIEW

Abuse law

Clergy should be included

Rep. Bob Lynn has introduced a bill that would require priests, ministers, rabbis and other religious leaders to report instances of abuse or neglect of minors to police.

Rep. Lynn's measure is in response to allegations of sexual abuse by the Rev. Francis Murphy, a former Anchorage priest, made by Service High School principal Pat Podvin. The Rev. Murphy never was charged with a crime, and Mr. Podvin was not a minor when the abuse allegedly occurred, but allegations of other abuse by the Rev. Murphy and the widespread reports of abuse of minors by priests prompted Rep. Lynn, a Catholic, to act.

Failure to report abuse or neglect would be a misdemeanor.

Perhaps the most important aspect of the measure is its message that religious leaders are not above the law or beyond the law. If anything, their positions of authority and trust require they be held to a higher standard, certainly on a par with doctors and teachers. The Rev. Greg Lindsay of Juneau pointed out that children "should be protected before anyone else." He's right.

Rep. Lynn said people expect their legislators to act responsibly. His bill would make it a legal requirement that men and women of the cloth act responsibly in cases of abuse. It's a step in the right direction.

Bush reveals a

For America's enemies, and for some semi-allies, a just-published U.S. document should be mandatory reading. President Bush's fiscal 2004 budget has little foreign policy content but, properly understood, has immense foreign policy implications. If Baghdad, Paris, Berlin, Brussels and Seoul understand this administration's comprehensive boldness, they will understand not only that regime change is coming to Iraq, but also that the end of NATO as we have known it, and the removal of U.S. troops from the Korean peninsula, are not unthinkable.

The budget evokes 1862. In that *annus mirabilis*, with the national government's writ severely restricted and the entire American project in doubt, Lincoln and Congress nevertheless enacted the Homestead Act, which sped the settlement of the Great Plains, the Morrill Act that begot the land grant college system, and the law that ignited construction of the transcontinental railroad.

Today, with the nation in a war on terrorism and on the brink of a related war against Iraq, the president's budget calls for: A dash for economic growth through another round of tax cuts, a tax-cutting President Reagan did not attempt; prescription drug entitlement linked to the Social Security trust funds; reform of the way Americans save. And in a budget-related document, the administration floats the idea of scrapping individual and corporate income taxes in favor of a consumption tax.

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Bill would expand law on abuse

■ **MINORS:** Religious leaders would have to report incidents

The Associated Press

JUNEAU — A bill filed by a lawmaker would hold priests, ministers, rabbis and other religious leaders accountable for failing to report incidents of abuse or neglect of a minor.

Rep. Bob Lynn, R-Anchorage, wants to extend a law that applies to school teachers and staff, doctors, child care providers and police officers to religious institutions.

Failure to report instances of abuse, sexual or otherwise, is a misdemeanor under Alaska law.

Lynn said the measure would apply to religious leaders but not their congregations. It would exempt any information acquired through a confession or penitential communication.

Lynn, a Catholic who attends St. Benedict's Church in Anchorage, said media reports of clerical sexual abuse prompted his bill.

Whenever anything gets in the headlines



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REPORT: Would be a misdemeanor

Continued from B-1

or on the evening news, people become aware of it and expect responsible legislators to address the issue, and that's what I'm trying to do as a responsible legislator," Lynn said.

An Anchorage high school principal recently alleged a former priest at St. Patrick's Catholic Church abused him when he was 16. Pat Podvin said the Rev. Francis Murphy, who later transferred from Anchorage to the Boston area, sexually abused him at a Girdwood residence more than 20 years ago. Murphy was named last week as one of several Catholic priests accused of sexual abuse who were allowed to move to other states and continue their work.

Retired Catholic Archbishop Francis Hurley last week apologized for not helping Podvin after he reported the abuse. Hurley also admitted

that there have been other allegations of abuse within the "last few years" but no one was charged with a crime.

Bob Flint, executive director for the Alaska Catholic Conference, said he believes the conference will support the measure. The conference includes Anchorage, Fairbanks and Juneau. Flint pointed out that the measure would not have applied in the Podvin case because the victim was not a minor.

The Rev. Greg Lindsay of Northern Light United Church in Juneau said he supports the measure.

"I think that because children get the short end of the stick a lot of the time, they should be protected before anyone else," said Lindsay, who heads a Presbyterian-Methodist congregation.

Measure would hold Alaska clergy responsible for abuse

By TIMOTHY INKLEBARGER
JUNEAU EMPIRE © 2003

Priests, ministers, rabbis and other religious leaders would be held accountable for failing to report incidents of abuse or neglect of a minor under a bill filed Monday by an Anchorage lawmaker.

Mandatory reporting laws already exist for school teachers and staff, doctors, child-care providers and police officers. But Republican Rep. Bob Lynn said the law should extend to clergy to protect children as well as religious institutions.



REP. BOB LYNN

Failure to report instances of abuse, sexual or otherwise, constitutes a misdemeanor under Alaska law. Lynn said the measure, which is expected

to be read on the House floor Wednesday, would apply to religious leaders but not members of their congregations.

It would, however, exempt any information acquired through a confession or "penitential communication."

Lynn did not cite specific examples but noted media reports of clerical sexual abuse prompted his bill.

"Whenever anything gets in the headlines or on the evening news, people become aware of it, and expect responsible legislators to address the issue and that's what I'm trying to do as a responsible legislator," said Lynn, a Catholic who attends St. Benedict's Church in Anchorage.

An Anchorage high school principal recently alleged a former priest at St. Patrick's Catholic Church abused him when he was 18. Pat Podvin said the Rev. Francis Murphy, who later transferred from Anchorage to the Boston area, sexually abused him at a Girdwood residence more than 20 years ago. Murphy was named last week as one of several Catholic priests accused of sexual abuse who were allowed to move to other states and continue their work.

Clergy: Law would only apply to the state's religious leaders

Retired Catholic Archbishop Francis Hurley last week apologized for not helping Podvin after he reported the abuse. Hurley also admitted that there have been other allegations of abuse within the "last few years" but no one was charged with a crime.

Bob Flint, executive director for the Alaska Catholic Conference, said the law would not have applied in Murphy's alleged abuse of Podvin, because the victim was 18, but added that he believes the conference will support the measure.

The Alaska Catholic Conference includes the diocese of Anchorage, Fairbanks and Juneau.

Flint, an attorney who argues business law in Anchorage, said Lynn consulted with him before introducing the bill. Flint said Lynn was looking for language that provided exceptions for the Catholic confession and extended to similar confessions to other religious leaders.

The Rev. Greg Lindsay of Northern Light United Church in Juneau said he supports the measure and noted he thought it already existed.

"I think that because children get the short end of the stick a lot of the time, they should be protected before anyone else," said Lindsay, who heads a Presbyterian-Methodist congregation.

Lindsay noted that moving religious leaders around from church to church is just as common for Methodists as it is for Catholics.

"(This law) might have the affect of ministerial colleagues holding one another accountable," he said.

Lynn said his bill would protect the church from allowing child abuse to go unpunished.

"I think many in the clergy will welcome this. If you are concerned about the health of the church, you have got to be concerned about this," he said.

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February 27, 2003

Representative Bob Lynn
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Lynn:

I am writing this letter in support of HB 92, a bill adding clergy to the list of mandated reporters of suspected or actual child abuse or neglect. Mandated reporting serves to help protect the safety of children and gives children the message that adults want them to be safe and will make efforts to ensure their safety.

As a member of the Alaska Network on Domestic Violence and Sexual Assault, the Executive Director of the Network, Lauree Hugonin, is available to provide testimony on this bill as needed.

Thank you for your work on behalf of Alaska's children, as we work together to end violence in the lives of those impacted by domestic violence and sexual assault.

Sincerely,

Saralyn Tabachnick
Executive Director





The Family Church

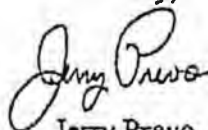
ANCHORAGE BAPTIST TEMPLE

February 24, 2003

Dear Representative Lynn:

Thank you for the opportunity to comment on HB 92. At this time we agree with the provisions of HB 92. I had our Christian Law Association review the provisions and they were complimentary on the wording of the bill. They believe it will help provide public safety for the children of Alaska, yet preserve the "confidentiality aspect" necessary for a minister to perform his ministerial duties. I would support the bill as it is written, but would like to be notified if there are any changes.

Sincerely,


Jerry Prevo



February 26, 2003

Representative Bob Lynn
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 92

Dear Bob,

This morning the Alaska Catholic Conference formally endorsed your bill on clergy reporting of suspected sexual abuse of minors, HB 92.

The bishops commend you on your efforts to enhance the protection of children while preserving the sanctity of penitential rites.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert B. Flint". The signature is fluid and cursive, with a large initial "R" and "F".

Robert B. Flint
Executive Director

Russian Orthodox Diocese of Sitka and Alaska

Orthodox Church in America

The Most Blessed HERMAN, Metropolitan and Primate

The Right Reverend NIKOLAI, Bishop of Sitka, Anchorage and Alaska

PO Box 210569 Anchorage, AK 99521-0569 Telephone: 907-279-0025 Fax: 907-279-9748

www.AlaskanChurch.org E-Mail: BishopNikolai@oci.net

February 22, 2003

Representative Bob Lynn
Alaska State Legislature
Via Fax - 907-269-0207

To whom it may concern:

I am writing in support of proposed House Bill 92 which would add clergy to the list of mandated reporters of actual or suspected child abuse. I believe this bill will not only protect the public safety of our children, but will also maintain the integrity of religious groups throughout Alaska.

Sincerely,

+ Bishop Nikolai

NIKOLAI

Bishop of Sitka, Anchorage and Alaska

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| Post-it* Fax Note | 7671 | Date | 2/27/03 | # of pages | |
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| Co./Dept. | FAX | Co. | DIocese of AK | | |
| Phone # | 907 465 4316 | Phone # | 907 279 0025 | | |
| Fax # | 907 269 0207 | Fax # | 907 279 9748 | | |

MAR 03 2003

Vincent J. Doran
No. 411 Pioneers' Home
923 West Eleventh Avenue
Anchorage, AK 99501-4390
1 907 272 5262

February 26, 2003

Representative Bob Lynn
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Lynn:

Thank you for sponsoring House Bill 92. The measure, if passed into law, will certainly strengthen the statute on child protection.

Members of the clergy must do their part by reporting instances of sexual abuse of children when they learn of them.

Cordially,

Vincent



Episcopal Diocese of Alaska

1205 Denali Way
Fairbanks, AK 99701-4137

(907) 452 - 3040
(907) 456 - 6552 (Fax)

March 3, 2003

Rep. Robert Lynn
Alaska State Legislature
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Rep. Lynn:

Thank you for your letter of February 19, regarding HB 92 which adds clergy to the list of mandated reporters of actual or suspected child abuse. Enclosed you will find a copy of the diocesan Safe Church Program manual. On pages 4 and 5 you will note that we already instruct clergy and lay leaders to notify authorities in such cases.

I am pleased to support your proposed legislation. When it is scheduled for committee, I would be willing to provide testimony on behalf of the bill.

Sincerely,

The Rt Rev. Mark L. MacDonald
7th Bishop of Alaska

MLM/clf

Enclosure (1)


Representative Bob Lynn
District 31 Anchorage
Fax: (907) 269-0207

Bob,

Thanks for sending me the fax concerning your bill HB 92. I do support your bill that the clergy should be required to report actual or suspected child abuse. I also agree with your reasoning for the bill. The public safety of our children and preserving the reputation of the clergy is essential. I am, as a Christian, mandated by the Lord in the scriptures to do just what you are asking me to do. Ephesians 5:11 says, "And do not participate in the unfruitful deeds of darkness, but instead even expose them." If it is your desire for me to be of any additional service in this matter, then please do not hesitate to call.

Grateful for your service to our state,

Pastor John F. Hunn



Pastor Hunn from
Anchorage Grace Church



NRLA

NORTHWEST RELIGIOUS LIBERTY ASSOCIATION

February 20, 2003

Representative Bob Lynn
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Lynn:

The Northwest Religious Liberty Association is the government relations division of the Seventh-day Adventist Church.

As the vice-president for the NRLA, I would like to give my/our support of HB 92. The bill is certainly in line with our church policy. As a pastor I must help to protect our children in any way possible, and I believe that this bill could work toward that end. I would be interested when this bill is scheduled for committee.

Sincerely,

Gary S. Waterhouse, vice-president
Northwest Religious Liberty Association;
pastor, Juneau 7-th day Adventist Church

Mailing: P.O. Box 16670
Portland, OR 97292-0670

Location: 10225 E. Burnside St.
Portland, OR 97216

Telephone: (503) 255-7300
Fax: (503) 253-2455
www.libertyexpress.org

February 19, 2003

Rob Lynn
Representative Lynn
State Capitol, Room 415
Juneau, AK 99801-1182
United States of America

Dear Representative Lynn,

We have read HB 92 and find that it is in keeping with our goal for Legislation that Actively works for the protection of our children. We feel that it can only benefit our children to make those that protect their spirits to also protect their bodies. It is our feeling that we all should work to protect our children.

Clergy have often been welcomed into homes and families in ways that no one else has. This position allows them to be aware of the internal family working in a child's life. Just as teacher and childcare providers are expected to report suspected child abuse, so should clergy. Their access to a family is often the same if not greater. We feel that there is sufficient language in the bill to protect the sanctity of confessions made within the bounds of religious practice. At the same time not allowing a loophole. We also appreciate the effective date for reporting compliance regarding past sexual abuse. As well as expanding reporters in that instance to include those who keep records for the clergy.

The more adults who put the safety of the children in their lives first, the better off our children will be. Child Abuse is not a family problem it is a community problem. It is time that we as a community confront it. It is only right that our moral compass step up to the front lines in that confrontation. Thank you for your work to advance the right of safety for our children.

Sincerely,

Theresa Williams
President
P. O. P.

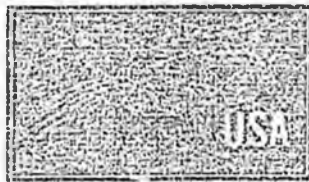
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from the June 10, 2002 edition



COMFORT: James Egan and Anita Guibault, alleged clergy-abuse victims, hug at a protest. STEW MILNE/AP

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September 11
One year later

More states moving to tighten sex-abuse laws for clergy

Bills call for clergy to report alleged abuse or extend time period for victims to file suits.

By [Seth Stern](#) | Staff writer of *The Christian Science Monitor*

The sexual-abuse scandal spreading through the Roman Catholic Church this spring is prompting moves in legislatures nationwide to tighten laws designed to ensure that cases of abuse are reported to authorities and prosecuted.

Lawmakers in at least seven states have introduced bills this year to extend the period when civil and criminal charges can be filed against abusers, or to require clergy to report allegations they hear about.

The moves come as the Catholic Church faces a continuing tide of lawsuits – some 300 since January – and new allegations sexual abuse of boys and young men by priests.

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[In Afghanistan, 'friendly fire'](#)

An incident last week shows how close US forces and their allies in Afghanistan come to fighting one another.

At a meeting in Dallas this week, Catholic bishops are expected to revise their internal policies regarding abuse allegations. But for now, the lawsuits and media coverage have put pressure on legislatures to act.

Revised laws could provide new protection for sex-abuse victims while creating new liabilities for churches and clergy.

Currently, all 50 states have mandatory-reporting laws regarding sexual abuse of children. But many do not apply to the clergy. Others, in a middle ground, provide that clergy need not report information that comes to light in situations such as the Catholic sacrament of confession.

This year, the tenor of the laws has begun to shift.

In Massachusetts, the epicenter of the scandal, acting Gov. Jane Swift signed a bill last month adding clergy to the list of mandatory reporters, which already included teachers, doctors, and child-care workers. Legislators in Illinois, Missouri, and Colorado have all recently approved bills requiring clergy to report abuse. State governors are expected to sign the measures.

Other states are extending their statutes of limitation that govern whether years-old cases can be brought up in court. Connecticut has extended its statute of limitations. Similar legislation is making its way through California's legislature, but has failed in Minnesota.

As state lawmakers consider such moves, they are being lobbied by a range of groups. These include Catholics and other religious denominations, including The First Church of Christ, Scientist, which publishes this newspaper, and child advocates. But lawmakers say the strongest lobbying often comes, not surprisingly, from embattled Catholic churches in each state.

Connecticut State Rep. Michael Lawlor (D), who sponsored one such bill, says the Catholic Church was the main opponent to expanding the statute of limitations.

The lobbying efforts, large or small, come within a new political climate.

In Wisconsin, state Sen. Alberta Darling says she plans to present mandatory-reporting legislation for priests next year, and expects much easier going than when she backed a similar measure in 1995.

The legislative climate can put the Catholic Church and other denominations in a difficult position as they acknowledge public pressure for new standards and at the same time stand up for time-

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honored traditions such as the confidentiality of confessions.


"We would support any legislation that would protect children," says Marie Hilliard, executive director of the Connecticut Catholic Conference. "Whether this will do that remains to be seen." She says the church did not actively lobby against any provisions of the legislation, but enlisted a law firm it regularly hires to monitor legislation.

In Missouri and Illinois, Catholic bishops proved willing to accept legislation making clergy mandatory reporters, as long as the laws protected confessions. Both states passed bills carving out such exceptions, advocated by an array of denominations, to protect clergy who learn about abuse while serving as spiritual advisers. The provision was criticized by victims' advocates. "This exception could gut the rule," says Lyn Schollett of the Illinois Coalition Against Sexual Abuse.

In Colorado, a coalition of Protestant churches enlisted Martin Nussbaum, a lawyer specializing in church-state law, to oppose the initial draft of a proposed mandatory-reporting law. A revised version of the bill overwhelmingly passed both houses and now awaits the governor's signature.

In Minnesota, associations representing public schools and municipalities joined churches to oppose legislation extending the statute of limitations.

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- [Clergy Abuse Tracker: A Coverage Weblog](#) Poynter Institute
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Autumn Brenton / KTUU

Rep. Bob Lynn says his bill aims to "help the clergy help themselves," but will not violate the seal of the confessional.

Bill would require clergy to report sexual abuse

Juneau, Alaska, Feb. 11 - Should a minister, priest or rabbi face criminal charges for not reporting the sexual abuse of children? A bill being introduced Wednesday in the Alaska Legislature could do just that.



Dan Fagan

Alaska has a mandatory reporting law for some professions, but it does not apply to ministers, priests or other clergy.

Under state law, police officers, day care providers, health care workers, drug counselors, teachers and other professionals must report any known case of child abuse or face charges.

"I think we have to help the clergy help themselves," said Rep. Bob Lynn, R-Anchorage. The former head of Anchorage

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Right to Life, Lynn wants the law to apply to clergy, too.

"I think clergy, as a whole, would respond positively to this legislation," Lynn said. "I don't know why they would not. The only ones who would not respond positively, I would think, are those who like the status quo."

Lynn filed his bill now after all the publicity in Anchorage and nationwide involving unreported sexual abuse in the Catholic Church. But Lynn, who is a Catholic, says his bill applies to all religions. "It is unfair, I think, to single out one church or another."

Bob Flint is an attorney for the Anchorage Diocese. "One of the things we certainly want to do in all this controversy is for everybody to cooperate the best we can to protect children," he said.

Rep. Lynn's bill does not require priests to report child abuse learned during confession. "It would break the seal of the confessional, and that's sacred to our church," he said.

As for the question, which is more sacred -- a child's safety or the seal of confession? "Well, I guess God's going to have to answer that," Lynn said.

Last week, former Anchorage Archbishop Francis Hurley apologized for not helping a teen-ager 20 years ago when he reported being sexually abused by a priest. Lynn said he hopes his bill would prevent that from happening again.

Among other things happening in the legislature Tuesday, Sen. Gretchen Guess, D-Anchorage, introduced a bill shrinking the time the legislature meets from 120 days down to 90 days. Guess said that would save the state almost \$1 million a year.

Also, Rep. Lesil McGuire introduced a bill that would permanently confiscate the computer from anyone convicted of possessing child pornography.

And Fairbanks Sen. Ralph Seekins passed out during a Senate Finance Committee meeting. He was taken to the hospital and is now OK. Seekins said he had flu-like symptoms and that may be why he passed out.

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APRIL 1, 2002

STATES

Clergy sex abuse: New move toward tougher state laws

Just as policies on handling accusations of clergy sex abuse vary from Roman Catholic diocese to diocese, state laws differ widely on whether clergy and religious institutions are required to report allegations to law enforcement. Now, more states are considering tougher laws. The New York Senate, for one, unanimously passed a bill on March 26 to require clergy to report suspicions of child abuse.

Twelve states specifically require clergy to report suspected abuse, according to the National Clearinghouse on Child Abuse and Neglect Information, a federal agency. Another 16 states require "all persons" report abuse. But many states grant exemption for information clergy during confession. (See list below).

In states where clergy are required to report abuse, what have been the effects, according to state attorneys general, advocates of children and victims, and religious leaders? Are clergy exempted if reporting accusations would violate confidentiality between clergy and confessor? What state limitation for sex-abuse allegations are in effect? Is your state considering a new law, or a tougher one? Are there other laws, such as those involving mental health counseling, that apply or that grant special clergy exemptions?

Why it matters

Because some religious institutions have handled allegations without involving the criminal justice system, many victims' only recourse has lawsuits. Now child advocates, prosecutors and citizens are calling for laws to be toughened.

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Background

- A March 22 Associated Press article, "Clergy Reporting Rules," about state laws for reporting clergy abuse of minors is posted here. Under the listing of "Tort Law News" click "More" to find it.
- AdvocateWeb, a nonprofit group working against exploitation by

professionals such as clergy and therapists, links to a sampling of state laws regarding sexual offenses. AdvocateWeb also tracks news stories free electronic newsletter and Media Update Archives.

- A Princeton Theological Seminary field handbook article explaining a of the law affecting clergy, including child abuse reporting and privilege communication, can be found here.
- The Poynter Institute is tracking clergy abuse news stories here.

Hot sources

- The National Clearinghouse on Child Abuse and Neglect Information, Washington, D.C., a federal agency under the U.S. Department of Health and Human Services, can help with research and statistics. Call (800) 3366 or (703) 385-7565 or email nccanch@calib.com.
- The U.S. Conference of Catholic Bishops supports stricter laws as for the laws shield the privilege of confession and other clergy-parishioner conversations, (202) 541-3000.
- Attorney Jeff Anderson of St. Paul, Minn., has represented hundreds of clients who say Catholic priests sexually victimized them. Reinhardt & Anderson law firm, 651-227-9990 or info@ralawfirm.com.
- The Rev. Marie M. Fortune, founder and senior analyst at the Center for the Prevention of Sexual and Domestic Violence in Seattle, Wash., has written several books including *Is Nothing Sacred? When Sex Invades Pastoral Relationship* (HarperSanFrancisco). Dr. Fortune, a United Methodist minister, edits *The Journal of Religion and Abuse*. 206-634-1100 or mfortune@cpsdv.org. See a March 9 column Fortune wrote for *The Daily Morning News*.
- James T. Richardson, professor of sociology and judicial studies at the University of Nevada, Reno, specializes in ways religious groups come into conflict with the law. Office 775-784-6270, department 775-784-6647 or jtr@unr.edu.

AS of
April 1, 2002

In your region

- The states that specifically require clergy to report suspected child abuse and neglect but grant confessional privilege are Arizona, California, Michigan, Minnesota, Montana, Nevada, North Dakota, Oregon, and Pennsylvania according to the National Clearinghouse on Child Abuse and Neglect Information.
- New Hampshire mandates clergy reporting and specifically denies confessional privilege.
- Connecticut and Mississippi require clergy to report, and say nothing about child abuse and neglect reporting statutes about confessional privilege.
- The states that mandate all persons to report child abuse or neglect but grant confessional privilege are Delaware, Florida, Idaho, Kentucky, Maryland, Utah, and Wyoming.
- The states that mandate all persons to report and specifically deny confessional privilege are North Carolina, Rhode Island, and Texas.
- Indiana, Nebraska, New Jersey, New Mexico, Oklahoma, and Tennessee require everyone to report; child abuse and neglect reporting statutes say nothing about confessional privilege.
- Four states' statutes do not specifically mention clergy or "all persons" but require everyone to report child abuse and neglect, but they do bring up confessional privilege. Among those states, Louisiana, Missouri, and South

Carolina grant it, and Washington State denies it.

ILLINOIS

- Illinois does not require clergy to report suspected child abuse. The Illinois Department of Children and Family Services discusses the law

INDIANA

- Indiana requires all citizens and, specifically, staff members of any public or private institution, school, facility or agency to report suspected child abuse. A copy of the code is posted here.

KENTUCKY

- Kentucky requires all citizens to report suspected child abuse, but exempts clergy-penitent communication. The Governor's Office of Child Abuse and Domestic Violence Services discusses the law and the exemptions.

MICHIGAN

- Michigan enacted legislation last year criminalizing sexual contact between mental health professionals and clients, but HB 4525 only moved forward after the deletion of language that had included clergy and school counselors.
- Michigan does not require clergy to report suspected child abuse. The *Detroit Free Press* reported March 27 that a statewide poll, conducted March 19-25 by Lansing-based EPIC/MRA, found that more than 80 percent of Michigan residents said the law should be changed to require the reports.

OHIO

- Ohio specifically requires religious "healers" to report suspected child abuse or neglect. Look up a copy of the revised code relating to child abuse and neglect, Section 2151.421.

WEST VIRGINIA

- West Virginia specifically requires clergy and religious healers to report suspected child abuse or neglect. See West Virginia Children's Service discussion of reporting requirements.

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who is one of the spouses between whom the communication was made; or

(E) In a proceeding under the Rules of Children's Procedure; or

(F) If the communication was primarily related to and made in the context of a business relationship involving both spouses or the spouses and third parties.

(Added by SCO 364 effective August 1, 1979; amended by SCO 823 effective August 1, 1987; and by SCO 1269 effective July 15, 1997)

Note to SCO 1269: Evidence Rule 505(a) was amended by § 70 ch. 64 SLA 1996. Section 13 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Annotations

Cases

Where defendant forcibly entered his wife's residence without permission and shot her boyfriend in her presence, wife's testimony against defendant was permissible under the "necessity" or "crimes-against-the-other" exception to the privilege against adverse spousal testimony *Loesch v. State*, Op. No. 2202, 620 P2d 646 (Alaska 1980).

When there is conclusive evidence that a marriage is in fact destroyed, the trial court may properly rule that the state's interest in a spouse's testimony outweighs the defendant spouse's interest in suppressing it. *Loesch v. State*, Op. No. 2202, 620 P2d 646 (Alaska 1980).

Trial court correctly dispensed with the spousal testimonial immunity privilege where defendant married on the eve of trial and had a strong motivation to prevent the testimony of the woman he married. *Osborne v. State*, Op. No. 2291, 623 P2d 784 (Alaska 1981).

Crimes against foster children are within the exception to the husband-wife privilege under this rule. *Daniels v. State*, Op. No. 357, 681 P2d 361 (Alaska App. 1984).

HB 92

Rule 506. Communications to Clergymen.

(a) **Definitions.** As used in this rule:

(1) A member of the clergy is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(2) A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) **General Rule of Privilege.** A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in that individual's professional character as spiritual adviser.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The authority so to do is presumed in the absence of evidence to the contrary.

(Added by SCO 364 effective August 1, 1979; amended by SCO 1153 effective July 15, 1994)

Annotations

Cases

Where defendant told his minister, who was also a certified counselor, that he had sexually abused a child, the minister's report of the crime to the police did not violate the psychotherapist-patient or communications with clergy privileges. *Walstad v. State*, Op. No. 1165, 818 P2d 695 (Alaska App. 1991).

Person claiming clergyman-communicant privilege is required to prove four things: (1) that he subjectively believed that conversation with clergyman was being held in private; (2) that this belief was reasonable under the circumstances; (3) that he intended that the communication not be disclosed to anyone except in furtherance of its purpose of obtaining spiritual guidance; and (4) that he reasonably believed that this intention was shared by the clergyman. *Plate v. State*, Op. No. 1493, 925 P2d 1057 (Alaska App. 1996).

Rule 507. Political Vote.

Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot unless the vote was cast illegally.

(Added by SCO 364 effective August 1, 1979)

Rule 508. Trade Secrets.

A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

(Added by SCO 364 effective August 1, 1979; amended by SCO 1153 effective July 15, 1994)

Rule 509. Identity of Informer.

(a) **Rule of Privilege.** The United States, the State of Alaska and sister states have a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an

of assistance or encouragement because he knows that facilitate a crime? That ple given above, how can plice as to C's death when the aid or encouragement that such a result ensue? otes omitted).

ues: "The cases in this lly in a state of confu- er, it has been held with hat accomplice liability ex- circumstances stated." *Id.* d). LaFave then states ry of accomplice liability l by some courts, and it licable under many of the ce statutes requiring an ssist the commission of a 50-51 (footnotes omitted).

to suggest that accom- reckless conduct is permit- es which have a specific to Model Penal Code above. *Id.* at 150 n. 110. tes that accomplice liabili- applicable under many of mplice statutes requiring o assist the commission of rs he is referring to stat- 11.16.110.

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statute, and the analysis in LaFave and Scott, we conclude that the trial court erred in instructing the jury that it could convict Arthur Echols if she acted recklessly regarding the results of Melvin Echols' conduct. Under our analysis, AS 11.16.110 allows the state to convict Arthur Echols for the crime of assault in the first degree only if it proves that she intended "to promote or facilitate the commission of the offense." In other words, Arthur Echols cannot be convicted as an accomplice for acting recklessly as to whether T.E. might suffer serious physical injury. In order to convict her of assault in the first degree as an accomplice, the state must show that when she solicited Melvin Echols to commit the offense she intended that T.E. suffer serious physical injury. We accordingly REVERSE Echols' conviction.⁵

BRYNER, C.J., concurs.

MANNHEIMER, J., not participating.

BRYNER, Chief Judge, concurring.

I join in the court's decision construing AS 11.16.110(2) to mean that Echols could be convicted as an accomplice only if she intended to inflict serious physical injury on T.E. I wish to emphasize, however, that Echols could properly have been charged with first-degree assault as a principal rather than as an accomplice. See 2 W. LaFave and A. Scott, *Substantive Criminal Law* § 6.7(e) at 151-52 (1986).

Had the state charged Echols as a principal, proof of specific intent would not have been necessary. Echols would have been subject to conviction if the jury found that she recklessly caused serious physical injury to T.E. by means of a dangerous instrument. AS 11.41.200(a)(1). In context, this would have required the state to prove (1) that T.E.'s injuries were caused by Echols—that is, that Echols' request to her husband to discipline T.E. was a substantial

5. To the extent that *Bowell v. State*, 728 P.2d 1220 (Alaska App.1986), is inconsistent with this result, we overrule that case.

1. See *State v. Malone*, — P.2d —, Op. No. 1155 (Alaska App., September 6, 1991).

factor in bringing about the child's injuries,¹ and (2) that, in making the request, Echols acted recklessly—in other words, that, in requesting her husband to discipline T.E., Echols consciously disregarded a substantial and unjustifiable risk that her husband would inflict serious physical injuries on T.E. by means of a dangerous instrument. See AS 11.81.900(a)(3).

The common law distinction between principals and accessories has, of course, been discarded for most purposes. See *Rice v. State*, 589 P.2d 419 (Alaska 1979); *Tarney v. State*, 512 P.2d 923, 928 (Alaska 1973). Accordingly, it would normally be unnecessary for the state to specify whether Echols was charged as a principal or as an accomplice. In the present case, however, the state relied exclusively on the accomplice liability theory at trial, and that was the only theory addressed in the trial court's instructions.² Under these circumstances, the trial court's failure to give appropriate instructions on the culpable mental state for accomplice liability was not harmless error, even though it is conceivable that Echols might have been convicted as a principal without proof that she intended T.E. to be seriously injured.



Therran L. WALSTAD, Appellant,

v.

STATE of Alaska, Appellee.

No. A-3554.

Court of Appeals of Alaska.

Oct. 4, 1991.

Defendant was convicted in the Superior Court, Fourth Judicial District, Fair-

2. Moreover, the state apparently relied exclusively on the accomplice liability theory in securing Echols' indictment. To convict Echols as a principal would thus have posed serious problems with variance. See *Michael v. State*, 805 P.2d 371 (Alaska 1991).

banks, Niesje J. Steinkruger, J., of first-degree sexual abuse of minor. Defendant appealed. The Court of Appeals, Bryner, C.J., held that neither psychotherapist-patient nor communications to clergy privileges attached to minister's report to authorities about defendant's alleged sexual abuse of child.

Affirmed.

1. Witnesses \S 214.5, 215

Neither psychotherapist-patient nor communications with clergy privileges attached to minister's report notifying authorities of client's alleged sexual relations with child, even though report divulged confidential communications between minister and client; report was out-of-court statement unrelated to any action, case, or proceeding then pending. Rules of Evid., Rules 504, 506.

2. Witnesses \S 214.5, 215

Psychotherapist-patient privilege and communications with clergy privilege are of limited, testimonial nature; they are meant to regulate disclosures occurring in context of civil or criminal proceedings. Rules of Evid., Rules 504, 506.

3. Criminal Law \S 394.1(2)

Evidence that resulted from minister reporting to authorities that client had sexually abused child was admissible despite rule against admitting evidence of statement or other disclosure of privileged matter, if disclosure was compelled erroneously; even if client had objected to report when it occurred, neither psychotherapist-patient privilege nor communications to clergy privilege would have barred minister from disclosing the information. Rules of Evid., Rules 504, 506, 511.

4. Criminal Law \S 394.1(2)

Rule against admitting evidence of statement or other disclosure of privileged matter if disclosure was compelled erroneously or made without opportunity to claim privilege deals only with disclosures that were impermissible when originally made, that is, disclosures as to which contempora-

neous claim of privilege would have succeeded, but for erroneous ruling or lack of opportunity for objection. Rules of Evid., Rule 511.

Kenneth L. Covell, Law Offices of Dick L. Madson, Fairbanks, for appellant.

Eric A. Johnson, Asst. Atty. Gen., Office of Special Prosecutions and Appeals, Anchorage, and Charles E. Cole, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., COATS, J., and ANDREWS, Superior Court Judge.*

OPINION

BRYNER, Chief Judge.

Therran L. Walstad entered a plea of no contest to a single count of sexual abuse of a minor in the first degree, reserving the right to appeal the superior court's denial of his motion to suppress, in which Walstad challenged the state's evidence as the unlawful fruit of a violation of the psychotherapist-patient and communications with clergy privileges. Walstad renews his challenge on appeal. We affirm the superior court's order denying the suppression motion.

There is no significant dispute as to the facts of this case. Walstad sexually molested a four-year-old child who had been placed in his care for an evening. The child's parents learned of the abuse and confronted Walstad. Walstad sought help through counseling with William Webb, a minister and certified counselor. After learning that Walstad had had sexual relations with a child, Webb reported the abuse to the authorities. Webb made his report to comply with AS 47.17.020(a)(1), which requires:

(a) The following persons who, in the performance of their occupational duties, have cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the depart-

* Sitting by assignment made pursuant to article

IV, section 16 of the Alaska Constitution.

ment [Department of Health and Social Services]:

(1) Practitioners of the healing arts[.]

Based on Webb's report, the Alaska State Troopers began an investigation, which culminated in the charge against Walstad.

Walstad moved to suppress all of the evidence obtained by the troopers in the course of their investigation, asserting that Webb's report of sexual abuse violated the psychotherapist-patient and communications with clergy privileges. According to Walstad, because the troopers' investigation resulted entirely from Webb's disclosure of privileged information, all of the evidence against him was tainted and subject to suppression as a fruit of the poisonous tree.

Superior Court Judge Neisje J. Steinkruger found that Walstad's communications with Webb were covered by both the psychotherapist-patient and communications to clergy privileges. On that basis, the judge ruled that Webb could not be called as a witness against Walstad. Judge Steinkruger further found, however, that Webb's report was not itself inappropriate, because the reporting requirement set forth in AS 47.17.020 amounted to a limited abrogation of the psychotherapist-patient privilege. Judge Steinkruger ruled that, in his role as counselor, Webb was required to report the abuse, notwithstanding the communications to clergy privilege. Finding no impropriety in the report, Judge Steinkruger concluded that the fruits of the report were not subject to suppression.

[1] In claiming error on appeal, Walstad advances three arguments. First,

1. The psychotherapist-patient privilege is set forth in Rule 504 of the Alaska Rules of Evidence, which provides, in relevant part:

(b) *General rule of privilege.* A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional conditions, including alcohol or drug addiction, among himself, his physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

Alaska Rep. 817-822 P.2d-7

Walstad claims that the reporting statute does not abrogate the psychotherapist-patient privilege. He relies primarily on this court's decision in *State v. R.H.*, 683 P.2d 269 (Alaska App.1984), which held that AS 47.17.020 was not meant to abrogate the privilege. Walstad further maintains that, even if the reporting statute had been meant to abrogate the privilege, it could not properly be held to accomplish this objective, because the legislature failed to expressly state its intent to do so. See *Leege v. Martin*, 379 P.2d 447 (Alaska 1963) (holding that statutory changes to procedural rules promulgated by the supreme court must be enacted by a two-thirds vote of the legislature and accompanied by an express statement of legislative intent to amend). Finally, Walstad asserts that, even if AS 47.17.020 validly abrogated the psychotherapist-patient privilege, Webb's report of abuse to the troopers was still independently barred by the communications to clergy privilege, Alaska Rule of Evidence 506, which remains unaffected by the reporting statute.

None of Walstad's arguments have merit, since they all proceed from a mistaken view of the scope of the two privileges here at issue.

[2] The psychotherapist-patient and communications to clergy privileges are embodied in the Alaska Rules of Evidence,¹ which were promulgated by the Alaska Supreme Court pursuant to its constitutional authority to "make and promulgate rules governing practice and procedure in civil and criminal cases...." Alaska Const., art. IV, § 15.² As creatures of the court's

The communications to clergy privilege is set out in A.R.E. 506, which provides, in relevant part:

(b) *General rule of privilege.* A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

2. It is important to note that neither of the privileges at issue here has an independent basis apart from the Alaska Rules of Evidence. The scope of a testimonial privilege arising exclusively from a procedural rule of court may be considerably narrower than that of a privilege such as the right against selfincrimination,

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ll, Law Offices of Dick
ks, for appellant.

Asst. Atty. Gen., Office
tions and Appeals, An-
es E. Cole, Atty. Gen.,
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;, C.J., COATS, J., and
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UNION

Judge.

ad entered a plea of no
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Alaska Constitution.

procedural rulemaking authority, these privileges are of a limited, testimonial nature: they are not intended to restrict or govern communications between persons in general, but are instead meant to regulate disclosures occurring in the context of civil or criminal proceedings.³

The limited sphere within which the psychotherapist-patient and communications to clergy privileges operate is described at the outset of the Alaska Rules of Evidence: under A.R.E. 101(a), the Rules of Evidence are generally applicable "in all proceedings in the courts of the State of Alaska..." Under A.R.E. 101(b), however, rules of privilege are given somewhat broader application; they are not confined to proceedings "in the courts" but are instead applicable "at all stages of all actions, cases, and proceedings." Though extending the reach of the rules of privilege beyond the strict confines of the courtroom, A.R.E. 101(b) still restricts privileges to the sphere of "actions, cases, and proceedings." *Id.* The rule makes no pretense of regulating

which is explicitly set out in the constitution, U.S. Const. amend. V; Alaska Const. art. I, § 9, or the lawyer-client privilege, A.R.E. 503, which, though adopted as part of the Alaska Rules of Evidence, is inextricably tied to the constitutional right to counsel U.S. Const. amend. VI; Alaska Const. art. I, § 11. We emphasize that our opinion in this case addresses only the two privileges currently before us.

3. In this regard, a useful distinction has been noted between evidentiary privileges, which "bar the use, in court proceedings, of certain information obtained by a professional during the course of treatment," and nondisclosure laws, which "apply both inside and outside court proceedings." R. Weisberg and M. Wald, *Confidentiality Laws and State Efforts to Protect Abused or Neglected Children: The Need for Statutory Reform*, 18 Family Law Quarterly 143, 145 (1984) (footnote omitted) (emphasis in original).

4. As the state correctly notes in its brief, it appears that both the Alaska Supreme Court and the Alaska Legislature have implicitly recognized the distinction between substantive, generally applicable confidentiality requirements and procedural privileges that are of a limited, testimonial nature. For instance, in A.R.E. 504(d)(5), the supreme court carved out an exception to the psychotherapist-patient privilege for information contained in mandatory reports when the reported information is made open to the public:

the disclosure of information in other contexts.

The same limits on the operative sphere of the psychotherapist-patient and communications to clergy privileges are implicit in the Alaska Constitution's provisions restricting the supreme court's rulemaking authority to procedural matters, as well as in its grant to the legislature of concomitant authority to regulate matters of substantive policy. Just as the "court should be wary of unwarranted extensions of the legislature's power to create substantive rights which encroach upon the procedural rules arena," *Allred v. State*, 554 P.2d 411, 427 (Alaska 1976) (Rabinowitz, J., concurring), so must it be wary against unwarranted extensions of its own procedural powers into the substantive arena of general human intercourse.⁴

In the present case, the superior court ruled that both the psychotherapist-patient and communications to clergy privileges applied to communications between Walstad and Webb that occurred within their

(d) *Exceptions.* There is no [psychotherapist-patient] privilege under this rule:

(5) *Required report.* As to information that the physician or psychotherapist or the patient is required to report to a public employee, or as to information required to be recorded in a public office, if such report or record is open to public inspection....

In carving out this limited exception, the supreme court implicitly recognized that in some nontestimonial contexts, the legislature can require disclosure of information which remains privileged from disclosure in testimonial contexts.

The legislature, for its part, has implicitly recognized the same type of distinction by specifying its intent to alter court rules (in compliance with *Leege v. Martin*, 379 P.2d 447 (Alaska 1963)) when abrogating a testimonial privilege, while omitting any statement of intent when enacting nontestimonial exceptions to general confidentiality provisions that parallel an established privilege. Compare, e.g., AS 08.86.200(b) (carving out exception to the general rule of confidentiality as to psychotherapist-patient communications for reports of abuse required under AS 47.17.020) with AS 47.17.060 (partially abrogating physician-patient privilege). For an extensive discussion of the interplay between general confidentiality statutes and procedural privileges, see *Allred v. State*, 554 P.2d 411 (Alaska 1976).

counseling relationship. On this ground, the court barred any testimonial disclosure of the confidential communications. The state has not challenged the superior court's ruling.⁵ Walstad's claim on appeal thus deals only with the admissibility of evidence gathered as a result of Webb's nontestimonial report to the authorities.

In support of his claim that this evidence should be suppressed, Walstad invokes the fruits of the poisonous tree doctrine. That doctrine, however, presupposes a poisonous tree; to prevail, Walstad must, at a minimum,⁶ establish some impropriety in Webb's report to the authorities. It is uncontroverted that Webb's report of sexual abuse was made in an out-of-court statement that was unrelated to any action, case or proceeding then pending. For this reason, although it divulged confidential communications between Walstad and Webb, the report did not amount to a violation of the psychotherapist-patient or communications with clergy privileges. In the context in which Webb's report was made, neither privilege attached. Because Webb's report violated no privilege, the fruits of his re-

5. In *State v. R.H.*, 683 P.2d 269 (Alaska App. 1984), we held that Alaska's mandatory child abuse reporting law did not abrogate the psychotherapist-patient privilege in criminal proceedings. In particular, we considered AS 47-17.060, which provided:

Evidence not privileged. Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding relating to a report made under this chapter.

Our opinion in *R.H.* concluded that a criminal proceeding resulting from a mandatory report of sexual abuse filed pursuant to AS 47.17.020 did not amount to "a judicial proceeding relating to a report made under this chapter." We construed the statutory language abrogating the privilege as extending only to child custody proceedings under Title 47.

In the present case, Judge Steinkruger relied on *R.H.* in ruling that the state was barred from calling Webb as a witness against Walstad at trial. Although the state has not actually challenged Judge Steinkruger's ruling, both parties have recognized that statutory amendments since *R.H.* raise questions concerning the continuing validity of our decision. The parties have thus devoted considerable attention to this issue in their briefs. In light of our conclusion that the evidentiary privileges at issue in this

port were not tainted by the violation of a privilege.

Nor was Webb's report improper in any other respect. As a general matter, under AS 08.86.200(a), Webb was required to keep his communications with Walstad confidential:

Confidentiality of communication.

(a) A psychologist or psychological associate may not reveal to another person a communication made to the psychologist or psychological associate by a client about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to a case conference with other psychologists, psychological associates or with physicians and surgeons, or in the case in which the client in writing authorized the psychologist or psychological associate to reveal a communication.

Subsection (b) of the same provision, however, carves out an exception to this general rule of confidentiality:

Notwithstanding (a) of this section, a psychologist or psychological associate

case apply only to disclosures made at some stage of an action, case or proceeding, A.R.E. 101(b), we need not consider the extent to which *R.H.* remains valid.

6. We note, moreover, that there seems to be considerable doubt as to the extent to which the fruits of the poisonous tree doctrine should apply in cases involving violations of evidentiary privileges. The general purpose of the Rules of Evidence is to facilitate the search for truth. See A.R.E. 102. Rules of privilege work against this purpose: "rather than facilitating the illumination of truth, they shut out the light." *McCormick on Evidence* § 72, at 171 (E. Cleary 3d ed. 1984). For this reason, there appears to be little consensus as to the extent to which the fruit of the poisonous tree doctrine should be applied in cases involving violations of evidentiary privileges. As Weinstein notes:

If the government was a party to the improper breach and a constitutional privilege was involved the legal fruits doctrine will apply. In other instances the court has some discretion. Generally it will admit, bearing in mind the general policy in favor of truth rather than exclusion.

2 J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 512 [02] (1991) (footnote omitted) (emphasis in original).

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shall report incidents of child abuse or neglect as required by AS 47.17.020.

It is undisputed that Webb's report of Walstad's sexual abuse was mandated under AS 47.17.020(a). Walstad does not challenge the validity of the reporting requirement, and this court has upheld it in other contexts. See *Strehl v. State*, 722 P.2d 226 (Alaska App.1986). Since Webb's report was made in accordance with AS 47.17.020(a), it fell within the exception stated in AS 68.86.200(b) and did not violate the general statutory requirement of confidentiality.

[3] As another basis for his suppression claim, Walstad cites rule 511 of the Alaska Rules of Evidence:

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

[4] By its own terms, however, this rule deals only with disclosures that were impermissible when originally made—that is, disclosures as to which a contemporaneous claim of privilege would have succeeded but for an erroneous ruling or the lack of opportunity for objection.

Here, Webb's report of sexual abuse occurred outside the sphere in which evidentiary privileges attach. Had Walstad objected to the report when it occurred, neither the psychotherapist-patient privilege nor the communications to clergy privilege would have barred Webb from proceeding with the disclosure. By the same token, to the extent that Webb may have felt compelled to make his report, he was not "compelled erroneously...." Webb's report thus did not contravene A.R.E. 511; that rule does not justify the suppression of evidence resulting from the report.

In conclusion, Webb's report of sexual abuse violated neither the psychotherapist-patient nor the communications to clergy privilege. The results of the investigation triggered by that report were untainted by any impropriety. Consequently, the superi-

or court did not err in denying Walstad's motion to suppress evidence.

The order denying the motion to suppress evidence is **AFFIRMED**.

MANNHEIMER, J., not participating.



Byran B. PEROTTI, Appellant,

v.

STATE of Alaska, Appellee.

No. A-3679.

Court of Appeals of Alaska.

Oct. 4, 1991.

Following jury trial before the Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., defendant was convicted of first-degree attempted escape and third-degree assault. Defendant appealed. The Court of Appeals, Bryner, C.J., held that: (1) defendant's actual possession of correctional officer's rifle was not prerequisite to commission of assault "by means of" dangerous instrument when defendant struggled for control of rifle with officer; (2) injury suffered by officer could properly be relied upon as aggravating factor forming basis for upward adjustment of presumptive term for assault; and (3) good cause existed for imposition of consecutive sentences.

Affirmed.

1. Assault and Battery \Leftrightarrow 56

There was no requirement that defendant have actual possession of rifle before he could be convicted of assault "by means of" rifle for struggling to gain control of rifle from correctional officer, for purpose of third-degree assault. AS 11.41.220(a)(1).



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Child Abuse and Neglect State Statutes Series

Compendium of Laws

Reporting Laws: Mandatory Reporters of Child Abuse and Neglect



U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

2002

This publication is one of the series **Child Abuse and Neglect State Statutes Series: Compendium of Laws**, which is produced by the National Clearinghouse on Child Abuse and Neglect Information. The Clearinghouse is a service of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

The **Compendium of Laws** presents citations and text of State laws on different topics related to child maltreatment reporting laws, central registries, permanency planning and domestic violence. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures. Readers interested in interpretation of specific statutory provisions within an individual jurisdiction should consult with professionals within the State familiar with the statutes' implementation.

The Child Abuse and Neglect Prevention and Treatment Act, as amended, requires States to make provision for the reporting of known or suspected instances of child abuse and neglect (42 U.S.C. 5106a). The publications included in the **Compendium of Laws: Reporting Laws** focus on how States have made provision in their statutes for defining acts that are reportable as abuse, enumerating mandated reporters, and specifying procedures for the making and receiving of child maltreatment reports.

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We welcome your comments and suggestions about this publication.

Mandatory Reporters of Child Abuse and Neglect¹

Every State and the District of Columbia have statutes identifying mandatory reporters of child maltreatment, and under what circumstances they are to report. A mandatory reporter is a person who is required by law to make a report. Any person, however, may report incidents of abuse or neglect. Today, reporting laws embrace all professionals working with children. Individuals typically designated as mandatory reporters include:

- Physicians, nurses, hospital personnel, dentists;
- Medical examiners;
- Coroners;
- Mental health professionals and social workers;
- School personnel;
- Law enforcement officials; and
- Child care providers.

In approximately² 18 States, any person who suspects child abuse or neglect is required to report.

The standards used to determine under what circumstances a mandatory reporter should notify authorities of suspected abuse also vary from State to State. Typically, a report must be made when the reporter *suspects* or *has reason to suspect* that a child has been abused or neglected.

Mandatory reporting statutes also may specify when a communication is privileged. Privileged communications, which is the statutory recognition of the right to maintain the confidentiality of communications between professionals and their clients or patients, are specific situations where mandatory reporters are not required by law to report cases of child maltreatment. The privilege most widely recognized by States is that of attorney-client. The clergy-penitent privilege also is frequently recognized, although that privilege may be limited strictly to confessional communications, or in some cases, denied altogether.

Legislation Regarding Mandatory Reporters of Child Abuse and Neglect (Current through December 31, 2001)

| | |
|---------|---|
| Alabama | Ala. Code § 26-14-3(a) (Supp. 1998) Ala. Code § 26-14-10 (1992) |
| Alaska | Alaska Stat. § 47.17.020(a), (h), (i) (Lexis, WESTLAW through End of 2001 1 st Spec. Sess.) |

¹ The State Statutes contain excerpts from specific sections of each State's code. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

² The word *approximately* is used throughout the State Statutes Elements to stress the fact that statutes are constantly being revised and updated.

Mandatory Reporters of Child Abuse and Neglect

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| | Alaska Stat. § 47.17.023 (Michie 1996) Alaska Stat. § 47.17.060 (Michie 1996) |
| Arizona | Ariz. Rev. Stat. Ann. § 13-3620(A) (West, WESTLAW through 1999 1 st Reg. Sess. & 2 nd Sp. Sess.) Ariz. Rev. Stat. Ann. § 8-805(B)-(C) (West Supp. 1998) |
| Arkansas | Ark. Code Ann. § 12-12-507(b)-(c) (West, WESTLAW through Ark.2001 Legis. Serv., Act 1210 & 1236) |
| California | Cal. Penal Code §§ 11166(a), (c), (d) (West, WESTLAW through 2002 portion of 2001-2002 Reg. Sess. & 3 rd Ex. Sess.) Cal. Penal Code 11165.7(a) (West, WESTLAW through 2002 portion of 2001-2002 Reg. Sess. & 3 rd Ex. Sess.) |
| Colorado | Colo. Rev. Stat. Ann. § 19-3-304(1), (2), (2.5) (West, WESTLAW through End of 2001 1 st Reg. Sess.) Colo. Rev. Stat. Ann. § 19-3-311 (West Supp. 1998) |
| Connecticut | Conn. Gen. Stat. Ann. § 17a-101(b) (West, WESTLAW through 1-1-01) Conn. Gen. Stat. Ann. § 17a-101a (West, WESTLAW through 1-1-01) |
| Delaware | Del. Code Ann. tit. 16, § 903 (WESTLAW through 1999 1 st Spec. Sess.) Del. Code Ann. tit. 16, § 909 (Supp. 1998) |
| District of Columbia | D.C. Code Ann. § 4-1321.02 (a), (b), (d) (WESTLAW through 10-2-01) D.C. Code Ann. § 4-1321.05 (WESTLAW through 10-2-01) |
| Florida | Fla. Stat. Ann. § 39.201(1) (West, WESTLAW through End of 2001 1 st Reg. Sess.) Fla. Stat. Ann. § 39.204 (West, WESTLAW through End of 2001 1 st Reg. Sess.) Ga. Code Ann. § 19-7-5(c)(1) (WESTLAW through 2001) Ga. Code Ann. § 16-12-100(c) (WESTLAW through 2001) Ga. Code Ann. § 19-7-5(g) (WESTLAW through 2001) |
| Hawaii | Haw. Rev. Stat. § 350-1.1(a) (WESTLAW through 2000 Spec. Sess.) Haw. Rev. Stat. § 350-5 (1998) |

Mandatory Reporters of Child Abuse and Neglect

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|---------------|---|
| Idaho | Idaho Code § 16-1619(a) (Supp. 1998) Idaho Code § 16-1619(c) (Supp. 1998) Idaho Code § 16-1620 (Supp. 1998) |
| Illinois | 325 Ill. Comp. Stat. Ann. 5/4 (West, WESTLAW through Ill. 2001 Legis. Serv., P.A. 92-16) 720 Ill. Comp. Stat. Ann. 5/11-20.2 (West Supp. 1998) |
| Indiana | Ind. Code Ann. § 31-33-5-1 (Michie 1997) Ind. Code Ann. § 31-33-5-2 (Michie 1997) Ind. Code Ann. § 31-32-11-1 (Michie 1997) |
| Iowa | Iowa Code Ann. § 232.69(1)(a)-(b) (West, WESTLAW through Iowa 2001 Legis. Serv., Ch. 122) Iowa Code Ann. § 232.74 (West, WESTLAW through End of 2000 Reg. Sess.) Iowa Code Ann. § 728.14(1) (West Supp. 1998) |
| Kansas | Kan. Stat. Ann. § 38-1522(a), (b) (West, WESTLAW through Kan. 2001 Legis. Serv., Ch. 154) |
| Kentucky | Ky. Rev. Stat. Ann. § 620.030(1), (2) (Michie Supp. 1998) Ky. Rev. Stat. Ann. § 620.050(2) (Michie Supp. 1998) |
| Louisiana | La. Children's Code Ann. art. 603(13) (West, WESTLAW through all 2001 Reg. & Ex. Sess.) La. Children's Code Ann. art. 609(A)(1) (West 1995) La. Children's Code Ann. art. 610(F) (West Supp. 1999) |
| Maine | Me. Rev. Stat. Ann. tit. 22, § 4011-A(1) (West, WESTLAW through 2001 1 st Reg. Sess.) Me. Rev. Stat. Ann. tit. 22, § 4015 (West 1992) |
| Maryland | Md. Code Ann. Fam. Law § 5-704(a)(1) (Lexis, WESTLAW through 2000 Reg. Sess.) Md. Code Ann. Fam. Law § 5-705(a) (Lexis, WESTLAW through 2000 Reg. Sess.) |
| Massachusetts | Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998) Mass. Gen. Laws Ann. ch. 119, § 51B (West Supp. 1998) |
| Michigan | Mich. Comp. Laws Ann. § 722.623 (1), (8) (West, WESTLAW through 1999 Reg. Sess.) Mich. Comp. Laws Ann. § 722.631 (West, WESTLAW through 1999 Reg. Sess.) |

Mandatory Reporters of Child Abuse and Neglect

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| Minnesota | Minn. Stat. Ann. § 626.556, Subd. 3(a) (West, WESTLAW through 2001 1 st Sp. Sess.) Minn. Stat. Ann. § 626.556, Subd. 3(a), 8 (West, WESTLAW through 2001 1 st Sp. Sess.) |
| Mississippi | Miss. Code Ann. § 43-21-353(1) (Supp. 1998) |
| Missouri | Mo. Ann. Stat. § 210.115(1) (West, WESTLAW through End of 2000 Reg. Sess.) Mo. Ann. Stat. § 568.110 (West, WESTLAW through End of 2001 1 st Reg. Sess. & 1 st Ex. Sess.) Mo. Ann. Stat. § 210.140 (West, WESTLAW through End of 2001 1 st Reg. Sess. & 1 st Ex. Sess.) |
| Montana | Mont. Code Ann. § 41-3-201(1)-(2) (WESTLAW through 2001 1 st Reg. Sess.) Mont. Code Ann. § 41-3-201(4) (WESTLAW through 2001 1 st Reg. Sess.) |
| Nebraska | Neb. Rev. Stat. Ann. § 28-711(1) (Michie 1995) Neb. Rev. Stat. Ann. § 28-714 (Michie 1995) |
| Nevada | Nev. Rev. Stat. Ann. § 432B.220(1), (3), (5) (WESTLAW through Nev. 2001 Legis. Serv., Ch. 152 & 260) Nev. Rev. Stat. Ann. § 432B.250 (WESTLAW through Nev. 2001 Legis. Serv., Ch. 1) |
| New Hampshire | N.H. Rev. Stat. Ann. § 169-C:29 (1994) N.H. Rev. Stat. Ann. § 169-C:32 (1994) |
| New Jersey | N.J. Stat. Ann. § 9:6-8.10 (West 1993) |
| New Mexico | N.M. Stat. Ann. § 32A-4-3(A) (Michie Supp. 1998) N.M. Stat. Ann. § 32A-4-5(A) (Michie 1995) |
| New York | N.Y. Soc. Serv. Law § 413(1) (West, WESTLAW through L. 2001) |
| North Carolina | N.C. Gen. Stat. § 7B-301 (West, WESTLAW through 2000 Reg. Sess.) N.C. Gen. Stat. § 7B-310 (West, WESTLAW through 2000 Reg. Sess.) |
| North Dakota | N.D. Cent. Code § 50-25.1-03 (Supp. 1997) N.D. Cent. Code § 50-25.1-10 (Supp. 1997) |

Mandatory Reporters of Child Abuse and Neglect

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| Ohio | Ohio Rev. Code Ann. § 2151.421(A)(1) (West, WESTLAW through 2000 portion of 123 rd Gen. Assem.) Ohio Rev. Code Ann. § 2151.421(A)(2), (G)(1)(b) (West, WESTLAW through 2000 portion of 123 rd Gen. Assem.) |
| Oklahoma | Okla. Stat. Ann. tit. 10, § 7103(A)(1) (West, WESTLAW through 2000 1 st Ex. Sess.) Okla. Stat. Ann. tit. 10, § 7104 (West, WESTLAW through 2001 1 st Ex. Sess.) Okla. Stat. Ann. tit. 21, § 1021.4 (West Supp. 1998) Okla. Stat. Ann. tit. 10, § 7113 (West 1998) |
| Oregon | Or. Rev. Stat. Ann. § 419B.005(3) (WESTLAW through Or. 2001 Legis. Serv., Ch. 104) Or. Rev. Stat. Ann. § 419B.010(1) (WESTLAW through Or. 2001 Legis. Serv., Ch. 104 & 904) |
| Pennsylvania | 23 Pa. Cons. Stat. Ann. § 6311(a)-(b) (West Supp. 1998) |
| Rhode Island | R.I. Gen. Laws § 40-11-3(a) (Lexis, WESTLAW through End of 2000 Reg. Sess.) R.I. Gen. Laws § 40-11-6(a) (1997) R.I. Gen. Laws § 40-11-11 (1997) |
| South Carolina | S.C. Code Ann. § 20-7-510(A) (WESTLAW through End of 2001 Reg. Sess.) S.C. Code Ann. § 20-7-550 (Law. Co-op. Supp. 1998) |
| South Dakota | S.D. Codified Laws § 26-8A-3 (WESTLAW through End of 2000 Reg. Sess.) S.D. Codified Laws § 26-8A-15 (Michie 1992) |
| Tennessee | Tenn. Code Ann. § 37-1-403(a) (WESTLAW through End of 2001 1 st Reg. Sess.) Tenn. Code Ann. § 37-1-605(a) (WESTLAW through End of 2001 1 st Reg. Sess.) Tenn. Code Ann. § 37-1-411 (1996) |
| Texas | Tex. Fam. Code Ann. § 261.101(a)-(c) (West, WESTLAW through End of 2001 Reg. Sess.) Tex. Fam. Code Ann. § 261.102 (West 1996) |

Mandatory Reporters of Child Abuse and Neglect

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| Utah | Utah Code Ann. § 62A-4a-403(1)-(3) (Lexis, WESTLAW through End of 2000 Gen. Sess.) Utah Code Ann. § 62A-4a-412(5) (Lexis, WESTLAW through End of 2001 Gen. Sess.) |
| Vermont | Vt. Stat. Ann. tit. 33, § 4913(a) (Supp. 1998) |
| Virginia | Va. Code Ann. § 63.1-248.3(A) (Lexis, WESTLAW through 2001 1 st Sp. Sess.) Va. Code Ann. § 63.1-248.11 (Lexis, WESTLAW through 2000 Reg. Sess.) |
| Washington | Wash. Rev. Code Ann. § 26.44.030(1)(a)-(c), (2) (West, WESTLAW through 1999 1 st Sp. Sess.) Wash. Rev. Code Ann. § 26.44.060(3) (West Supp. 1999) |
| West Virginia | W. Va. Code Ann. § 49-6A-2 (Lexis, WESTLAW through End of 2001 6 th Ex. Sess.) W. Va. Code Ann. § 49-6A-7 (1996) |
| Wisconsin | Wis. Stat. Ann. § 48.981(2), (2m)(c)-(e) (West, WESTLAW through 2001 Act 15) |
| Wyoming | Wyo. Stat. Ann. § 14-3-205(a) (Michie 1997) Wyo. Stat. Ann. § 14-3-210 (Michie 1997) |

**Summary of Legislation Regarding
Mandatory Reporters of Child Abuse and Neglect
(Current through December 31, 2001)**

ALABAMA

Ala. Code § 26-14-3(a) (Supp. 1998)

WHO MUST REPORT

- Hospitals, clinics, sanitariums, doctors, physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, nurses, school teachers, and officials;
- Peace officers, law enforcement officials, pharmacists, social workers, day-care workers or employees, mental health professionals;
- Any other person called upon to render aid or medical assistance to any child.

CIRCUMSTANCES

- When the child is known or suspected to be a victim of child abuse or neglect.

PRIVILEGED COMMUNICATIONS

Ala. Code § 26-14-10 (1992)

The doctrine of privileged communication, with the exception of the attorney-client privilege, shall not be a ground for excluding any evidence regarding a child's injuries or the case thereof in any judicial proceeding resulting from a report pursuant to this chapter.

ALASKA

Alaska Stat. § 47.17.020(a), (h), (i) (Lexis, WESTLAW through End of 2001 1st Spec. Sess.); § 47.17.023 (Michie 1996)

WHO MUST REPORT

- Practitioners of the healing arts; administrative officers of institutions;
- School teachers; school administrative staff members of public and private schools; child care providers;

Mandatory Reporters of Child Abuse and Neglect

- Paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs; paid employees of organizations that provide counseling or treatment to individuals seeking to control their use of drugs or alcohol;
- Peace officers; officers of the Department of Corrections;
- Persons who process or produce visual or printed matter, either privately or commercially;
- Members of a child fatality review team or the multidisciplinary child protection team.

CIRCUMSTANCES

- When, in the performance of their occupational duties or appointed duties, they have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect;
- Persons who process or produce visual or printed matter, either privately or commercially, must report when, in the course of processing or producing such matter, they have reasonable cause to suspect that the matter visually depicts a child engaged in conduct described in the law prohibiting the unlawful exploitation of a minor.

This section does not require a person required to report child abuse or neglect to report mental injury as a result of exposure to domestic violence so long as the person has reasonable cause to believe that the child is in safe and appropriate care and not presently in danger of mental injury as a result of exposure to domestic violence.

This section does not require a person required to report child abuse or neglect to report the resumption of use of an intoxicant so long as the person does not have a reasonable cause to suspect that a child has suffered harm as a result of the resumption.

PRIVILEGED COMMUNICATIONS

Alaska Stat. § 47.17.060 (Michie 1996)

Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding related to a report made under the reporting statute.

ARIZONA

Ariz. Rev. Stat. Ann. § 13-3620(A) (West, WESTLAW through 1999 1st Reg. Sess. & 2nd Sp. Sess.)

WHO MUST REPORT

- Physicians, hospital interns or residents, surgeons, dentists, osteopaths, chiropractors, podiatrists, county medical examiners, nurses, psychologists;

- School personnel, social workers, peace officers, parents, counselors, clergymen, priests, or any other person having responsibility for the care or treatment of children.

CIRCUMSTANCES

When their observation or examination of any minor discloses reasonable grounds to believe that a minor is or has been the victim of injury, sexual abuse, sexual conduct with a minor, sexual assault, molestation, commercial sexual exploitation of a minor, sexual exploitation of a minor, incest, child prostitution, death, abuse, or physical neglect which appears to have been inflicted on that minor by other than accidental means or which is not explained by the available medical history as being accidental in nature, or denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant less than one year of age.

PRIVILEGED COMMUNICATIONS

Ariz. Rev. Stat. Ann. § 13-3620(A) (West, WESTLAW through 1999 1st Reg. Sess. & 2nd Sp. Sess.)

A clergyman or priest who has received a confidential communication or a confession in that person's role as a clergyman or priest in the course of the discipline enjoined by the church to which the clergyman or priest belongs may withhold reporting of the communication or confession if the clergyman or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to the personal observations the clergyman or priest may otherwise make of the minor.

Ariz. Rev. Stat. Ann. § 8-805(B)-(C) (West Supp. 1998)

Except as provided in the provision exempting clergymen and priests from examination as witness,

- The physician-patient privilege;
- Husband-wife privilege; or
- Any privilege except the attorney-client privilege;

provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is in issue nor in any judicial proceeding resulting from a report submitted pursuant to this article.

In any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is an issue, a clergyman or priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman or a priest in the course of the discipline enjoined by the church to which he belongs.

ARKANSAS

Ark. Code Ann. § 12-12-507(b) WESTLAW through Ark. 2001 Legis. Serv., Act 1210 & 1236)

WHO MUST REPORT

- Physicians; surgeons; coroners; dentists; osteopaths; resident interns; licensed nurses; medical personnel who may be engaged in admission, examination, care, or treatment of persons;
- Teachers; school officials; school counselors; day-care center workers;
- Social workers; family service workers; mental health professionals; any other child or foster care workers;
- Division of Youth Service employees; employees working under contract for the Division of Youth Services;
- Domestic violence shelter employees; domestic violence shelter volunteers;
- Peace officers; law enforcement officials; prosecuting attorneys, domestic abuse advocates; judges.

CIRCUMSTANCES

- When they have reasonable cause to suspect that a child has been subjected to, or died as a result of, child maltreatment;
- When they have observed the child being subjected to conditions or circumstances which would reasonably result in child maltreatment.

PRIVILEGED COMMUNICATIONS

Ark. Code Ann. § 12-12-507(c) (WESTLAW through Ark. 2001 Legis. Serv., Act 1210)

No privilege or contract shall relieve any mandatory reporter of this responsibility.

CALIFORNIA

Cal. Penal Code §§ 11166(a), (d); 11165.7(a) (West, WESTLAW through 2002 portion of 2001-2002 Reg. Sess. & 3rd Sess.)

WHO MUST REPORT

- Teachers; instructional aides; Headstart teachers; teacher's aides or teacher's assistants employed by any public or private school; classified employees of any public school;
- Administrative officers or supervisors of child welfare and attendance; certificated pupil personnel employees of any public or private school;

- Administrators and employees of public or private day camps, public or private youth centers, youth recreation programs, or youth organizations;
- Administrators or employees of public or private organizations whose duties require direct contact and supervision of children;
- Any employees of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis;
- Licensees, administrators, employees of licensed community care or child day care facilities;
- Licensing workers or licensing evaluators employed by a licensing agency;
- Public assistance workers;
- Employees of child care institutions, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities;
- Social workers; probation officers, or parole officers;
- Employees of school district police or security departments;
- Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school;
- District attorney investigators, inspectors, or family support officers unless the investigator, inspector, or officer is working with an attorney appointed to represent a minor;
- Peace officers who are not otherwise described in this section;
- Firefighters, except for volunteer firefighters;
- Physicians, surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, marriage, family and child counselors, clinical social workers;
- Emergency medical technicians I or II; paramedics; psychological assistants; marriage, family and child therapist trainees; unlicensed marriage, family, and child therapist interns;
- State or county public health employees who treat minors for venereal diseases or any other conditions;
- Coroners; medical examiners, or any other person who performs autopsies;
- Commercial film and photographic print processors;
- Child visitation monitors;
- Animal control officers or humane society officers;
- Clergy members;
- Employee of any police department, county sheriff's department, county probation department, or county welfare department;
- Employees or volunteers of Court Appointed Special Advocate programs.

CIRCUMSTANCES

- When they have knowledge of or observe a child in their professional capacities or within the scope of their employment, whom they know or reasonably suspect has been the victim of child abuse;

- Commercial film and photographic print processors must report when they have knowledge of or observe, within the scope of their professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in any of the following:
 - Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex or between humans and animals;
 - Penetration of the vagina or rectum by any object;
 - Masturbation for the purpose of sexual stimulation of the viewer;
 - Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer; or
 - Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

PRIVILEGED COMMUNICATIONS

Cal. Penal Code § 11166(c) (West, WESTLAW through 2002 portion of 2001-2002 Reg. Sess. & 3rd Ex. Sess.)

A clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication is not subject to the requirement to make a report. For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

COLORADO

Colo. Rev. Stat. Ann. § 19-3-304(1), (2), (2.5) (West, WESTLAW through End of 2001 1st Reg. Sess.)

WHO MUST REPORT

- Physicians; surgeons; physicians in training; child health associates; medical examiners; coroners; dentists; osteopaths; optometrists; chiropractors; chiropodists; podiatrists; registered nurses; licensed practical nurses; hospital personnel engaged in the admission, care, or treatment of patients; dental hygienists; physical therapists; pharmacists;
- Public or private school officials or employees; workers in family care homes, foster care homes, or child care centers;

- Social workers; Christian Science practitioners; mental health professionals; psychologists;
- Veterinarians; peace officers; firemen; victim's advocates;
- Commercial film and photographic print processors;
- Licensed professional counselors; licensed marriage and family therapists; unlicensed psychotherapists.

CIRCUMSTANCES

- When they have reasonable cause to know or suspect that a child has been subjected to abuse or neglect;
- When they have observed a child being subjected to circumstances or conditions which would reasonably result in abuse or neglect;
- Commercial film and photographic print processors must report when, within the scope of their professional capacities or employments, they have knowledge of or observe any film, photograph, videotape, negative, or slide depicting a child engaged in an act of sexual conduct.

PRIVILEGED COMMUNICATIONS

Colo. Rev. Stat. Ann. § 19-3-311 (West Supp. 1998)

The incident of privileged communication between patient and physician, between patient and registered professional nurse, or certified school psychologist and client, which is the basis for a report pursuant to the reporting laws, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report. In addition, privileged communication shall not apply to any discussion of any future misconduct or of any other past misconduct which could be the basis for any other report under the reporting laws.

The privileged communication between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to the reporting laws.

CONNECTICUT

Conn. Gen. Stat. Ann. § 17a-101(b) (West, WESTLAW through 1-1-01)

WHO MUST REPORT

- Licensed physicians or surgeons;
- Resident physicians or interns in any hospital in this State, whether or not so licensed;
- Registered nurses, licensed practical nurses, medical examiners, dentists, dental hygienists;
- Physician assistants;
- Pharmacists;
- Physical therapists, osteopaths, optometrists, chiropractors, podiatrists;

Mandatory Reporters of Child Abuse and Neglect

- Psychologists, mental health professionals;
- School teachers, school principals, school guidance counselors, school paraprofessionals;
- Social workers;
- Police officers;
- Clergymen;
- Licensed substance abuse counselors, licensed marital and family therapists, sexual assault counselors, battered women's counselors; or
- Any person paid to care for a child in any public or private facility, day-care center or family day-care home which is licensed by the State;
- The Child Advocate and any employee of the Office of Child Advocate.

CIRCUMSTANCES

Conn. Gen. Stat. Ann. § 17a-101a (West, WESTLAW through 1-1-01)

Who in his professional capacity has reasonable cause to suspect or believe that any child under the age of 18 years has been abused, or has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted on him by a person responsible for such child's health, welfare or care or by a person given access to such child by such responsible person, or is placed at imminent risk of serious harm by an act or failure to act on the part of such responsible person, or has been neglected.

DELAWARE

Del. Code Ann. tit. 16, § 903 (WESTLAW through 1999 1st Spec. Sess.)

WHO MUST REPORT

- Physicians; any other persons in the healing arts, including persons licensed to render services in medicine, osteopathy, or dentistry; interns; residents; nurses; medical examiners;
- School employees;
- Social workers; psychologists;
- Any other persons.

CIRCUMSTANCES

- When they know or in good faith suspect child abuse or neglect.

continues

PRIVILEGED COMMUNICATIONS

Del. Code Ann. tit. 16, § 909 (Supp. 1998)

No legally recognized privilege, except that between attorney and client and that between priest and penitent in a sacramental confession, shall apply to situations involving known or suspected child abuse, neglect, exploitation, or abandonment and shall not constitute grounds for failure to report as required or to give or accept evidence in any judicial proceeding relating to child abuse or neglect.

DISTRICT OF COLUMBIA

D.C. Code Ann. § 4-1321.02(a), (b), (d) (WESTLAW through 10-2-01)

WHO MUST REPORT

- Physicians; medical examiners; dentists; chiropractors; registered nurses; licensed practical nurses; persons involved in the care and treatment of patients;
- School officials; teachers; day-care workers;
- Psychologists; mental health professionals;
- Law enforcement officers (except an undercover officer whose identity or investigation might be jeopardized); social service workers.

CIRCUMSTANCES

- When they know or have reasonable cause to suspect that a child known to them in their professional or official capacity has been or is in immediate danger of being a mentally or physically abused or neglected child;
- When they have reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to exposure to drug-related activity.

PRIVILEGED COMMUNICATIONS

D.C. Code Ann. § 4-1321.05 (WESTLAW through 10-2-01)

Neither the husband-wife privilege nor the physician-patient privilege shall be grounds for excluding evidence in any proceeding in the Family Division of the Superior Court concerning the welfare of a neglected child, provided that a judge of that court determines such privilege should be waived in the interest of justice.

FLORIDA

Fla. Stat. Ann. § 39.201(1) (West, WESTLAW through End of 2001 1st Reg. Sess.)

WHO MUST REPORT

- Any person;
- Physicians, osteopathic physicians, medical examiners, chiropractic physicians, nurses, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
- Other health or mental health professionals;
- Practitioners who rely solely on spiritual means for healing;
- School teachers or other school officials or personnel;
- Social workers; day care center workers; or other professional child care, foster care, residential, or institutional workers;
- Law enforcement officers; or judges.

CIRCUMSTANCES

- When they know, or have reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare.

PRIVILEGED COMMUNICATION

Fla. Stat. Ann. § 39.204 (West, WESTLAW through End of 2001 1st Reg. Sess.)

The privileged quality of communications between husband and wife and between any professional person and his or her patient or client, or any other privileged communications except that between attorney and client or the privilege provided by § 90.505 [providing for the confidentiality of communications made to a clergy member for the purpose of spiritual counsel], as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment or neglect, and shall not constitute grounds for failure to report as required by the reporting laws regardless of the source of information requiring the report, failure to cooperate with the Department, or failure to give evidence in any judicial proceeding relating to child abuse, abandonment, or neglect.

GEORGIA

Ga. Code Ann. §§ 19-7-5(c)(1); 16-12-100(c) (WESTLAW through 2001)

WHO MUST REPORT

- Physicians licensed to practice medicine; interns; residents; hospital and medical personnel; dentists; podiatrists; registered professional nurses or licensed practical nurses;
- School teachers; school administrators; school guidance counselors, visiting teachers, school social workers, or school psychologists;
- Licensed psychologists; persons participating in internships to obtain licensing as psychologists; professional counselors, social workers, or marriage and family therapists; child-counseling personnel;
- Child welfare agency personnel (including any child-caring institution, child-placing agency, maternity home, family day-care home, group day-care home, and day-care center); child service organization personnel;
- Law enforcement personnel;
- Persons who process or produce visual or printed matter.

CIRCUMSTANCES

- When they have reasonable cause to believe that a child has been abused;
- A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct.

PRIVILEGED COMMUNICATIONS

Ga. Code Ann. § 19-7-5(g) (WESTLAW through 2001)

Mandatory reporters are required to report even if the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part on any communication to the reporter which would otherwise be privileged or confidential, by law.

HAWAII

Haw. Rev. Stat. § 350-1.1(a) (WESTLAW through 2000 Spec. Sess.)

WHO MUST REPORT

- Licensed or registered professionals of the healing arts and health-related occupations who examine, attend, treat, or provide other professional or specialized services, including, but not limited to, physicians, physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals; medical examiners; coroners;
- Employees or officers of any public or private school; individual providers of child care; employees or officers of any licensed or registered child care facility, foster home, or similar institution;
- Employees or officers of any public or private agency or institution, or other individuals, providing social, medical, hospital, or mental health services, including financial assistance; employees or officers of any law enforcement agency, including, but not limited to, the courts, police departments, correctional institutions, and parole or probation offices;
- Employees of any public or private agency providing recreational or sports activities.

CIRCUMSTANCES

When, in their professional or official capacity, they have reason to believe that:

- Child abuse or neglect has occurred; or
- There exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future.

PRIVILEGED COMMUNICATIONS

Haw. Rev. Stat. § 350-5 (1998)

The physician-patient privilege, the psychologist-client privilege, the spousal privilege, and the victim-counselor privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report of child abuse or neglect pursuant to the reporting laws.

IDAHO

Idaho Code § 16-1619(a) (Supp. 1998)

WHO MUST REPORT

- Physicians; residents on hospital staffs; interns; nurses; coroners;
- School teachers; day-care personnel;
- Social workers; law enforcement personnel;
- Any other persons.

CIRCUMSTANCES

- When they have reason to believe that a child under the age of 18 has been abused, abandoned, or neglected;
- When they observe a child being subjected to conditions or circumstances which would reasonably result in abuse, abandonment, or neglect.

PRIVILEGED COMMUNICATIONS

Idaho Code § 16-1619(c) (Supp. 1998)

The notification requirements do not apply to a duly ordained minister of religion, with regard to any confession or confidential communication made to him in his ecclesiastical capacity in the course of discipline enjoined by the church to which he belongs if:

- The church qualifies as tax-exempt under Federal statute;
- The confession or confidential communication was made directly to the duly ordained minister of religion; and
- The confession or confidential communication was made in the manner and context which places the duly ordained minister of religion specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

A confession or confidential communication made under any other circumstances does not fall under this exemption.

Idaho Code § 16-1620 (Supp. 1998)

Any privilege between husband and wife, or between any professional person except the lawyer-client privilege, including but not limited to physicians, counselors, hospitals, clinics, day-care centers and schools and their clients shall not be grounds for excluding evidence at any proceeding regarding the abuse, abandonment or neglect of the child or the cause thereof.

ILLINOIS

325 Ill. Comp. Stat. Ann. 5/4 (West, WESTLAW through Ill. 2001 Legis. Serv., P.A. 92-16);
720 Ill. Comp. Stat. Ann. 5/11-20.2 (West 1998)

WHO MUST REPORT

- Physicians; residents; interns; hospitals; hospital administrators and personnel engaged in examination, care, and treatment of persons; surgeons; physician assistants; dentists; dental hygienists; osteopaths; chiropractors; podiatrists; coroners; medical examiners; emergency medical technicians; registered nurses; licensed practical nurses; acupuncturists; respiratory care practitioners; advanced practice nurses; home health aides;
- School personnel; educational advocates assigned to a child pursuant to the law; directors or staff assistants of nursery schools or child day-care centers; recreational program or facility personnel; child care workers; homemakers;
- Substance abuse treatment personnel; crisis line or hotline personnel; social workers; domestic violence program personnel; registered psychologists and assistants working under the direct supervision of psychologists; psychiatrists; Christian Science practitioners;
- Social services administrators; supervisors and administrators of general assistance; foster parents; field personnel of the Illinois Department of Public Aid, Public Health, Human Services, Corrections, Human Rights, or Children and Family Services;
- Truant officers; law enforcement officers; probation officers; funeral home directors or employees;
- Commercial film and photographic print processors.

CIRCUMSTANCES

- When they have reasonable cause to believe a child known to them in their professional or official capacity may be an abused or neglected child;
- Commercial film and photographic print processors must report when they have knowledge of or observe, within the scope of their professional capacities or employments, any film, photograph, videotape, negative, or slide which depicts a child whom the processors know or reasonably should know to be under the age of 18 where such child is actually or by simulation:
 - Engaged in any act of sexual intercourse with any person or animal;
 - Engaged in any act of sexual contact involving the sex organs of the child and the mouth, anus, or sex organs of another person or animal, or which involves the mouth, anus, or sex organs of the child and the sex organs of another person or animal;
 - Engaged in any act of masturbation;
 - Portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal;
 - Engaged in any act of excretion or urination within sexual context; or
 - Portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context.

PRIVILEGED COMMUNICATIONS

325 Ill. Comp. Stat. Ann. 5/4 (West, WESTLAW through Ill. 2001 Legis. Serv., P.A. 92-16)

The privileged quality of communication between any professional person required to report and his or her patient or client shall not apply to situations involving abused or neglected children and shall not constitute grounds for failure to report.

INDIANA

Ind. Code Ann. §§ 31-33-5-1; 31-33-5-2 (Michie 1997)

WHO MUST REPORT

- Any individual;
- Any staff member of a medical or other public or private institution, school, facility, or agency.

CIRCUMSTANCES

- When they have reason to believe that a child is a victim of child abuse or neglect.

PRIVILEGED COMMUNICATIONS

Ind. Code Ann. § 31-32-11-1 (Michie 1997)

The following privileged communications are not grounds for failing to report as required by the reporting laws:

- Between a husband and wife;
- Between a health care provider and that health care provider's patient;
- Between a certified social worker, certified clinical social worker, or certified marriage and family therapist and a client of any of these professionals; or
- Between a school counselor or psychologist and a student.

IOWA

Iowa Code Ann. §§ 232.69(1)(a)-(b) (West, WESTLAW through Iowa 2001 Legis. Serv., Ch. 122); 728.14(1) (West Supp. 1998)

WHO MUST REPORT

- Social workers; certified psychologists;

- Licensed school employees; certified paraeducators; holders of coaching authorizations under § 272.31;
- Employees or operators of:
 - Public or private health care facilities;
 - Licensed child care centers, registered child care homes, Head Start programs, family development and self-sufficiency grant programs, or healthy opportunities for parents to experience success—healthy families Iowa programs;
 - Substance abuse programs or facilities;
 - Juvenile detention or juvenile shelter care facilities,;
 - Foster care facilities licensed or approved as such; or
 - Mental health centers;
- Employees of Department of Human services institutions;
- Peace officers, counselors, or mental health professionals;
- Commercial film and photographic print processors.

CIRCUMSTANCES

Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused is required to report. This provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease, unless law requires otherwise.

Any of the above persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse is required to report.

A commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, or slide which depicts a minor whom the processor knows or reasonably should know to be under the age of 18, engaged in a prohibited sexual act or in the simulation of a prohibited sexual act, shall report the depiction to the county attorney.

PRIVILEGED COMMUNICATIONS

Iowa Code Ann. § 232.74 (West, WESTLAW through End of 2000 Reg. Sess.)

Any statute or rule of evidence which excludes or makes privileged the testimony of a husband or wife against the other or the testimony of a health practitioner or mental health professional as to confidential communications, do not apply to evidence regarding a child's injuries or the cause of the injuries in any judicial proceeding, civil or criminal, resulting from a report pursuant to this chapter or relating to the subject matter of such a report.

KANSAS

Kan. Stat. Ann. § 38-1522(a), (b) (West, WESLAW through Kan. 2001 Legis. Serv., Ch. 154)

WHO MUST REPORT

- Persons licensed to practice the healing arts or dentistry; persons licensed to practice optometry; persons engaged in postgraduate training programs approved by the State Board of Healing Arts; licensed professional or practical nurses examining, attending, or treating a child under the age of 18; chief administrative officers of medical care facilities; emergency medical services personnel;
- Teachers, school administrators, or other employees of a school which the child is attending; persons licensed by the Secretary of Health and Environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child;
- Licensed psychologists; licensed masters level psychologists; licensed clinical psychotherapists; licensed marriage and family therapists; licensed social workers; licensed clinical marriage and family therapists; licensed professional counselors; licensed clinical professional counselors; registered alcohol and drug abuse counselors;
- Firefighters; mediators appointed under the law; law enforcement officers; juvenile intake and assessment workers.

CIRCUMSTANCES

- When they have reason to suspect that a child has been injured as a result of physical, mental, or emotional abuse or neglect, or sexual abuse;
- When they know of the death of a child.

KENTUCKY

Ky. Rev. Stat. Ann. § 620.030(1), (2) (Michie Supp. 1998)

WHO MUST REPORT

- Physicians; osteopathic physicians; nurses; coroners; medical examiners; residents; interns; chiropractors; dentists; optometrists; emergency medical technicians; paramedics; health professionals;
- Teachers; school personnel; child-caring personnel;
- Social workers; mental health professionals;
- Peace officers;
- Any organization or agency for any of the above persons;
- Any persons.

continues

CIRCUMSTANCES

- When they know or have reasonable cause to believe that a child is dependent, neglected, or abused.

PRIVILEGED COMMUNICATIONS

Ky. Rev. Stat. Ann. § 620.050(2) (Michie Supp. 1998)

Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report, or for excluding evidence regarding a dependent, neglected or abused child thereof, in any judicial proceedings resulting from a report.

LOUISIANA

La. Children's Code Ann. art. 603(13) (West, WESTLAW through all 2001 Reg. & Ex. Sess.); 609(A)(1) (West 1995); 610(F) (West Supp. 1999)

WHO MUST REPORT

Any of the following individuals performing their occupational duties:

- Health practitioners, including, but not limited to, physicians, surgeons, physical therapists, dentists, residents, interns, hospital staff members, podiatrists, chiropractors, licensed nurses, nursing aides, dental hygienists, emergency medical technicians, paramedics, optometrists, coroners, or medical examiners;
- Mental health or social service practitioners, including psychiatrists, psychologists, marriage or family counselors, social workers, aides, or other individuals who provide counseling services to children and their families;
- Teachers or child care providers, including, but not limited to, school principals, teacher's aides, school staff members, foster home parents, or group home or other child care institutional staff members; personnel of residential home facilities, day care providers, or any individuals who provide such services to children;
- Police officers, law enforcement officials, probation officers;
- Commercial film or photographic print processors;
- Mediators.

CIRCUMSTANCES

- When they have cause to believe that:
 - A child's physical or mental health or welfare is endangered as a result of abuse or neglect; or
 - Abuse or neglect was a contributing factor in a child's death;

- Commercial film or photographic print processors must report when they have knowledge of or observe, within the scope of their professional capacities or employments, any film, photograph, videotape, negative, or slide depicting a child who they know or should know is under the age of 17 years which constitutes child pornography.

PRIVILEGED COMMUNICATIONS

La. Children's Code Ann. art. 603(13)(b) (West, WESTLAW through all 2001 Reg. & Ex. Sess.)

When a priest, rabbi, duly ordained minister, or Christian Science practitioner has acquired knowledge of abuse or neglect from a person during a confession or other sacred communication, he shall encourage that person to report but shall not be a mandatory reporter of that information given in confession or sacred communication.

La. Children's Code Ann. art. 609(A)(1) (West 1995)

Notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall report in accordance with the reporting laws.

MAINE

Me. Rev. Stat. Ann. tit. 22, § 4011-A(1) (West, WESTLAW through 2001 1st Reg. Sess.)

WHO MUST REPORT

- Allopathic or osteopathic physicians; residents; interns; emergency medical services persons; medical examiners; physicians' assistants; dentists; dental hygienists; dental assistants; chiropractors; podiatrists; registered or licensed practical nurses; home health aides; medical or social service workers;
- Teachers; guidance counselors; school officials; child care personnel; children's summer camp administrators or counselors;
- Social workers; psychologists; mental health professionals;
- Court Appointed Special Advocates; guardians *ad litem*; homemakers; law enforcement officials; State or municipal fire inspectors; municipal code enforcement officials; municipal fire inspectors; chairs of licensing boards that have jurisdiction over mandated reporters;
- Commercial film and photographic print processors;
- Clergy members acquiring the information as a result of clerical professional work except for information received during confidential communications; or
- Any other person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, whether or not the person receives compensation.

CIRCUMSTANCES

- When, while acting in a professional capacity, they know or have reasonable cause to suspect that a child has been or is likely to be abused or neglected.

PRIVILEGED COMMUNICATIONS

Me. Rev. Stat. Ann. tit. 22, § 4011-A(1) (West, WESTLAW through 2001 1st Reg. Sess.)

A clergy member shall report except for information received during confidential communications.

Me. Rev. Stat. Ann. tit. 22, § 4015 (West 1992)

The husband-wife and physician and psychotherapist-patient privileges and the confidential quality of communication are abrogated in relation to required reporting, cooperating with the department or guardian *ad litem* in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department shall be kept confidential and may not be disclosed by the department except as provided by law.

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated may not be used against the client in a criminal proceeding except to rebut the client's testimony contradicting those statements. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.

MARYLAND

Md. Code Ann. Fam. Law §§ 5-704(a)(1); 5-705(a)(1) (Lexis, WESTLAW through 2000 Reg. Sess.)

WHO MUST REPORT

- The following persons, acting in a professional capacity:
 - Health practitioners;
 - Educators or human service workers; or
 - Police officers;
- Any other persons.

CIRCUMSTANCES

- When they have reason to believe that a child has been subjected to abuse or neglect.

continues

PRIVILEGED COMMUNICATIONS

Md. Code Ann. Fam. Law § 5-705(a)(2), (a)(3) (Lexis, WESTLAW through 2000 Reg. Sess.)

A person is not required to provide notice under paragraph (1) of this subsection:

- In violation of the attorney-client privilege;
- If the notice would disclose matter communicated in confidence by a client to the client's attorney or other information relating to the representation of the client; or
- In violation of any constitutional right to assistance of counsel.

A minister of the gospel, clergyman, or priest of an established church of any denomination is not required to provide notice if the notice would disclose matter in relation to any communication that is protected by the clergy-penitent privilege and:

- The communication was made to the minister, clergyman, or priest in a professional character in the course of discipline enjoined by the church to which the minister, clergyman, or priest belongs; and
- The minister, clergyman, or priest is bound to maintain the confidentiality of that communication under canon law, church doctrine, or practice.

MASSACHUSETTS

Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998)

WHO MUST REPORT

- Physicians; medical interns; hospital personnel engaged in the examination, care, or treatment of persons; medical examiners; emergency medical technicians; dentists; nurses; chiropractors; podiatrists; optometrists; osteopaths; psychiatrists;
- Public or private school teachers; educational administrators; day-care workers or persons paid to care for or work with children in public or private facilities, or homes or programs funded or licensed by the State which provide day-care or residential services to children or which provide the services of child care resource and referral agencies, voucher management agencies, family day-care systems and child care food programs; school attendance officers;
- Psychologists; social workers; licensed allied mental health and human services professionals; drug and alcoholism counselors; clinical social workers; guidance or family counselors;
- Probation officers; clerk/magistrates of district courts; parole officers; foster parents; firefighters or police officers; office for children licensors.

continues

CIRCUMSTANCES

When, in their professional capacities, they have reasonable cause to believe that a child under age 18 is:

- Suffering physical or emotional injury resulting from abuse inflicted upon him or her which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse;
- Suffering from neglect, including malnutrition; or
- Determined to be physically dependent upon an addictive drug at birth.

PRIVILEGED COMMUNICATIONS

Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998)

Any privilege established by statutes regarding social worker and client or psychotherapist and patient confidential communications shall not prohibit the filing of a report pursuant to the provisions of the reporting laws.

Mass. Gen. Laws Ann. ch. 119, § 51B (West Supp. 1998)

Notwithstanding any privilege created by statute or common law relating to confidential communications or any statute prohibiting the disclosure of information, any person required to make a report pursuant to the reporting law who has information which he believes might aid the Department of Social Services in determining whether a child has been abused or neglected pursuant to an investigation under this section shall, if requested by the Department, disclose such information relevant to the specific investigation to the Department. Such statutory or common law privileges shall not preclude the admission of any such information in any civil proceeding concerning abuse or neglect of a child, placement or custody of a child.

MICHIGAN

Mich. Comp. Laws Ann. § 722.623 (1), (8) (West, WESTLAW through 1999 Reg. Sess.)

WHO MUST REPORT

- Physicians; coroners; dentists; registered dental hygienists; medical examiners; nurses; persons licensed to provide emergency medical care; audiologists;
- School administrators; school counselors; school teachers; regulated child care providers;
- Psychologists; marriage and family therapists; licensed professional counselors; certified social workers; social workers; social work technicians;
- Law enforcement officers.

continues

CIRCUMSTANCES

- When they have reasonable cause to suspect child abuse or neglect;
- The pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age shall be reasonable cause to suspect child abuse and neglect have occurred.

PRIVILEGED COMMUNICATIONS

Mich. Comp. Laws Ann. § 722.631 (West, WESTLAW through 1999 Reg. Sess.)

Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report.

MINNESOTA

Minn. Stat. Ann. § 626.556, Subd. 3(a) (West, WESTLAW through 2001 1st Sp. Sess.)

WHO MUST REPORT

- A professional or professional's delegate who is engaged in the practice of:
 - The healing arts; hospital administration; psychiatric treatment;
 - Child care; education;
 - Psychological treatment;
 - Social services;
 - Law enforcement;
- A clergy member who receives the information while engaged in ministerial duties, provided that he or she is not required to report information that is otherwise privileged by law.

CIRCUMSTANCES

When they know or have reason to believe a child:

- Is being neglected or physically or sexually abused;
- Has been neglected or physically or sexually abused within the preceding 3 years.

PRIVILEGED COMMUNICATIONS

Minn. Stat. Ann. § 626.556, Subd. 3(a), 8 (West, WESTLAW through 2001 1st Sp. Sess.)

A clergy member who receives the information while engaged in ministerial duties shall report when he knows or has reason to believe a child is neglected or physically or sexually abused,

provided that he or she is not required to report information that is otherwise privileged under § 595.02(1)(c).

No evidence relating to the neglect or abuse of a child or to any prior incidents of neglect or abuse involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of privilege set forth in § 595.02, Subd. 1, paragraphs (a), (d), or (g) [regarding husband-wife, medical practitioner-patient, or mental health professional-client privilege].

MISSISSIPPI

Miss. Code Ann. § 43-21-353(1) (Supp. 1998)

WHO MUST REPORT

- Physicians; dentists; interns; residents; nurses;
- Public or private school employees; child care givers;
- Psychologists; social workers;
- Attorneys; ministers; law enforcement officers;
- Any other persons.

CIRCUMSTANCES

- When they have reasonable cause to suspect that a child is an abused or neglected child.

MISSOURI

Mo. Ann. Stat. §§ 210.115(1) (West, WESTLAW through End of 2000 2nd Reg. Sess.); 568.110 (West, WESTLAW through End of 2001 1st Reg. Sess. & 1st Ex. Sess.)

WHO MUST REPORT

- Physicians; medical examiners; coroners; dentists; chiropractors; optometrists; podiatrists; residents; interns; nurses; hospital and clinic personnel that are engaged in the examination, care, treatment, or research of persons; other health care practitioners;
- Day-care center workers or other child care workers; teachers; principals; other school officials;
- Psychologists; mental health practitioners; social workers; Christian Science practitioners;
- Juvenile officers; probation officers; parole officers; peace officers; law enforcement officials; jail or detention center personnel;
- Other persons with responsibility for the care of children;
- Commercial film and photographic print processors; computer providers; or Internet service providers.

CIRCUMSTANCES

- When they have reasonable cause to suspect that a child has been or may be subjected to abuse or neglect;
- When they observe a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect;
- Commercial film and photographic print processors must report when they have knowledge of or observe, within the scope of their professional capacity or employment, any film, photograph, videotape, negative, slide, or computer-generated image or picture depicting a child under the age of 17 years engaged in an act of sexual conduct.

PRIVILEGED COMMUNICATIONS

Mo. Ann. Stat. § 210.140 (West, WESTLAW through End of 2001 1st Reg. Sess. & 1st Ex. Sess.)

Any legally recognized privileged communication, except that between attorney and client, or involving communications made to a minister or clergyman, shall not apply to situations involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required or permitted, to cooperate with the division in any of its activities, or to give or accept evidence in any judicial proceeding relating to child abuse or neglect.

MONTANA

Mont. Code Ann. § 41-3-201(1)-(2) (WESTLAW through 2001 Reg. Sess.)

WHO MUST REPORT

- Physicians; residents; interns; members of hospitals' staffs engaged in the admission, examination, care, or treatment of persons; nurses; osteopaths; chiropractors; podiatrists; medical examiners; coroners; dentists; optometrists; any other health professionals;
- School teachers; other school officials; employees who work during regular school hours; operators or employees of any registered or licensed day-care or substitute care facility; any other operators or employees of child care facilities;
- Mental health professionals; social workers;
- Christian Science practitioners; religious healers; foster care, residential, or institutional workers; members of clergy; guardians *ad litem*, court appointed advocates authorized to investigate a report;
- Peace officers; other law enforcement officials;
- Staff of a resource and referral grant program organized under § 52-2-711 or of a child and adult food care program; or employees of an entity that contracts with the department to provide direct services to children.

continues

CIRCUMSTANCES

- When they know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected.

PRIVILEGED COMMUNICATIONS

Mont. Code Ann. § 41-3-201(4) (WESTLAW through 2001 Reg. Sess.)

Except as provided in the subsections below, a person listed as a mandated reporter may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

A clergyperson or priest is not required to make a report under this section if:

- The knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in that person's capacity as a clergyperson or priest;
- The statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and
- The person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

NEBRASKA

Neb. Rev. Stat. Ann. § 28-711(1) (Michie 1995)

WHO MUST REPORT

- Physicians; medical institutions; nurses;
- School employees;
- Social workers;
- Any other persons.

CIRCUMSTANCES

- When they have reasonable cause to believe that a child has been subjected to abuse or neglect;
- When they observe a child being subjected to conditions or circumstances which reasonably would result in abuse or neglect.

continues

PRIVILEGED COMMUNICATIONS

Neb. Rev. Stat. Ann. § 28-714 (Michie 1995)

The privileged communication between patient and physician, between client and professional counselor, and between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to the reporting laws.

NEVADA

Nev. Rev. Stat. Ann. § 432B.220(3), (5) (WESTLAW through Nev. 2001 Legis. Serv., Ch. 152 & 260)

WHO MUST REPORT

- Physicians; dentists; dental hygienists; chiropractors; optometrists; pediatric physicians; medical examiners; residents; interns; professional or practical nurses; physician assistants;
- Advanced emergency medical technicians; other persons providing medical services licensed or certified in this State; any personnel of hospitals or similar institutions engaged in the admission, examination, care, or treatment of persons; administrators, managers, or other persons in charge of hospitals or similar institutions upon notification of suspected child abuse or neglect by staff members;
- Coroners;
- School administrators, teachers, or librarians; school counselors;
- Any persons who maintain or are employed by facilities or establishments that provide care for children, children's camps, or other facilities, institutions, or agencies furnishing care to children;
- Psychiatrists; psychologists; marriage and family therapists; alcohol or drug abuse counselors; social workers;
- Any persons who maintain, are employed by, or serve as volunteers for agencies or services that advise persons regarding child abuse or neglect and refer them to persons and agencies where their requests and needs can be met;
- Clergymen, practitioners of Christian Science, or religious healers, unless they have acquired the knowledge of the abuse or neglect from the offenders during confessions;
- Persons licensed to conduct foster homes;
- Officers or employees of law enforcement agencies; adult or juvenile probation officers; attorneys, unless they have acquired the knowledge of the abuse or neglect from clients who are, or may be, accused of the abuse or neglect; and
- Any person who is employed by or serves as a volunteer for an approved youth shelter.

CIRCUMSTANCES

- When they, in their professional or occupational capacities, know or have reason to believe that a child has been abused or neglected;

- When they have reasonable cause to believe that a child has died as a result of abuse or neglect.

PRIVILEGED COMMUNICATIONS

Nev. Rev. Stat. Ann. § 432B.250 (WESTLAW through Nev. 2001 Legis. Serv., Ch. 1)

Any person who is required to make a report may not invoke any of the privileges set forth in statute:

- For his failure to make a report pursuant to § 432B.220;
- In cooperating with an agency which provides child welfare services or a guardian *ad litem* for a child; or
- In any proceeding held pursuant to the child protection laws.

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 169-C:29 (1994)

WHO MUST REPORT

- Physicians; surgeons; county medical examiners; psychiatrists; residents; interns; dentists; osteopaths; optometrists; chiropractors; registered nurses; hospital personnel (engaged in admission, examination, care, and treatment of persons);
- Teachers; school officials; school nurses; school counselors; day-care workers; any other child or foster care workers; social workers;
- Psychologists; therapists; Christian Science practitioners; priests; ministers; rabbis;
- Law enforcement officials;
- Any other persons.

CIRCUMSTANCES

- When they have reason to suspect that a child has been abused or neglected.

PRIVILEGED COMMUNICATIONS

N.H. Rev. Stat. Ann. § 169-C:32 (West, WESTLAW through 2001 Reg. Sess.)

The privileged quality of communication between husband and wife and any professional person [including a priest, minister, or rabbi] and his patient or client, except that between attorney and client, shall not apply to proceedings instituted pursuant to this chapter and shall not constitute grounds for failure to report as required by this chapter.

NEW JERSEY

N.J. Stat. Ann. § 9:6-8.10 (West 1993)

WHO MUST REPORT

- Any person.

CIRCUMSTANCES

Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Youth and Family Services by telephone or otherwise.

NEW MEXICO

N.M. Stat. Ann. § 32A-4-3(A) (Michie Supp. 1998)

WHO MUST REPORT

- Every person;
- Licensed physicians, residents, or interns examining, attending, or treating a child;
- Law enforcement officers; judges presiding during any proceeding;
- Registered nurses; visiting nurses;
- Schoolteachers or school officials; or
- Social workers.

CIRCUMSTANCES

Any mandated reporter, acting in an official capacity, who knows or has a reasonable suspicion that a child is an abused or a neglected child.

PRIVILEGED COMMUNICATIONS

N.M. Stat. Ann. § 32A-4-5(A) (Michie 1995)

In any proceeding alleging neglect or abuse under law resulting from a report required, or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

NEW YORK

N.Y. Soc. Serv. Law § 413(1) (West, WESTLAW through L. 2001)

WHO MUST REPORT

- Physicians; registered physician assistants; surgeons; medical examiners; coroners; dentists; dental hygienists; osteopaths; optometrists; chiropractors; podiatrists; residents; interns; registered nurses; emergency medical technicians; hospital personnel engaged in the admission, examination, care or treatment of persons; or a Christian Science practitioner;
- School officials; social services workers; day-care center workers; providers of family or group family day-care; employees or volunteers in a residential care facility; or any other child care or foster care worker;
- Psychologists, mental health professionals; substance abuse counselors; or alcoholism counselors;
- Peace officers; police officers; district attorneys or assistant district attorneys; investigators employed in the office of a district attorney; or other law enforcement officials.

CIRCUMSTANCES

- When they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child; or
- When they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and States from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child.

NORTH CAROLINA

N.C. Gen. Stat. § 7B-301 (West, WESTLAW through 2000 Reg. Sess.)

WHO MUST REPORT

- Any person or institution.

CIRCUMSTANCES

- When they have cause to suspect that any juvenile is abused, neglected, dependent, or has died as a result of maltreatment.

continues

PRIVILEGED COMMUNICATIONS

N.C. Gen. Stat. § 7B-310 (West, WESTLAW through 2000 Reg. Sess.)

No privilege shall be grounds for any person or institution failing to report that a juvenile may have been abused, neglected, or dependent, even if the knowledge or suspicion is acquired in an official professional capacity, except when the knowledge 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 in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse, neglect, or dependency is in issue nor in any judicial proceeding resulting from a report submitted under this Article, both as this privilege relates to the competency of the witness and to the exclusion of confidential communications.

NORTH DAKOTA

N.D. Cent. Code § 50-25.1-03 (Supp. 1997)

WHO MUST REPORT

- Physicians; nurses; dentists; optometrists; medical examiners or coroners; or any other medical or mental health professionals or religious practitioners of the healing arts;
- Schoolteachers or administrators; school counselors; addiction counselors; social workers; day-care center or any other child care workers;
- Police or law enforcement officers, or members of the clergy.

CIRCUMSTANCES

When they have knowledge of or reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity.

PRIVILEGED COMMUNICATIONS

N.D. Cent. Code § 50-25.1-03 (Supp. 1997)

A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of a spiritual advisor.

N.D. Cent. Code § 50-25.1-10 (Supp. 1997)

Any privilege of communication between husband and wife or between any professional person and the person's patient or client, except between attorney and client, is abrogated and does not

constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding child abuse, neglect, or death resulting from abuse or neglect resulting from a report made under this chapter.

OHIO

Ohio Rev. Code Ann. § 2151.421(A)(1)(b) (West, WESTLAW through 2000 portion of 123rd Gen. Assem.)

WHO MUST REPORT

- Physicians, including hospital interns or residents; dentists; podiatrists; practitioners of limited branches of medicine or surgery; registered nurses; licensed practical nurses; visiting nurses; other health care professionals; speech pathologists; audiologists; coroners;
- Licensed school psychologists; administrators or employees of child day-care centers, certified child care agencies, or other children services agencies; residential camps, or day camps; school teachers; school employees; school authorities;
- Licensed psychologists; social workers; counselors;
- Persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion;
- Attorneys.

CIRCUMSTANCES

Ohio Rev. Code Ann. § 2151.421(A)(1)(a) (West, WESTLAW through 2000 portion of 123rd Gen. Assem.)

When they are acting in their official or professional capacities and know or suspect that a child under 18 years or a mentally retarded, developmentally disabled, or physically impaired child under 21 years has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates child abuse or neglect.

PRIVILEGED COMMUNICATIONS

Ohio Rev. Code Ann. § 2151.421(A)(2), (G)(1)(b) (West, WESTLAW through 2000 portion of 123rd Gen. Assem.)

An attorney or a physician is not required to make a report concerning any communication made to him or her by one of his or her clients in the attorney-client relationship or the physician-patient relationship if the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding, except that the client/patient is deemed to have waived any testimonial privilege with respect to that communication and the attorney or physician shall make a report with respect to that communication, if all of the following apply:

- The client or patient, at the time of the communication, is either a child under 18 years of age or a physically or mentally handicapped person under 21 years of age;
- The attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient; and
- The attorney-client relationship or the physician-patient relationship does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian.

The physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect, in any judicial proceeding resulting from a report submitted pursuant to the reporting laws.

OKLAHOMA

Okla. Stat. Ann. tit. 10, § 7103(A)(1) (West, WESTLAW through 2000 1st Ex. Sess.); tit. 10, § 7104 (West, WESTLAW through 2001 1st Ex. Sess.); tit. 21, § 1021.4 (West Supp. 1998)

WHO MUST REPORT

- Physicians or surgeons, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending, or treating a child under the age of 18 years;
- Registered nurses examining, attending, or treating such child in the absence of physicians or surgeons;
- Teachers of any child under the age of 18 years;
- Commercial film and photographic print processors;
- Any other person.

CIRCUMSTANCES

- When they have reason to believe that a child under the age of 18 years is a victim of abuse or neglect;
- When a health care professional examines, attends, or treats the victim of what appears to be criminally injurious conduct, including, but not limited to, child physical or sexual abuse.
- When a health care professional attends the birth of a child who tests positive for alcohol or a controlled dangerous substance;
- When any commercial film and photographic print processor has knowledge of or observes, within the scope of his professional capacity or employment, any film, photograph, video tape, negative, or slide, depicting a child under the age of 18 years engaged in an act of sexual conduct.

PRIVILEGED COMMUNICATIONS

Okla. Stat. Ann. tit. 10, § 7113 (West 1998)

In any proceeding resulting from a report made pursuant to the reporting laws or in any proceeding where such a report or any contents of the report are sought to be introduced into evidence, such report, contents, or other fact related thereto or to the condition of the child or victim who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

OREGON

Or. Rev. Stat. Ann. § 419B.005(3) (WESTLAW through Or. 2001 Legis. Serv., Ch. 104)

WHO MUST REPORT

Public or private officials:

- Physicians, including interns or residents; dentists; school employees; licensed practical nurses or registered nurses;
- Employees of the Department of Human Resources, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health and developmental disabilities program, a county juvenile department, a licensed child-caring or an alcohol and drug treatment program;
- Peace officers; psychologists; members of clergy; licensed clinical social workers; optometrists; chiropractors; certified providers of foster care; or employees thereof;
- Attorneys; naturopathic physicians; licensed professional counselors; licensed marriage and family therapists; firefighters; emergency medical technicians; court appointed special advocates; child care providers.

CIRCUMSTANCES

Or. Rev. Stat. Ann. § 419B.010(1) (WESTLAW through Or. 2001 Legis. Serv., Ch. 904)

When they have reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child.

PRIVILEGED COMMUNICATIONS

Or. Rev. Stat. Ann. § 419B.010(1) (WESTLAW through Or. 2001 Legis. Serv., Ch. 104 & 904)

Nothing shall affect the duty to report imposed by the reporting laws, except that a psychiatrist, psychologist, member of clergy or attorney shall not be required to report such information communicated by a person if the communication is privileged under the law.

An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client, if disclosure of the information would be detrimental to the client.

PENNSYLVANIA

23 Pa. Cons. Stat. Ann. § 6311(a)-(b) (West Supp. 1998)

WHO MUST REPORT

- Licensed physicians, osteopaths, medical examiners coroners, funeral directors, dentists, optometrists, chiropractors, podiatrists, interns, registered nurses, licensed practical nurses, hospital personnel engaged in the admission, examination, care or treatment of persons, Christian Science practitioners;
- Members of the clergy, school administrators, school teachers, school nurses, social services workers, day-care center workers or any other child-care or foster-care workers, mental health professionals, peace officers or law enforcement officials.

CIRCUMSTANCES

When, in the course of their employment, occupation or practice of their profession, they come into contact with children who they have reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child.

PRIVILEGED COMMUNICATIONS

23 Pa. Cons. Stat. Ann. § 6311(a) (West Supp. 1998)

Except with respect to confidential communications made to an ordained member of the clergy which are protected under law relating to confidential communications to clergymen, the privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

RHODE ISLAND

R.I. Gen. Laws §§ 40-11-3(a) (Lexis, WESTLAW through End of 2000 Reg. Sess.); 40-11-6(a) (1997)

WHO MUST REPORT

- Any person;
- Any physician or duly certified registered nurse practitioner.

CIRCUMSTANCES

- When they have reasonable cause to know or suspect that any child:
 - Has been abused or neglected;
 - Has been a victim of sexual abuse by another child;
- When any physician or duly certified registered nurse practitioner have cause to suspect that a child brought to them or coming to them for examination, care, or treatment is an abused or neglected child or when they determine that a child under the age of 12 years is suffering from any sexually transmitted disease.

PRIVILEGED COMMUNICATIONS

R.I. Gen. Laws § 40-11-11 (1997)

The privileged quality of communication between husband and wife and any professional person and his or her patient or client, except that between attorney and client, is hereby abrogated in situations involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required by this chapter, failure to cooperate with the department in its activities pursuant to this chapter, or failure to give or accept evidence in any judicial proceeding relating to child abuse or neglect. In any family court proceeding relating to child abuse or neglect, notwithstanding the provisions of other statutes, no privilege of confidentiality may be invoked with respect to any illness, trauma, incompetency, addiction to drugs, or alcoholism of any parent.

SOUTH CAROLINA

S.C. Code Ann. § 20-7-510(A) (WESTLAW through End of 2001 Reg. Sess.)

WHO MUST REPORT

- Physicians; nurses; dentists; optometrists; medical examiners or coroners; employees of county medical examiners' or coroners' offices; any other medical, emergency medical services, or allied health professionals;

Mandatory Reporters of Child Abuse and Neglect

- School teachers or counselors; child care workers in any day-care centers or foster care facilities; principals; assistant principals;
- Any mental health professionals; Christian Science practitioners; religious healers; social or public assistance workers; substance abuse treatment staff;
- Police or law enforcement officers; judges; undertakers; funeral home directors; or employees of funeral homes;
- Persons responsible for the processing of films; computer technicians.

CIRCUMSTANCES

- When, in their professional capacity, the person has received information which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect.

PRIVILEGED COMMUNICATIONS

S.C. Code Ann. § 20-7-550 (Law. Co-op. Supp. 1998)

The privileged quality of communication between husband and wife and any professional person and his patient or client, except for that between an attorney and client or priest and penitent, is abrogated and does not constitute grounds for failure to report, or the exclusion of evidence in a civil protective proceeding resulting from a report.

SOUTH DAKOTA

S.D. Codified Laws § 26-8A-3 (WESTLAW through End of 2000 Reg. Sess.)

WHO MUST REPORT

- Physicians; dentists; doctors of osteopathy; chiropractors; optometrists; podiatrists; hospital interns or residents; nurses; coroners;
- Teachers; school counselors; school officials; licensed or registered child welfare providers;
- Mental health professionals or counselors; psychologists; social workers; chemical dependency counselors; employees or volunteers of domestic abuse shelters; religious healing practitioners;
- Parole or court services officers; law enforcement officers;
- Any safety-sensitive position, as defined in § 23-3-64 [any law enforcement officer authorized to carry firearms and any custody staff employed by any agency responsible for the rehabilitation or treatment of any adjudicated adult or juvenile].

CIRCUMSTANCES

- When they have reasonable cause to suspect that a child under the age of 18 has been abused or neglected.

PRIVILEGED COMMUNICATIONS

S.D. Codified Laws § 26-8A-15 (Michie 1992)

The privilege of confidentiality set forth in statutes regarding physician-patient privilege, husband-wife privilege, school counselor-student privilege, and social worker-client privilege may not be claimed in any judicial proceeding involving an alleged abused or neglected child or resulting from the giving or causing the giving of a report concerning abuse or neglect of a child pursuant to the reporting laws.

TENNESSEE

Tenn. Code Ann. § 37-1-403(a); 37-1-605(a) (WESTLAW through End of 2001 1st Reg. Sess.)

WHO MUST REPORT

- Physicians; osteopathic physicians; medical examiners; chiropractors; nurses or hospital personnel engaged in the admission, examination, care, or treatment of persons; other health or mental health professionals;
- School teachers; other school officials or personnel; day-care center workers; other professional child care, foster care, residential, or institutional workers;
- Social workers; practitioners who rely solely on spiritual means for healing;
- Judges of any court of the State; law enforcement officers;
- Neighbors; relatives; friends;
- Any other person.

CIRCUMSTANCES

- When they have knowledge of or are called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition which:
 - Is of such a nature as to reasonably indicate that it has been caused by brutality, abuse, or neglect; or
 - On the basis of available information, reasonably appears to have been caused by brutality, abuse, or neglect;
- When they know or have reasonable cause to suspect that a child has been sexually abused.

PRIVILEGED COMMUNICATIONS

Tenn. Code Ann. § 37-1-411 (1996)

Neither the husband-wife privilege nor psychiatrist-patient privilege nor the psychologist-patient privilege is a ground for excluding evidence regarding harm or the cause of harm to a child in

any dependency and neglect proceeding resulting from a report of such harm or a criminal prosecution for severe child abuse.

TEXAS

Tex. Fam. Code Ann. §§ 261.101(a)-(b) (West, WESTLAW through End of 2001 Reg. Sess.); 261.102 (West 1996)

WHO MUST REPORT

- Any person;
- Professionals, including teachers, nurses, doctors, day-care employees, juvenile probation officers, juvenile detention or correctional officers, and employees of a clinic or health care facility that provides reproductive services.

CIRCUMSTANCES

- When a person has cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect;
- If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected or that a child is a victim of an offense under Sec. 21.11, Penal Code;
- When the reporter believes that a child has been or may be abused or neglected or has died of abuse or neglect.

PRIVILEGED COMMUNICATIONS

Tex. Fam. Code Ann. § 261.101(c) (West, WESTLAW through End of 1999 Reg. Sess.)

The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, and an employee of a clinic or health care facility that provides reproductive services.

UTAH

Utah Code Ann. § 62A-4a-403(1) (Lexis, WESTLAW through End of 2000 Gen. Sess.)

WHO MUST REPORT

- Any person licensed under the Medical Practice Act or the Nurse Practice Act;
- Any person.

continues

CIRCUMSTANCES

- When they have reason to believe that a child has been subjected to:
 - Incest;
 - Molestation;
 - Sexual exploitation;
 - Sexual abuse;
 - Physical abuse; or
 - Neglect;
- When they observe a child being subjected to conditions or circumstances which would reasonably result in sexual abuse, physical abuse, or neglect.

PRIVILEGED COMMUNICATIONS

Utah Code Ann. § 62-4a-403(2), (3) (Lexis) WESTLAW through End of 2000 Gen. Sess.)

The reporting requirements do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, if:

- The confession was made directly to the clergyman or priest by the perpetrator; and
- The clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

When the clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, he is required to give notification on the basis of that information even though he may have also received a report of abuse or neglect from the confession of the perpetrator.

Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts require by law to prevent further abuse or neglect by the perpetrator.

Utah Code Ann. § 62A-4a-412(5) (Lexis, WESTLAW through End of 2001 Gen. Sess.)

The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to the reporting law.

VERMONT

Vt. Stat. Ann. tit. 33, § 4913(a) (Supp. 1998)

WHO MUST REPORT

- Physicians, surgeons, osteopaths, chiropractors, physician's assistants, resident physicians, interns, or hospital administrators in any hospital in this State, whether not so registered, and registered nurses, licensed practical nurses, medical examiners, dentists, psychologists, or other health care providers;
- School superintendents, school teachers, school librarians, day-care workers, school principals, school guidance counselors, mental health professionals, or social workers;
- Probation officers, police officers, camp owners, camp administrators or camp counselors.

CIRCUMSTANCES

When they have reasonable cause to believe that any child has been abused or neglected. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

VIRGINIA

Va. Code Ann. § 63.1-248.3(A) (Lexis, WESTLAW through 2001 1st Sp. Sess.)

WHO MUST REPORT

- Persons licensed to practice medicine or any of the healing arts; hospital residents or interns; persons employed in the nursing profession; other professional staff persons employed by hospitals, institutions, or facilities to which children have been committed or placed for care and treatment; duly accredited Christian Science practitioners;
- Teachers or other persons employed in public or private schools, kindergartens, or nursery schools; persons providing child care for pay on a regularly planned basis;
- Persons employed as social workers; mental health professionals; any persons associated with or employed by private organizations responsible for the care, custody, and control of children;
- Probation officers; law-enforcement officers; mediators eligible to receive court referrals; court-appointed special advocates.

CIRCUMSTANCES

- When in their professional or official capacity, they have reason to suspect that a child is an abused or neglected child.

continues

PRIVILEGED COMMUNICATIONS

Va. Code Ann. § 63.1-248.11 (Lexis, WESTLAW through 2000 Reg. Sess.)

In any legal proceeding resulting from the filing of any report or complaint pursuant to the reporting laws, the physician-patient and husband-wife privileges shall not apply.

WASHINGTON

Wash. Rev. Code Ann. § 26.44.030(1)(a)-(c), (2) (West, WESTLAW through 1999 1st Sp. Sess.)

WHO MUST REPORT

- Practitioners; county coroners or medical examiners; pharmacists; registered or licensed nurses;
- Professional school personnel; licensed or certified child care providers or their employees;
- Social service counselors; psychologists;
- Employees of the State Department of Social and Health Services; juvenile probation officers; law enforcement officers; personnel of the Department of Corrections; placement and liaison specialists;
- Responsible living skills program staff; HOPE center staff; State family and children's ombudsman or any volunteer in the ombudsman's office;
- Any adult with whom a child resides.

CIRCUMSTANCES

- When they have reasonable cause to believe that a child has suffered abuse or neglect;
- The reporting requirement does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirements shall apply.

PRIVILEGED COMMUNICATIONS

Wash. Rev. Code Ann. § 26.44.060(3) (West Supp. 1999)

Conduct conforming with the reporting requirements shall not be deemed a violation of the confidential communication privilege of §§ 5.60.060 [pertaining to husband-wife, attorney-client, clergy-penitent, and physician-patient privilege], 18.53.200 [pertaining to optometrist-patient privilege], and 18.83.110 [pertaining to psychologist-client privilege].

WEST VIRGINIA

W. Va. Code Ann. § 49-6A-2 (Lexis, WESTLAW through End of 2001 6th Ex. Sess.)

WHO MUST REPORT

- Medical, dental, or mental health professionals; emergency medical services personnel;
- School teachers or other school personnel; child care workers or foster care workers;
- Christian Science practitioners; religious healers; social service workers;
- Peace officers or law-enforcement officials; members of the clergy; circuit court judges; family law masters; employees of the division of juvenile services; or magistrates.

CIRCUMSTANCES

- When they have reasonable cause to suspect that a child is neglected or abused;
- When they observe the child being subjected to conditions that are likely to result in abuse or neglect;
- When they believe that a child has suffered serious physical abuse or sexual abuse or sexual assault.

PRIVILEGED COMMUNICATIONS

W. Va. Code Ann. § 49-6A-7 (1996)

The privileged quality of communications between husband and wife and between any professional person and his or her patient or client, except that between attorney and client, is hereby abrogated in situations involving suspected or known child abuse or neglect.

WISCONSIN

Wis. Stat. Ann. § 48.981(2), (2m)(c)-(e) (West, WESTLAW through 2001 Act 198)

WHO MUST REPORT

- Physicians; coroners; medical examiners; nurses; dentists; chiropractors; optometrists; acupuncturists; other medical or mental health professionals; physical therapists; dietitians; occupational therapists; speech-language pathologists; audiologists; emergency medical technicians;
- School teachers, administrators or counselors; child care workers in day-care centers or child caring institutions; day-care providers;
- Alcohol or other drug abuse counselors; members of the treatment staff employed by or working under contract with a county department; marriage and family therapists; professional counselors;

- Social workers; public assistance workers, including a financial and employment planner; police or law enforcement officers; mediators; court appointed special advocates.

CIRCUMSTANCES

- When they have reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected;
- When they have reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur.

The following persons are not required to report sexual intercourse or sexual contact involving a child as suspected or threatened abuse:

- Health care providers who provide any health care service to a child; or
- Persons who obtain information about a child who is receiving or has received health care services from a health care provider.

Mandated reporters shall report if they have any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse or if they have reason to suspect any of the following:

- That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver;
- That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions;
- That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact;
- That the child was unconscious at the time of the act or for any reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact; or
- That another participant in the sexual contact or sexual intercourse was exploiting the child.

WYOMING

Wyo. Stat. Ann. § 14-3-205(a) (Michie 1997)

WHO MUST REPORT

- Any person.

CIRCUMSTANCES

- Who knows or has reasonable cause to believe or suspect that a child has been abused or neglected;

- Who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

PRIVILEGED COMMUNICATIONS

Wyo. Stat. Ann. § 14-3-210 (Michie 1997)

Evidence regarding a child in any judicial proceeding resulting from a report made pursuant to the reporting laws shall not be excluded on the ground it constitutes a privileged communication:

- Between husband and wife;
- Claimed under any provision of law other than § 1-12-101(a)(i) [regarding attorney-client or physician-patient privilege] and § 1-12-101(a)(ii) [regarding privilege of a clergyman or priest as it relates to a confession made to him in his professional character if enjoined by the church to which he belongs;
- Claimed pursuant to § 1-12-116 regarding the confidential communication between a family violence and sexual assault advocate and victim.



NATIONAL CLEARINGHOUSE ON CHILD
ABUSE AND NEGLECT INFORMATION
330 C Street, SW
Washington, DC 20447
(703) 385-7565
Outside Metropolitan Area: (800) FYI-3366
<http://www.calib.com/nccanch>

Child Abuse and Neglect State Statutes Series

Ready Reference

Reporting Laws: Clergy as Mandated Reporters



U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

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This **Ready Reference** is a product of the **Child Abuse and Neglect State Statutes Series** prepared by the National Clearinghouse on Child Abuse and Neglect Information. The Clearinghouse is a service of the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

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Ready Reference publications present compilations of State statutes citations and text on subjects of special interest. They are intended to provide easy access to information on issues that are part of one or more of the Child Abuse and Neglect State Statutes *Compendium of Laws*. Legal references are current as of March 2002.

The citations for *Reporting Laws: Clergy as Mandated Reporters* are drawn from the following title in the Child Abuse and Neglect State Statutes *Compendium of Laws*: Reporting Laws: Mandatory Reporters of Child Abuse and Neglect.

Clergy's Responsibility to Report

A mandatory reporter is a person who is required to report suspected cases of child abuse and neglect. Every State and the District of Columbia have statutes identifying mandatory reporters of child maltreatment and specifying under what circumstances they are to report.

Approximately¹ 13 States (Arizona, California, Connecticut, Maine, Minnesota, Mississippi, Montana, Nevada, New Hampshire, North Dakota, Oregon, Pennsylvania, and West Virginia) currently include members of the clergy among those professionals specifically mandated by those States' reporting laws to report known or suspected instances of child abuse or neglect. In approximately 18 States (Delaware, Florida, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming²), any person who suspects child abuse or neglect is required to report. That broad language appears on its face to include clergy as well as anyone else but it is possible that the term has been interpreted otherwise.

Privileged Communications

As a doctrine of some faiths, clergy have an obligation to maintain the confidentiality of pastoral communications. Mandatory reporting statutes in some States specify when a communication is privileged. "Privileged communications" is a legal term for the statutory recognition of the right to maintain the confidentiality of communications between certain persons such as professionals and their clients or patients. Privileged communications may be exempt from the reporting laws. The privilege of maintaining this confidentiality under State law must be provided by statute³, and most States do provide the privilege in statute, typically in rules of evidence or civil procedure.⁴ If the issue of privilege is not addressed in the reporting laws summarized here, it does not mean that privilege is not granted; it may be granted in other parts of State statutes.

This privilege, however, is not absolute. While clergy-penitent privilege is frequently recognized within the reporting laws, it is typically interpreted narrowly in the child abuse or neglect context, and the circumstances under which it is allowed varies from State to State, or in some States, is denied altogether. For example, among the States that enumerate clergy as mandated reporters, New Hampshire and West Virginia deny the clergy-penitent privilege in cases of child abuse or neglect. Three of the States that enumerate "any person" as a mandated reporter (North Carolina, Rhode Island and Texas), also deny clergy-penitent privilege in child abuse cases.

¹ The word *approximately* is used throughout the State Statutes series to stress the fact that statutes are constantly being revised and updated.

² Two of these States, Mississippi and New Hampshire, also enumerate clergy as mandated reporters.

³ *American Jurisprudence*, 2nd Edition, vol. 81, p. 447. Rochester, NY: Lawyers Cooperative Publishing, 1992.

⁴ The issue of clergy-penitent privilege may also be addressed in case law, which this publication does not cover. For a fuller discussion of the issues, including significant case law, see Karen L. Ross, "Revealing Confidential Secrets: Will It Save Our Children?" *28 Seton Hall Law Review* 963 (1998); or J. Michael Keal, "Law and Religion Collide Again: The Priest-Penitent Privilege in Child Abuse Reporting Cases." *28 Cumberland Law Review* 681. (1997-1998)

Reporting Laws: Clergy as Mandated Reporters

In States where neither clergy nor "any person" are enumerated as mandated reporters, it is less clear whether clergy are included as mandated reporters within other broad categories of professionals who work with children. For example, Louisiana includes clergy among "mental health/social services practitioners" as mandated reporters, but excludes information given in "confession or sacred communication." However, in Missouri, South Carolina, and Washington, clergy are not enumerated as mandated reporters, but the clergy-penitent privilege is affirmed within the reporting laws.

The chart below summarizes how States have or have not addressed the issue of clergy as mandated reporters (either specifically or as part of a broad category) and/or clergy-penitent privilege (either limiting or denying the privilege) within their reporting laws:

| | Privilege granted but limited to "pastoral communications" | Privilege denied in cases of suspected child abuse or neglect | Privilege not addressed in the reporting laws |
|--|--|--|---|
| Clergy enumerated as mandated reporters | Arizona, California, Maine, Minnesota, Montana, Nevada, North Dakota, Oregon, Pennsylvania | New Hampshire, West Virginia | Connecticut, Mississippi |
| Clergy not enumerated as mandated reporters but may be included with "any person" designation | Delaware, Florida, Idaho, Kentucky, Maryland, Utah, Wyoming | North Carolina, Rhode Island, Texas | Indiana, Nebraska, New Jersey, New Mexico, Oklahoma, Tennessee |
| Neither clergy nor "any person" enumerated as mandated reporters | Louisiana, Missouri, South Carolina, Washington ⁵ | Not applicable | Alabama, Alaska, Arkansas, Colorado, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Kansas, Massachusetts, Michigan, New York, Ohio, South Dakota, Vermont, Virginia, Wisconsin |

⁵ Clergy are not mandated reporters in Washington, but if they elect to report, their report and any testimony are provided statutory immunity from liability.