

Mandated Reporting of Abuse of Older Adults and Adults with Disabilities

INTRODUCTION

This brief focuses on mandated reporting of abuse of older adults and adults with disabilities to Adult Protective Services (APS). While most APS programs consider mandated reporting an essential tool for addressing harm to older adults and adults with disabilities, this brief will explore the strengths of mandated reporting as well as the criticisms and questions raised by other professionals.

This brief will:

- Define mandated reporting and provide up to date information about who is required to report.
- Delve into the policy questions that arise from mandated reporting, including the pros and cons of requiring professionals and others to report. Two experts will weigh in with their divergent opinions on the topic.
- Review the available research and present the most pressing research questions.

Reporting Requirements Vary

Every state, with the exception of New York, has mandated reporters but the list of who is included varies considerably. For example, fifteen states have universal reporting. This means that *everyone* in that state is required to report abuse, neglect and exploitation as defined by that state's statute.

Many states¹ provide broad definitions of who should report (e.g. all medical personnel) making it important that professionals review the statute for their own state. These broad categories often include language such as "as defined in code section..." to help clarify who is and is not included. However, it may also be necessary to contact your local Adult Protective Services (APS) program or law enforcement office as, in some cases, legal opinions have determined that a profession that appears to be included by statute is exempt. To illustrate, in one state that requires "medical personnel" to report, counsel has determined that paramedics are not included as mandated reporters.

Across states, the most often named mandated reporters are law enforcement and medical personnel. In the Addendum to this report, you will find an up to date (as of June 2020) state by state list of each state's mandated reporter statute.



MANDATED REPORTING DEFINED

*Mandated reporting of abuse of older adults and adults with disabilities is generally defined as **the legal requirement of a specific profession to report suspected abuse, neglect and/or exploitation (ANE) of a person meeting the state's definitions of an adult eligible for special protection under the law.***

Reports are made to that entity in the state required to investigate such allegations. Such entities may include adult protective services, law enforcement, and licensing agencies, among others. State laws define a) who is a mandated reporter, b) what situations they are required to report on, c) when they are required to report, and d) to whom they are required to report. Mandated reporting laws across states vary greatly as there are no federal laws defining abuse of older adults and persons with disabilities.

Considerations for a Reporting System

As states build their reporting systems, one of the first questions they must consider is whether to make reporting mandatory. This is an issue both when first developing a system and when adding new reporters to an existing reporting system.

In the journal article “Building the adult protective services system of tomorrow: The role of the APS national voluntary consensus guidelines”², the authors described mandated reporting as a “contentious issue garnering comments from every stakeholder group.” The comments included:

- Concern that there is not an evidence-base for the belief that reporting reduces incidence of adult maltreatment.
- Lack of consensus as to who should be a mandated reporter.
- Objections by domestic violence advocates for their inclusion as mandated reporters.
- Multiple calls for further research.

The authors remarked that comments were evenly split between support of and opposition to mandated reporting. In the end, the APS national voluntary consensus guidelines identified specific professionals to consider as mandated reporters and recommended that suspected crimes related to adult maltreatment be reported to law enforcement.

Potential Risks and Advantages of Mandating Reporting

RISKS

Lisa Nerenberg's book, “Critical Topics in an Aging Society: Elder Justice, Ageism, and Elder Abuse”, explores Nina Kohn's³ question of whether some reporting laws violate the civil rights of victims. Nerenberg points out that in Kohn's analyses, reporting laws may:

- Conflict with protected communications [e.g. between spouses, professionals and their clients, and clergy and their members]
- Discourage victims from seeking help
- Damage reputations and/or relationships
- Stigmatize parties
- Disclose confidential information if adequate safeguards are not in place or not clearly understood [e.g. questions about sharing information within MDTs]
- Not meet the required justification for state involvement if mandated reporting is not more effective than voluntary reporting and/or educational efforts.

Elsewhere, Nerenberg points out that little is known about why some reporters choose to report, and others are discouraged due to distrust of the system. She also notes that, internationally, many countries have explored mandated reporting but rejected it in favor of rights-based advocacy approaches.⁴

Leigh Ann Davis, Director of Criminal Justice Initiatives, The Arc of the U.S. points out that many in the disability community believe that mandated reporting takes away the client's right to self-determination and can re-traumatize them [see [Expert Opinion](#) in this brief for her full explanation].

Additionally, in the research around this question in the field of child abuse, commentators have argued that mandated reporting leads to increased unsubstantiated reports which waste time and cause damage⁵.

ADDITIONAL CONSIDERATIONS

Additional questions states should consider when designing or revising a reporting system include:

- What types of abuse, neglect and exploitation (ANE) must be reported? Should only criminal ANE be reported?
- Which occupations must report? Are there laws that limited that profession's ability to report [e.g. attorney privilege, sacramental confession, Long Term Care Ombudsman's advocacy role]? Are reports only required when ANE is discovered in the reporter's professional capacity?
- Does requiring "everyone" to report ANE dilute the effectiveness of mandated reporting statues? How is the requirement communicated to all reporters?
- How serious does the ANE need to be to be reported? Is the level of harm the same for all types of abuse? States often use conceptual terms like 'significant harm' or "failure to provide basic care" which, while allowing the reporter to exercise his/her professional judgement, have the disadvantage of being vague. Experts⁶ recommend that legislation mandating reports should incorporate as much clarity as possible.
- Are reports required for past, present and/or suspected risk of future ANE? How is this defined?

EXPERT OPINION

Nancy Alterio

"If you see something, say something." It's such a familiar and well-worn adage that most of us overlook the responsibility it seeks to engender. While for the most part we each go about our days alone and independently—despite often being in a sea of people—we are part of something larger than ourselves.

Call it what you want—a community, or a city, or a society, or a global citizenry. We are parts of a whole. And, we owe an obligation to the greater good when we observe something that calls into question the health and safety of those around us. We do not need to rescue or render aid. But, we should, at a minimum, say something to someone who might be able to help.

Reporting suspicions is a universal concept. Mandating reporting of abuse of vulnerable people creates a system wherein those at the front lines who suspect abuse—first responders, teachers, doctors, etc.—are required to make an effort to remedy the situation and protect the individual by alerting the proper authorities. However, mandated reporting of abuse is not limited to "vulnerable" populations such as children, elders, or persons with disabilities. Most licensed professionals are, by law or code, required to report on peers when they engage in inappropriate or unethical conduct.

Employees are encouraged and protected under whistleblower laws from reporting misconduct by their employers. Mandated reporting is not unique to abuse. It extends to a wide array of circumstances and individuals, all in the promotion of the greater good.

As such, mandated reporting should not be construed as a constraint on an individual's self-determination; it should be viewed as a tool to help empower persons, including persons with disabilities who are being subjected to abuse. Safety is a cornerstone of self-determination; without feeling and being safe, self-determination is unlikely to be realized. Also, mandated reporting of abuse impacts at both an individual and societal level – it sends a message to abusers that we as a larger whole will not tolerate abusive behavior. We unite in this effort by reporting reasonable suspicions, not by remaining silent.



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Mandated reporting of abuse should not be viewed as limiting or restricting the rights of a person with a disability any more than requiring a doctor or lawyer or electrician or realtor to report the malfeasance of a peer, or recommending someone attending a concert or ballgame alert security of a suspicious package. Mandated reporting is simply an extension of the well-recognized concept that in order to have a safe and functional society, we each share a small, but powerful role in looking out for the well-being of those around us by seeking help for those in need or trying to root out bad actors.

Permitting abuse to continue by failing to report does not empower the victim, it empowers his or her abuser. Individuals are empowered when they are provided with knowledge, choice and resources, including the choice to live a life free from abuse. If we see something, whether it is in a boardroom, at the ballgame, a bus stop, or at a group home—we should say something.

EXPERT OPINION

Leigh Ann Davis

The primary goal of mandated reporting is to ensure safety of victims and potential future victims, while holding offenders accountable. The question we must ask when it comes to adults with disabilities is this: How are their lives safer when a report is made, and how are we as a society empowering or disempowering them in the goal of increasing access to safety and healing?

In this era of emphasis on supported decision making and self-determination (a process by which people control their own lives) within the disability community, how does mandatory reporting support or negate this, and the “nothing about us, without us” philosophy?

There is consensus to “assume competence” rather than assume people with disabilities do not have the ability or capacity to make decisions for themselves. How does this belief come into play when someone with a disability is being or has been abused and has no say about if, when and how the abuse is reported?

While mandated reporting can certainly increase a person's safety, has society, in its attempt to help people, neglected the impact mandatory reporting has on people with disabilities who may have little or no say about basic decisions affecting their lives? In this way, is the system re-victimizing or re-traumatizing the victim?

Other questions include:

- Does the victim fully comprehend the potential ramifications of making a report (while the ramifications can be serious and even dangerous for all people, for those with disabilities, the impact can be compounded)
- Thanks to the MeToo movement, we are becoming keenly aware of the power of people telling their stories when and how they choose. Shouldn't that decision be the victim's alone?
- The system is set up so that the victim will need to tell their story, possibly multiple times, before the criminal justice process is over. Will the person be supported through this process, and if so, how? Who works to ensure the support is available, and accessible, to people with disabilities?

Another consideration involves the aftermath of a report being filed. Victims with disabilities may have no idea of what the potential consequences might be when a report is filed. Will the mandated reporting be followed up with “mandated healing” for the victim, or will the victim be left to face the consequences alone? In this way, mandated reporting cannot be viewed as an isolated event, or seen in a vacuum. While trying to do good in a person's life, we must also strive to “do no harm.”



Director of Criminal Justice Initiatives, The Arc of the U.S.

POSSIBLE SOLUTIONS

We must take steps toward ensuring safety of people with disabilities to be able to report abuse without repercussions.

- Mandated reporters must explain, using plain language, that they are mandated reporters and what that means. They should provide accessible materials to help the person understand the basics about reporting. Mandated reporters can also ask the individual if they have any questions or concerns about the reporting process and talk through what could happen once a report is filed.
- The victim should be given the opportunity to report with the mandatory reporter to ensure the experience is a positive, empowering one.
- The victims should be provided regular updates about the case and access to the investigator anytime there are questions about what is going on, what is happening next, etc.
- While there are some people who are obligated to report, there must be other resources and people available for those with disabilities who need help after a victimization occurs but want their information to remain confidential.
- State agencies should request input and advisement from people with disabilities about their mandated reporting policies.

Perhaps the question when it comes to mandated reporting is not about if one should report or not, but is more about creating a balanced, fair and empowering process that allows victims the dignity of risk to speak their truth when they are ready. Have we done all that we can to respect their process, trust their process, and empower them to make their own decisions after victimization? That, after all, is the foundation to realizing justice and experiencing deep healing.



Research on Mandated Reporting

Although there is little research into mandated reporting of adult abuse, there is a body of research in child abuse. This issue brief relied heavily on a comprehensive review of the literature in child abuse conducted by Davies, Matthews and Read [2014] entitled “Mandatory Reporting? Issues to consider when developing legislation and policy to improve discovery of child abuse”. That study conducted a well-documented examination of the pros and cons of mandated reporting across all English-speaking countries. They found that the “most commonly identified reasons for professionals not reporting abuse and neglect are a) inadequate training in the indicators of child abuse leading to a lack of awareness of probable abusive situations, b) lack of knowledge of reporting obligations and procedure, c) fear of negative consequences for reporters, and d) fear of negative results of reporting for the child.”⁷ There is no reason to think that the same factors are not in play in adult abuse cases.

An older report by the Government Accountability Office (GAO), “ELDER ABUSE: Effectiveness of Reporting Laws and Other Factors” did not find enough evidence to support the case for mandatory reporting. In its concluding observations, the report stated: “State officials we surveyed agree that other factors – such as public awareness campaigns, interagency coordination, and in-home services and respite care – are more important than reporting laws.”⁸

THE CHALLENGES TO RESEARCHING MANDATED REPORTING AND ELDER ABUSE IN GENERAL

The lack of uniformity in definitions of adult ANE and who is required to report has negatively impacted national efforts to trace and combat adult abuse according to the CDC⁹. This lack of uniformity causes methodological problems when researchers attempt to collect and analyze data. For this reason, the CDC has recommended the adoption of uniform definitions to improve research into the scope and nature of elder abuse.

LACK OF EVIDENCE THAT MANDATED REPORTING INCREASES CLIENT SAFETY

There is currently no research into whether or not mandated reporting increases the safety of APS clients. And, surprisingly, there is also no definitive research that children are safer in jurisdictions across the globe where mandated reporting is required. As a result of this, we are unable to draw any conclusions from that literature.

What is clear from the child abuse literature, according to Davies, Mathews and Read [2014]¹⁰, is that more abused and neglected children are seen by professionals in those jurisdictions requiring mandated reporting and the substantiation rates are higher. They also found that the resulting investigations frequently uncovered additional problems requiring interventions.

FACTORS THAT INHIBIT REPORTING

There are factors inherent in identifying ANE that may naturally inhibit reporting. There are health conditions that cause symptoms which mimic indicators of caregiver neglect. For example, a client’s weight loss can be caused by health issues (e.g. an undiagnosed cancer) but also by the caregiver failing to provide adequate calories or by the client’s failure to thrive due to emotional issues. These can be difficult for medical professionals to confidently diagnose as being caused by abuse versus natural disease processes.

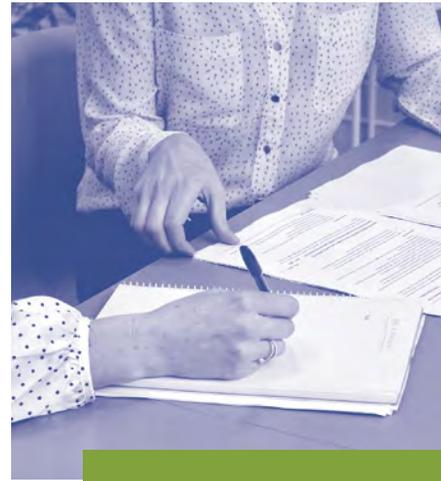
There are also some types of injuries that can be caused by either accident or abuse. For example, disorders of coagulation can result in bruising that can look like abuse, and individuals with brittle bone disease can break bones with or without abuse. Without extensive training in recognizing ANE, medical professionals may not be able to differentiate between accidental and abusive causes. For those professionals already disinclined to report, this ambiguity can provide a justification for not reporting. And even for those who want to report, the fear of being wrong is an inhibiting factor in these cases.

Another factor that has been identified in the review of child abuse research is the impact of negative experiences with law enforcement/protective services upon reporting rates.¹¹ When reporters feel that their reports don't lead to increased protection for the alleged victim, they are less likely to report in the future.

Because of strict confidentiality requirements, APS usually cannot update the reporter on the case, leading some reporters to conclude "nothing was done." This can be especially true in cases where APS does not take outwardly visible actions because the client does not want them taken.

Perhaps most importantly, people generally prefer to avoid conflict. There is a risk in making a report and getting it wrong. For this reason, it has been postulated that reporters rationalize not getting involved. Excuses include "I might make things worse for the adult", "I am not certain it is abuse", or "Reporting won't change anything". It takes courage to intervene.

Being mandated to report provides some protection from these fears of getting involved, getting it wrong or being unsure. For these reasons, professions who are not mandated to report stated that they experience anxiety about potential complaints from families and fear of disciplinary action if the abuse is not substantiated.



INCREASE THE EFFECTIVENESS OF REPORTING

Training to identify abuse and overcome barriers to reporting has been suggested as one way to increase the effectiveness of reporting. Studies in child abuse have repeatedly found that mandated reporters often do not have the training required to equip them to fulfil their role. However, it is unclear what components and mechanisms of training are most effective for respective reporter groups.¹²

ADDITIONAL RESEARCH QUESTIONS THAT NEED ANSWERS

- **What do specific professional groups know about their duty to report?** Are they adept at identifying indicators of ANE? If a report is not indicated, do they know how else to help? Under what circumstances, when they suspected ANE, have they decided not to make a report? Why were they reluctant to report? What is their attitude about reporting? What is their perception of the effectiveness of the current systems [APS and law enforcement] in addressing ANE?
- **Across professional groups**, what factors influence or impede effective reporting? Are some professionals more effective in identifying ANE? Why?
- **What is the impact of training** on the effectiveness of reporting? What type of training is most effective?
- **How effectively do investigative systems interact with reporters?**
- **What are the professional, attitudinal, political, cultural, ethical, and systemic barriers** to reporting and how can they be minimized or removed?
- **Are we intervening at the right time with the right intervention?** A public health model would suggest that, rather than focusing on treating the effects of abuse [once reported], we should be attempting to prevent the abuse from occurring in the first place by applying primary prevention programs. This model would suggest that we collect better incidence and prevalence data and evaluate the effectiveness of interventions rather than focusing on mandating reporting after the fact.

Recommendations

This overview of mandated reporting of adult maltreatment opens the door to a number of recommendations. Based on the information provided, we hope that APS professionals, researchers, advocates, and policy makers will seriously consider prioritizing the following recommendations:

1. Advocating for national standardized definitions of adult ANE
2. Developing a national research agenda that includes a review of the effectiveness of mandated reporting
3. Developing and evaluating training for reporters from various professions to determine what training is needed and effective for which professions.
4. Seriously evaluating the potential of preventative public health models to address the issue before reporting is necessary.

Conclusion

This brief has provided an overview of the issue of mandated reporting of abuse of older adults and adults with disabilities to Adult Protective Services [APS]. It defined mandated reporting and provided up to date information about who is required to report. A review of the list in the addendum clearly shows that there is great variance in who is required to report ANE across the country.

The questions and critiques raised by the review of child abuse literature and scant research into mandated reporting and adult maltreatment provides ample food for thought as APS professionals, researchers, advocates, and policy makers, especially those reviewing legislative proposals to develop and/or improve their reporting systems. A list of research questions has been provided to help both researchers and APS professionals think about what is and is not known about the effectiveness of mandated reporting. Although APS professionals for the most part are strongly in support of mandated reporting, there is ample room for philosophical and practical discussions around this topic and it is hoped that this brief has provided background for those conversations.

¹See addendum: List of State Statutes

²<https://www.tandfonline.com/doi/full/10.1080/08946566.2017.1382414>

³Kohn, N.A. (2009). Outliving civil rights. *Washington University Law Review*, 86(5),1053-1115. Retrieved from https://openscholarship.wustl.edu/law_lawreview/vol86/iss5/1

⁴Critical Topics in an Aging Society: Elder Justice, Ageism, and Elder Abuse, Lisa Nerenberg, 2019, page 81

^{5,6,7,10,11,12}Mandatory Reporting? Issues to consider when developing legislation and policy to improve discovery of child abuse DOI: <https://doi.org/10.14296/islr.v2i1.2110>

⁸<https://www.gao.gov/assets/220/214127.pdf>

⁹Elder Abuse Surveillance: Uniform Definitions And Recommended Core Data Elements https://www.cdc.gov/violenceprevention/pdf/EA_Book_Revised_2016.pdf



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RESOURCES & REFERENCES

*National Center on Law and Elder Rights
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<https://ncler.acl.gov/getattachment/Legal-Training/Mandatory-Reporting-Ch-Summary.pdf.aspx>*

*Critical Topics in an Aging Society: Elder Justice, Ageism, and Elder Abuse
Lisa Nerenberg, 2019
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