

**Criminal Liability, Failure to Report Child Abuse, and School Personnel:
An Examination of History, Policy and Caselaw**

Brief Summary:

Currently the criminal liability affixed to mandatory reporting statutes for school personnel is hardly more than window dressing, or a vague, unrealized threat. While the threat of criminal liability has dramatically increased reporting levels, reporting has not nearly maximized its potential. This situation contributes, or at least does little to prevent children from suffering at the hands of those entrusted with their care. Increasing the number of prosecutions of school personnel, however, would help the statutes do what they are meant to do – protect children from the hands of their abusers.

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I. INTRODUCTION

On October 4, 1990, Jerry Conner, a severely retarded child attending Reynolds Elementary School in Texas, defecated on himself for the second time that day.¹ Two teachers' aides, who were employed in order to help care for the severely and profoundly retarded children at the school, cleaned him up and changed his clothes.² They then took him to a different classroom where they told the teacher, Alicia Morris, "we're going to teach Jerry to stop eating his shit" something he had apparently also done.³ The aides then took Jerry to the washroom area of the classroom and held his hand under hot water but when Jerry yelled "ka hot. ka hot," Morris "told the two women to get something to cover up his mouth, so Jerry would not be heard screaming and hollering."⁴ The aides placed a towel over Jerry's mouth and placed his hand back under the hot water while Jerry screamed and cried.⁵ The women only stopped once Jerry's hand started to blister.⁶ Jerry's hand was severely burned, covered in blisters, and required extensive treatment at the hospital.⁷

Morris, however, did not report the incident to anyone and was subsequently charged for failure to report child abuse.⁸ At trial, a jury of her peers found Morris guilty of a Class B misdemeanor⁹ under section 34.07 of the Texas Family Code,¹⁰ and levied a punishment of 120 days confinement, one year probation, and a \$1,000 fine.¹¹ The Court of Appeals affirmed.¹²

¹ *Morris v. State*, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992). Apparently this was not an infrequent occurrence for the retarded children at the school because the school had a policy that if such a child defecated on themselves more than twice in a day, the school would call the child's caregiver to come and pick up the child. *Id.*

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 627.

⁸ *Id.* at 629.

⁹ *Id.* at 626.

¹⁰ TEX. FAM. CODE ANN. § 34.07 (WESTLAW through 1992 sess.) (This statute was repealed in 1995).

¹¹ *Morris v. State*, 833 S.W.2d at 626. At the time, the maximum penalty for a Class B misdemeanor was 180 days in prison and \$1,500 fine. TEX. PENAL CODE ANN. § 12.22 (WESTLAW through 1992 sess.).

¹² *Id.* at 629.

Every state imposes criminal liability upon school personnel¹³ who fail to report child abuse they either suspect or reasonably believe has occurred.¹⁴ As *Morris* suggests, imposing criminal liability for a failure to report is appropriate, and further caselaw pertaining to such liability reiterates both the need for, and the purpose behind imposing criminal liability on America's

¹³ This Note uses this term to refer to teachers, principals, administrative officials, teachers' aides, and even school counselors and nurses.

¹⁴ See generally ALA. CODE § 26-14-3 (WESTLAW through 2004 Sess.); ALASKA STAT. § 47.17.020 (WESTLAW through 2004 Sess.); ARIZ. REV. STAT. § 13-3620 (WESTLAW through legislation effective April 13, 2005); ARK. CODE ANN. § 12-12-507 (WESTLAW through March 2005 revisor changes); CAL. PENAL CODE § 11166 (WESTLAW through ch. 7 2005 Reg. Sess.); COLO. REV. STAT. ANN. § 19-3-304 (WESTLAW through ch. 6 First Regular Sess. 65th Gen. Assembly); CONN. GEN. STAT. ANN. § 17a-101a (WESTLAW to Jan. 1, 2005); DEL. CODE ANN. tit. 16, ch. 9, § 903 (WESTLAW through First Regular Sess. 143rd Gen. Assembly 2005); FLA. STAT. ANN. § 39.201 (WESTLAW through ch. 484 and H.J.R. No. 1 and S.J.R. No. 2394 of 2004 Special "A" Sess., 19th Legislature); GA. CODE ANN. § 19-7-5 (WESTLAW through 2004 First Special Sess.); HAW. REV. STAT. ANN. § 350-1.1 (WESTLAW through 2003 Regular and Spec. Sess.); IDAHO CODE § 16-1619 (WESTLAW through 2004 Sess.); 325 ILL. COMP. STAT. ANN. 5/4 (WESTLAW through P.A. 93-1102 of 2004 Regular Sess.); IND. CODE ANN. § 31-33-5-3 (WESTLAW through Mar. 31, 2005); IOWA CODE ANN. § 232.69 (WESTLAW through Jan. 1, 2005); KAN. STAT. ANN. § 38-1522 (WESTLAW through 2003 Sess.); KY. REV. STAT. ANN. § 620.030(1) (WESTLAW through 2004 First Extraordinary Sess.); LA. REV. STAT. ANN. § 609 (WESTLAW West 1999); ME. REV. STAT. ANN. tit. 22 § 4011-A (WESTLAW through 2004 Second Special Sess.); MD. CODE ANN., Family Law § 5-704 (WESTLAW through Apr. 1, 2005); MASS. ANN. LAWS ch. 119, § 51A (WESTLAW through ch. 15 2005 1st Annual Sess.); MICH. COMP. LAWS ANN. § 722.623 (WESTLAW through P.A. 2005, 1-4); MINN. STAT. ANN. § 626.556 (WESTLAW through Mar. 20, 2005); MISS. CODE ANN. § 43-21-353 (WESTLAW through 2004, Third Extraordinary Sess.); MO. ANN. STAT. § 210.115 (WESTLAW through West ID 1 of 2005 First Regular Sess.); MONT. CODE ANN. § 41-3-201 (WESTLAW through 2003 Sess.); NEB. REV. STAT. § 28-711 (WESTLAW through 2004 Second Regular Sess.); NEV. REV. STAT. § 432B.220 (WESTLAW through 21st Special Sess. of 72nd Legislature, 2004); N.H. REV. STAT. ANN. § 169-C:29 (WESTLAW through 2004 Sess. 1994); N.J. STAT. ANN. § 9:6-8.10 (WESTLAW through L.2005, ch. 1-42); N.M. STAT. ANN. § 32A-4-3 (WESTLAW through Apr. 1, 2005, First Regular Sess.); N.Y. SOC. SERV. LAW § 413 (WESTLAW through L.2005, ch. 4-12, 52); N.C. GEN. STAT. § 7B-301 (WESTLAW through 2004 Regular & Extra Sessions); N.D. CENT. CODE § 50-25.1-03 (WESTLAW through 2003 Regular and Special Sess.); OHIO REV. CODE ANN. § 2151.421 (WESTLAW through General Assembly, Apr. 11, 2005 1993); OKLA. STAT. ANN. tit. 10, § 7103 (WESTLAW through ch. 41, 2005 First Regular Sess.); OR. REV. STAT. § 419B.010 (WESTLAW through 2003 Regular Sess.); 23 PA. CONS. STAT. ANN. § 6311 (WESTLAW through 2004); R.I. GEN. LAWS § 40-11-3 (WESTLAW through Jan. 2004 Sess.); S.C. CODE ANN. § 20-7-510 (WESTLAW through 2004 Regular Sess.); S.D. CODIFIED LAWS § 26-8A-3 (WESTLAW through Nov. 2, 2004 election); TENN. CODE ANN. § 37-1-403 (WESTLAW through 2004 Second Reg. Sess.); TEX. FAM. CODE ANN. § 261.101 (WESTLAW through 2004 Fourth Called Sess.); UTAH CODE ANN. § 62A-4a-403 (WESTLAW through Nov. 2, 2004); VT. STAT. ANN. tit. 33, § 4913 (WESTLAW through 2003 Adjourned Sess.); VA. CODE ANN. § 63.1-248.3 (WESTLAW through 2004 Sp. Sess. II); WASH. REV. CODE ANN. § 26.44.030 (WESTLAW through April 4, 2005); W. VA. CODE § 49-6A-2 (WESTLAW through 2005 First Ex. Sess.); WIS. STAT. ANN. § 48-981 (WESTLAW through Mar. 11, 2005); WYO. STAT. ANN. § 14-3-205 (WESTLAW through 2004 Special Sess.).

school personnel – inducing reporting in order to protect abused children.¹⁵ Yet the scarcity of existing caselaw on the matter,¹⁶ and the ongoing call to impose civil liability in addition to criminal,¹⁷ also imply that the penalties do not have the teeth intended to induce reporting. Caselaw also suggests that school personnel are not properly informed of statutory reporting procedures.¹⁸ Furthermore, and perhaps most intriguingly, while the vast majority of child abuse takes place in the home,¹⁹ six of the seven reported cases deal only with abuse of children at the school.²⁰

¹⁵ See *infra* pp. 13-25.

¹⁶ According to the updated version of *Teachers and the Law*, no *reported* cases of criminal prosecution for failure to report actually existed in 1999. LOUIS FISCHER, DAVID SCHLIMMEL & CYNTHIA KELLY, *TEACHERS AND THE LAW* 107 (5th ed. 1999). Yet there are a few cases that could arguably be “reported” cases, though the decisions often are appellate court cases seeking relief under constitutional claims and these cases are the focus of this paper. See e.g.: *People v. Bernstein*, 243 Cal.Rptr. 363 (Cal. App. Dep’t. Super. Ct. 1987); *Morris v. State*, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992); *Commonwealth v. Allen*, 980 S.W.2d 278 (Ky. 1998).

¹⁷ Richard G. Salmon & M. David Alexander, *Child Abuse and Neglect: Implications for Educators*, 28 ED. L. REP. 9, 15-17 (1986) (Stating on pages 15-16 that the “Imposition of civil liability for any negligent failure to report a suspected case of child abuse might well provide the necessary impetus to compel teachers to report, and thereby contribute to the eventual solution of the child abuse problem.”); Jody Aaron, *Civil Liability for Teachers’ Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183, 187 (1981) (“Fear of civil liability would most certainly increase teachers’ tendency to report, and increased reporting would, in turn, facilitate effective agency intervention and remediation of abusive home atmospheres.”) *But see* Jane Rosien, Lelia Helms & Carolyn Wanat, *Intent v. Practice: Incentives and Disincentives for Child Abuse Reporting by School Personnel*, 1993 B.Y.U. EDUC. & L.J. 102, 109-112 (Citing a Michigan asking teachers why they did not report instances of child abuse, thirty-five percent of them said it was because of fear of reprisal, meaning that civil liability could further entrench the hesitancy of teachers to report); Steven J. Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. JUV. L. 236, 246-247 (1998) (Concluding that “Misdemeanor penalties are adequate to compel reporting”).

¹⁸ See *infra* section 4(A)(4).

¹⁹ National Clearinghouse on Child Abuse and Neglect Information, *Child Abuse and Neglect General Information Packet, Child maltreatment 2002: A summary of Key Findings* p. 2 available at <http://nccanch.acf.hhs.gov/pubs/factsheets/canstats.cfm>. In 2002, “more than 80 percent of perpetrators were parents. Other relatives accounted for 7 percent, and unmarried partners of parents accounted for 3 percent of perpetrators.” *Id.* Teachers and school personnel, however, made up a conglomeration of others that constituted ten percent. *Id.*

²⁰ The six cases are: *State v. Hurd*, 400 N.W.2d 42 (Wis. Ct. App. 1986); *People v. Bernstein*, 243 Cal.Rptr. 363 (Cal. App. Dep’t. Super. Ct. 1987); *State v. Grover*, 437 N.W.2d 60, 61 (Minn. 1989); *Morris v. State*, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992); *Commonwealth v. Allen*, 980 S.W.2d 278 (Ky. 1998); *People v. Beardsley*, 688 N.W.2d 304 (Mich. Ct. App. 2004). The one case that dealt with child abuse at home was actually a civil suit that discussed the alleged abuse by a third grader’s father: *Mary Hughes v. Stanley County School Board*, 594 N.W.2d 346 (S.D. 1999) (Hughes I); *Hughes v. Stanley County School District*, 638 N.W.2d 50, 51-52 (S.D. 2001) (Hughes II). While the case contains interesting factual information regarding abuse and reporting, the court made only passing mention of the fact that Hughes was charged with a failure to report. See Hughes I, 594 N.W.2d at 350; Hughes II, 638 N.W.2d at 52. The criminal case ultimately resulted in a mistrial. Hughes II, 638 N.W.2d at 52.

While the threat of criminal liability has dramatically increased reporting levels, reporting has not nearly maximized its potential. Criminal liability is currently more like a window dressing than a reality, because it is so infrequently employed. Yet more frequent prosecutions, would likely induce school boards and school personnel to give greater heed to mandatory reporting, and they would likely clamor to improve reporting upon the current status. This would then help the statutes do what they are meant to do, protect children from the hands of their abusers.²¹

II. BACKGROUND

Society began to pay strict heed to child abuse a little over forty years ago, prompting the creation of mandatory child abuse reporting statutes.²² Since that time, society's understanding of the problem, its extent, its horrors, and potential methods of prevention have all expanded such that today, every state has its own, often fairly detailed, definition of child abuse.²³ These are typically found in the reporting statutes and the vast majority share common elements such as physical injury (including death), neglect, mental injury, sexual abuse, emotional injury and most state that the abuser must be a person with some level of control, authority, or supervision over the child.²⁴ All the states currently have child abuse reporting statutes in place²⁵ and the policies behind these statutes indicate that legislatures are aware of the prevalence of child abuse.²⁶ Experts also state that child abuse has real, often life-long consequences for the abused children,²⁷ yet forty years ago, such ideas were merely in embryo.

²¹ Public school teachers and officials are among this country's most valuable, and yet undervalued resources. They often work very hard for little money, and have numerous other duties placed upon them that, if they fail to perform, can affix penalties upon them that will smother their lives and their livelihood. This paper is not intended to further burden the nation's school personnel; rather it merely calls for heightened use of the criminal sanctions set out by state legislatures in order to induce reporting of suspected abuse. In fact, the author feels that the current movement among some states and scholars to impose civil liability on those who fail to report, or for those who *do* report, is duplicitous and detrimental to those teachers who desire to report.

²² Salmon & Alexander, 28 ED. L. REP. 9, 11-13 (1986); Jody Aaron, *Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183, 187 (1981);

²³ See e.g.: KS ST § 38-1522 (The elements of child abuse are defined as injury "as a result of physical, mental, or emotional abuse or neglect or sexual abuse");

²⁴ See Rosien, Helms & Wanat, *Intent* 1993 B.Y.U. EDUC. & L.J. at 106 (listing these over-arching qualities and also giving examples of the states, at least in 1993, that did not have certain of these elements).

²⁵ See *supra* note 14.

²⁶ See *generally supra* note 14.

²⁷ Linda Hale and Julie Underwood state that

A. Dr. Henry C. Kempe and the Crusade for Mandatory Reporting

In the early 1960s, Dr. C. Henry Kempe led a group of physicians in a crusade to mandate that certain professionals report child abuse.²⁸ Alarmed at the number of non-accidental injuries he witnessed as a pediatrician, Kempe directed a symposium in 1961 through the American Academy of Pediatrics to draw attention to child abuse; here he first raised the term “battered child syndrome.”²⁹ The conference and the interest it spawned helped to raise research funds from the Children’s Bureau in the Department of Health, Education, and Welfare in order to study child abuse, its effects and possible preventions.³⁰ Simultaneously, Kempe and others pointed towards early detection and identification because recognizing the abuse is the “first step toward any solution to the child abuse problem.”³¹ The conference also helped Kempe and his followers “persuade[] the U.S. Children’s Bureau” in 1963 ‘to promulgate a model law that required physicians to report children with a ‘serious physical injury or injuries inflicted . . . other than by accidental means.’”³² The movement ignited a flurry of action and by 1965, all fifty states and the District of Columbia instituted mandatory child abuse reporting laws for physicians.³³

Victims of child abuse and neglect exhibit devastating consequences as adults. Statistically, these individuals have lower IQs, a higher frequency of suicide attempts, and more alcohol-related problems. Furthermore, they are significantly more prone to become abusers themselves. Early detection and reporting of child abuse and neglect by educators can help eliminate its long-term consequences, and help prevent the continuing cycle of abuse.

Linda L. Hale & Julie Underwood, *Child Abuse: Helping Kids Who Are Hurting*, 74 MARQ. L. REV. 560, 561 (1991).

²⁸ Robert J. Shoop & Lynn M. Firestone, *Mandatory Reporting of Suspected Child Abuse: Do Teachers Obey the Law?*, 46 ED. L. REP. 1115, 1116-1117 (1988).

²⁹ Samuel X. Radbill, *A History of Child Abuse and Infanticide*, in THE BATTERED CHILD 16 (Ray E. Helfer & C. Henry Kempe eds., 1968). In 1962, Kempe and a number of colleagues also published a very influential article in the *Journal of the American Medical Association* entitled, “The Battered Child Syndrome” C. Henry Kempe et al., *The Battered- Child Syndrome*, 181 J. AM. MED. ASSOC. 17 (1962).

³⁰ *Id.*

³¹ Jody Aaron, *Civil Liability for Teachers’ Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183, 184 (1981).

³² Douglas J. Besharov, *Child Protection: Past Progress, Present Problems, and Future Directions*, 17 FAM. L.Q. 151, 153 (Summer 1983). See also Eric A. Hamilton, *Commonwealth v. Allen: An Eye-Opener for Kentucky’s Teachers*, 27 N. KY. L. REV. 447, 449 (2000) (stating that Kempe’s “initial effort[s] focused on promulgating a model law that would require physicians to report injuries sustained by other than accidental means.”)

³³ Jody Aaron, *Civil Liability for Teachers’ Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183, 187 (1981); Besharov, 17 FAM. L.Q. at 153-154. Besharov states that it was in a matter of four years and also states that “in the history of the United States, few legislative proposals have been so widely adopted in so little time.” *Id.* (quoting Monrad Paulsen, *The Legal*

Indeed, these “first generation” reporting statutes “singled out the physician as the mandated reporter . . . because it was felt that they had the necessary training and expertise to identify child abuse.”³⁴ Still, these statutes varied widely and often did not function properly. Resultantly, the federal government stepped in to help remedy the situation.³⁵

Senator Walter Mondale then led a number of congressional hearings in 1973 on child abuse and neglect in an attempt to gauge both its prevalence and the effectiveness of the state laws in reporting it.³⁶ The hearings uncovered “shocking weaknesses in state and local child protective efforts and clearly moved Mondale and his colleagues.”³⁷ Writing later about his experiences, Mondale, whose tenure as a Senator lasted nine years, stated that nothing during that time “was as disturbing or horrifying, or as compelling, as the stories and photos of children . . . [and] infants, who had been whipped and beaten with razor straps; burned and mutilated by cigarettes and lighters; scalded by boiling water; bruised and battered by physical assaults; and starved and neglected and malnourished.”³⁸ Based in large part on these hearings,³⁹ Congress

Framework for Child Protection, 6 COLUM. L. REV. 679, 711 (1966)). See also Hamilton, 27 N. KY. L. REV. at 449; Shoop & Firestone, 46 ED. L. REP. at 1117.

It is also interesting to note that at this point, the vast majority of professionals required to report were only physicians or other medical personnel. See e.g.: 17 CONN. GEN. STAT. ANN. § 38a (Supp. 1965) (requiring only physicians and surgeons with reasonable cause to suspect abuse); ARIZ. REV. STAT. ANN. § 13-842.01 (Supp. 1966)(stating that any physician whose examination shows evidence of abuse must report); N.Y. SOCIAL SERVICE LAW § 383-b (Pocket Part, 1967) (listing all of the following if they have a reasonable cause to suspect abuse: physicians, dentists, osteopaths, optometrists, chiropractors, podiatrists, registered nurses, Christian Science Practitioners); MICH. STAT. ANN. §§ 14.564 (1)-(5) (Supp. 1965) (mandates that any physician who examines or gives medical treatment to a child whose injuries may have been caused by abuse). For a complete listing and description of each of the states and the mandated reporters in each in 1967, see Dean Paulsen, *Appendix C: Summary of Abuse Legislation*, in THE BATTERED CHILD 16 (Ray E. Helfer & C. Henry Kempe eds., 1968).

³⁴ Brian G. Fraser, *A Glance at the Past, A Gaze at the Present, a Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes*, 54 CHICAGO-KENT L. REV. 641, 656 (1977).

³⁵ Jane Rosien, Lelia Helms & Carolyn Wanat, *Intent v. Practice: Incentives and Disincentives for Child Abuse Reporting by School Personnel*, 1993 B.Y.U. EDUC. & L.J. 102, 103-104; Besharov, 17 FAM. L.Q. at 154-158.

³⁶ Besharov, 17 FAM. L.Q. at 157.

³⁷ *Id.*

³⁸ Walter F. Mondale, *Introductory Comments*, 54 CHICAGO-KENT L. REV. 635, 636 (1977). When he wrote this introduction, Mondale was serving as the Vice President of the United States.

³⁹ Besharov, 17 FAM. L.Q. at 158. Besharov also credits the Act’s creation and passing to the efforts of Representatives Patricia Schroeder, John Brademas, and Mario Baggio. *Id.*

passed the Child Abuse Prevention and Treatment Act of 1974,⁴⁰ a move that pushed the states towards more comprehensive and effective child abuse legislation.

B. The Child Abuse Prevention and Treatment Act of 1974

The Act provided for the creation of the National Center of Child Abuse and Neglect (Center)⁴¹ to “serve[] as a clearinghouse to gather accurate information on the extent of abuse and neglect; to carry out research efforts; and to provide technical assistance and training to states and local groups.”⁴² More significantly, however, the Act also provided a Model Child Protection Act whose definition of child abuse was much more detailed than the 1960s non-accidental injury standard,⁴³ and it served as the foundation for the states’ soon-to-be amended acts,⁴⁴

Child abuse and neglect means the physical or mental injury, sexual abuse, negligent treatment, or mistreatment of a child under the age of eighteen by a person who is responsible for the child’s welfare under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary.⁴⁵

This definition found its way into the states’ legislation because the Center and the Act provided for the distribution of funds to states that amended their reporting statutes to comply with the new federal regulations.⁴⁶ Because the cost of state reporting and prevention programs was very high, federal assistance was a virtual necessity for a state’s legislation to be properly implemented and while the sum was nominal, \$80,000, it, “together with other national center activities, served as a catalyst for making improvements long advocated by child protective specialists.”⁴⁷ Indeed in

⁴⁰ Pub. L. no. 93-247, 88 Stat. 5, (1974) [codified at 42 U.S.C. §§ 5101-5106 (1974)]

⁴¹ The Act actually “required the Secretary of Health, Education, and Welfare (presently Health and Human Services) to establish” the Center. Besharov, 17 FAM. L.Q. at 158.

⁴² *Mondale*, 54 CHICAGO-KENT L. REV. at 637. Interestingly, up to that point there “was not one full-time [federal government employee] with responsibility for child abuse and neglect treatment or prevention efforts.” *Id.* The “Act required the Secretary of Health, Education, and Welfare (presently Health and Human Services) to establish” the Center. Besharov, 17 FAM. L.Q. at 158.

⁴³ See *supra* p. 5.

⁴⁴ See Marjorie R. Freiman, *Unequal and Inadequate Protection Under the Law: State Child Abuse Statutes*, 50 George Washington L. Rev. AT 253-254 (1982); Richard G. Salmon & M. David Alexander, *Child Abuse and Neglect: Implications for Educators*, 28 ED. L. REP. 9, 12 (1986).

⁴⁵ 42 U.S.C. § 5102 (1974).

⁴⁶ Besharov, 17 FAM. L.Q. at 158; Jane Rosien, Lelia Helms & Carolyn Wanat, *Intent v. Practice: Incentives and Disincentives for Child Abuse Reporting by School Personnel*, 1993 B.Y.U. EDUC. & L.J. 102, 103-104.

⁴⁷ Besharov, 17 FAM. L.Q. at 159; Rosien, Helms & Wanat, 1993 B.Y.U. EDUC. & L.J. at 103-104.

1973, only three states had child reporting and protective legislation that passed the federal government's standard, but by 1978 that number had jumped to forty-three states as well as the District of Columbia, American Samoa, Guam, and Puerto Rico.⁴⁸

C. Teachers as Mandated Reporters

Along with the increased focus and heightened standards pertaining to child abuse prevention and victim protection, came an increase in the number of professions required to report suspected child abuse. While in 1967 all fifty-two child abuse reporting statutes⁴⁹ listed physicians and other medical personnel, fourteen also mandated teachers or school personnel to report.⁵⁰ By 1974 that number had increased to twenty-four and in 1977, forty-nine state statutes named school teachers as mandatory reporters of child abuse.⁵¹ Still, one could wonder why states choose to place a duty on school teachers – individuals who likely have no medical, psychological, or welfare training – to report child abuse upon a reasonable belief that it is occurring.

⁴⁸ Besharov, 17 FAM. L.Q. at 158.

⁴⁹ For a complete list and summary of the fifty-two statutes and their provisions see Dean Paulsen, *Appendix C: Summary of Abuse Legislation*, in THE BATTERED CHILD 16 (Ray E. Helfer & C. Henry Kempe eds., 1968).

⁵⁰ Only ten of the fourteen mentioned teachers specifically: Alabama (ALA. CODE §§ 27-21 to -25 (Supp. 1966)) Alaska (ALASKA STAT. §§ 11.67.010-67.070 (Supp. 1965)); Hawaii (L.1967, c 261, § 2); Maryland (MD. CODE ANN. art. 27 § 11A (Supp. 1967)); Montana (MONT. REV. CODES ANN. §§ 10-901-905 (Supp. 1965)); Nevada (NEV. REV. STAT. §§ 200.501-507 (Supp. 1965)); New Mexico (N.M. STAT. ANN. §§ 13-9-12 to -16 (Supp. 1965)); North Carolina (N.C. GEN. STAT. §§ 14-318.2-318.3 (Supp. 1965)); Ohio (OHIO REV. CODE ANN. § 2151.421 (Baldwin Supp. 1966)); West Virginia (W. VA. CODE ANN. § 4904 (80a-d) (Supp. 1965)). Two states did not mandate teachers to report, but still required some form of school personnel to report when they had a cause to believe: California (CAL. PEN. CODE § 11161.5 (Supp. 1966)) & Wisconsin (Wis. Stat. Ann. § 48.981 (Supp. 1966)). Furthermore, two states mandated that any person with a reasonable belief that child abuse has occurred must report, Nebraska (Neb. Rev. Stat. & Utah (Utah Code Ann. §§ 55-16-1 to -6 (Supp. 1965)). This information was all gathered from Dean Paulsen, *Appendix C: A Summary of Child-Abuse Legislation*, in THE BATTERED CHILD 237-261 (Ray E. Helfer & C. Henry Kempe eds., 1968).

⁵¹ Brian G. Fraser, *A Glance at the Past, A Gaze at the Present, a Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes*, 54 Chicago-Kent L. Rev. 641, 657 (1977). The forty-nine states that mandated school personnel or teachers to report in 1977 were: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin & Wyoming. *Id.* at 657 n.109. See also Jody Aaron, *Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183, 187 (1981) (stating that all but two states required teachers to report in 1981).

Teachers are mandated reporters because they have daily interaction with children who are required by law to attend school. Teachers can actually be a much greater asset to prevent and protect against further abuse than many other professionals:

Unlike [the child's] relationship with other professionals, a child's relationship with his teacher is not subject to the whim of his parents. Children are required by law to attend school, but are generally not required to visit medical, dental, psychological, or other professional facilities. The opportunity for discovery of abuse is thus greatly enhanced in the school setting, and the teacher is the most likely person to discover it.⁵²

Unlike the "first generation" reporting statutes which "singled out the physician as the mandated reporter,"⁵³ these "second and third generation"⁵⁴ reporting statutes recognized the integral role teachers could play in the reporting scheme because teachers "have the opportunity to observe and monitor their students in a continuing, consistent manner."⁵⁵ Yet statistics indicate that teachers have not reported at a rate that would seem appropriate for their daily interaction with students.

D. Child Abuse Reporting Statistics

Teachers have consistently reported a lower percentage of cases than other professionals. In 1969, David Gil stated that "47.6 percent of the reported cases concerned school age children, but only 12 percent of all reported cases came from school personnel."⁵⁶ In a sample taken in Virginia in 1983, "teachers contributed the smallest percentage, 10% of the total cases reported"⁵⁷ Furthermore in 1986 teachers failed to report suspected child abuse about

⁵² Aaron, 28 WAYNE L. REV. at 211; see also Brian G. Fraser, *A Glance at the Past, A Gaze at the Present, A Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes*, 54 CHICAGO-KENT L. REV. 641, 657 (stating that teachers are quite ideal reporters of suspected child abuse because they "have almost daily access to young children" and "have the unique opportunity of identifying the child in peril long before the damage becomes severe."); 74 MARQ. L. REV. 560 ("Educators are particularly well-positioned to discover abuse due to their day-to-day interactions with students.")

⁵³ Fraser, 54 CHICAGO-KENT L. REV. at 656.

⁵⁴ *Id.* at 656-657.

⁵⁵ Aaron, 28 WAYNE L. REV. at 184. See also Robert J. Shoop & Lynn M. Firestone, *Mandatory Reporting of Suspected Child Abuse: Do Teachers Obey the Law?*, 46 ED. L. REP. 1115, 1122 (1988). ("Because school teachers often are the only professionals that see the abused child on a regular basis, they have a special responsibility to act to ensure the protection of the child. Teachers are expected to report suspected cases of abuse to the proper authorities").

⁵⁶ Shoop & Firestone, 46 ED. L. REP. 1115, 1117 (1988).

⁵⁷ Richard G. Salmon & M. David Alexander, *Child Abuse and Neglect: Implications for Educators*, 28 ED. L. REP. 9, 14 (1986).

seventy-six percent of the time, whereas hospitals only failed thirty-four percent of the time.⁵⁸

Nationwide, the failure to report suspected cases of child abuse was sixty percent.⁵⁹

Nevertheless, the increased number of professionals required to report, coupled with the broadening definitions of abuse has led to a dramatic increase in the number of reported cases.⁶⁰ In 1963, the same year Kempe and his colleagues really brought child maltreatment to the public eye, there were only 150,000 children reported who were suspected victims of child abuse.⁶¹ Nine years later, the number had quadrupled, and by 1986 the number jumped to 2.1 million.⁶² In 1996, over 3.1 million children were reported as alleged victims of child abuse⁶³ and in 2002, child protective services agencies received reports dealing with approximately 4.5 million children.⁶⁴ Those 4.5 million children came from 2.6 million reports, of which sixty-seven percent had some substantiation and in the end, 865,000 children of the 4.5 million children were found to be victims of child abuse.⁶⁵

III. CURRENT SCHOLARSHIP

The literature dealing with mandatory reporting in the schools focuses on two major areas at present. The first group studies why school personnel continue to dramatically underreport suspected cases of child abuse,⁶⁶ despite the strong public interest to report.⁶⁷ Scholars in this group point to a variety of reasons, all of which seem to carry some validity:

⁵⁸ Victor I. Vieth, *Passover in Minnesota: Mandated Reporting and the Unequal Protection of Abused Children*, 24 WM. MITCHELL L. REV. 131, 137 (1998).

⁵⁹ *Id.*

⁶⁰ Steven Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. JUV. L. 236, 238 (1998). Any figures, however, are imprecise and often subject to a state's or an agency's definition as to what constitutes child abuse. See Louis Fischer, David Schlimmel & Cynthia Kelly, *Teachers and the Law* 99(5th ed. 1999).

⁶¹ Vieth, 24 WM. MITCHELL L. REV. at 135.

⁶² *Id.*

⁶³ Singley, 19 J. JUV. L. at 238; see also Vieth, 24 WM. MITCHELL L. REV. at 135.

⁶⁴ National Clearinghouse on Child Abuse and Neglect Information, *Child Abuse and Neglect General Information Packet, How Does the Child Welfare System Work?* p. 2 available at <http://nccanch.acf.hhs.gov/pubs/factsheets/cpswork.cfm>. While the number of children involved was 4.5 million, the number of reports actually stood at 2.6 million. *Id.*

⁶⁵ *Id.* Though it has been suggested that approximately twenty-five percent of the children whose reports are deemed unsubstantiated, will be reported as abuse victims within four years. Vieth, 24 WM. MITCHELL L. REV. at 136.

⁶⁶ See e.g.: Richard G. Salmon & M. David Alexander, *Child Abuse and Neglect: Implications for Educators*, 28 ED. L. REP. 9, 14 (1986) (listing (1) Lack of diagnostic experience, (2) Impairment of Student-Teacher Relationship, (3) Fear of Legal Liability (civil suits)); Linda L. Hale & Julie Underwood, *Child Abuse: Helping Kids Who Are Hurting*, 74 MARQ. L. REV. 560, 565-67 (1991)

(a) a lack of recognition of the characteristics associated with child abuse, (b) teachers' lack of awareness of their legal responsibilities, (c) fear of repercussions from parents,⁶⁸ (d) fear that a school's reputation or an educator's prestige would be impaired, (e) lack of knowledge regarding correct legal procedures for reporting such cases, or (f) perception that child abuse is a problem for the medical profession, the courts or social welfare agencies.⁶⁹

In addition, others point to the fact that some abuse occurs in the schools and "school personnel may hesitate reporting abuse . . . when a co-worker is suspected of abusing students in the school."⁷⁰ Indeed, the ideas are as numerous as the articles, and many authors speculate as to how to overcome these obstacles to reporting, yet none have received as much attention as the second focus of current scholarship, imposing civil liability for failing to report.

Typically, state statutes impose only criminal liability upon mandated reporters who fail to report,⁷¹ yet civil liability for the same failure has also become a focus for many who want to see reporting numbers increase.⁷² These proponents feel that civil liability would give an added impetus to mandated reporters, particularly because the criminal sanctions are so rarely employed.⁷³ Opponents however, feel that opening the doors to civil suits would shift the focus of

(citing three reasons: (1) fear of retaliation from parents, (2) school personnel do not want to report a colleague abusing at school, (3) a concern that reporting will further endanger the child or will break up the family unit); Jane Rosien, Lelia Helms & Carolyn Wanat, *Intent v. Practice: Incentives and Disincentives for Child Abuse Reporting by School Personnel*, 1993 B.Y.U. EDUC. & L.J. 102, 109. (giving three over-arching reasons: "(1) the ambiguities and vagueness of individual state statutes, (2) the lack of incentives for mandated reporters to report known and suspected instances of child abuse or neglect, and (3) the dynamics of school settings"); Giving a number of reasons throughout the paper

⁶⁷ Rosien, Helms & Wanat, 1993 B.Y.U. Educ. & L.J. at 109.

⁶⁸ Salmon & Alexander, 28 ED. L. REP. at 14 (1986). Some potential claims in a civil suit include "slander, libel, defamation of character, invasion of privacy, and breach of confidence." *Id.* See also Hale & Underwood, 74 MARQ. L. REV. at 565-66 ("School personnel may hesitate in making child abuse reports because they fear that parents may retaliate by bringing law suits against them").

⁶⁹ Robert J. Shoop & Lynn M. Firestone, *Mandatory Reporting of Suspected Child Abuse: Do Teachers Obey the Law?*, 46 ED. L. REP. 1115, 1117-1118 (1988). See also Rosien, Helms & Wanat, 1993 B.Y.U. EDUC. & L.J. at 108

⁷⁰ Hale & Underwood, 74 MARQ. L. REV. at 565-567. Many educators are hesitant to report a colleague for alleged child abuse, particularly when they must do so to outside authorities, "the mandate for teachers to report directly to an outside agency conflicts with an environment where the culture requires cooperative staffing between multiple specialists to address the problems of an individual student." Rosien, Helms & Wanat, 1993 B.Y.U. EDUC. & L.J. 102, 112.

⁷¹ Salmon & Alexander, 28 ED. L. REP. at 15 (1986); Steven J. Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. JUV. L. 236, 246-247 (1998) (in 1998, only seven states permitted "civil liability for injuries proximately caused by a reporter's failure to report.")

⁷² See *supra* note 17.

⁷³ See e.g.: Jody Aaron, *Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183 (1981).

the legislation from protecting the victims to punishing the would-be reporters.⁷⁴ Additionally, the vast majority of caselaw in this realm over the past few decades has dealt with civil suits directed towards a teacher or other school employee for a failure to report child abuse.⁷⁵

IV. CRIMINAL CASELAW, MANDATORY REPORTING & SCHOOL PERSONNEL

At least ninety percent of child abuse occurs at the hands of parents, relatives, or parental partners,⁷⁶ yet research uncovered only one prosecution of school personnel for failing to report suspected instances of child abuse that occurred in the home.⁷⁷ Given that criminal liability and mandatory reporting for teachers have been almost universally in place for thirty years, that figure is stunningly miniscule. Yet even more intriguing is that research uncovered six prosecutions of school personnel for failing to report child abuse that occurred at school.⁷⁸ Even adding the two types of cases together yields only seven prosecutions in over thirty years.

Given that six of the seven cases prosecuting school personnel under the mandatory reporting statutes pertain to failing to report abuse *in the school*,⁷⁹ one could quite reasonably conclude that child abuse was primarily a problem in the schools. Yet child abuse in the schools does not amount to even one-tenth of the overall child abuse⁸⁰ and the main focus of mandatory reporting legislation was to protect children from abuse in the home, and school personnel only became part of the equation in the second and third generations of such statutes.⁸¹

The reasons for the scant litigation pertaining to this matter are certainly numerous but the purpose of this paper is not to delineate them all. Instead, this paper seeks to bring to the fore, through an examination of existing criminal cases, where such prosecutions stand, how they

⁷⁴ See e.g.: Singley, 19 J. Juv. L. 236, 246-247, 270 (1998).

⁷⁵ See e.g.: Kimberly S.M. v. Bradford Central School, 649 N.Y.S.2d 588 (1996) (reversing summary judgment, thereby permitting the civil suit to proceed against a sixth-grade teacher); Campbell v. Burton, 750 N.E.2d 539 (Ohio 2001) (holding that civil liability could be imposed upon a teacher/peer mediation coordinator for failing to report student's accounts of abuse).

⁷⁶ See *supra* note 19

⁷⁷ See Mary Hughes v. Stanley County School Board, 594 N.W.2d 346 (S.D. 1999) (Hughes I); Hughes v. Stanley County School District, 638 N.W.2d 50, 51-52 (S.D. 2001) (Hughes II).

⁷⁸ State v. Hurd, 400 N.W.2d 42 (Wis. Ct. App. 1986); People v. Bernstein, 243 Cal.Rptr. 363 (Cal. App. Dep't. Super. Ct. 1987); State v. Grover, 437 N.W.2d 60, 61 (Minn. 1989); Morris v. State, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992); Commonwealth v. Allen, 980 S.W.2d 278 (Ky. 1998); People v. Beardsley, 688 N.W.2d 304 (Mich. Ct. App. 2004).

⁷⁹ See *supra* note 20.

⁸⁰ See *supra* note 19.

⁸¹ See *supra* p. 9.

are decided, and what insight they give as to the purpose behind criminal penalties for failing to report.

A. The Cases

1. *State v. Hurd*:⁸² *Reasonable Cause/Suspicion Mandating a Report*

The standard for most state mandatory reporting statutes is some form of the reasonable cause to suspect or believe,⁸³ a standard that courts in criminal prosecutions for failure to report have found to be constitutional, despite its purportedly vague standard.⁸⁴ The vagueness of this standard was a central issue in the first reported case pertaining to the criminal liability of school personnel.⁸⁵

Richard Hurd was the administrator of the Berean Christian Ranch and the Berean School,⁸⁶ when he was informed by a male student (MS) that he, MS, had been sexually assaulted by a school counselor.⁸⁷ Near the same time, Hurd also learned that the counselor had made “advances” toward other boys at the Ranch, but Hurd reported the information to no one.⁸⁸ When the counselor was subsequently “convicted of sexually assaulting certain boys at the youth ranch,” Hurd was charged with failure to report child abuse in contravention of section 48-981 of the Wisconsin State Code.⁸⁹

Hurd claimed “that the statute’s undefined phrase ‘reasonable cause to suspect’ [was] ambiguous and vague” and as such “fails to notify a person of ordinary intelligence of the conduct

⁸² *State v. Hurd*, 400 N.W.2d 42 (Wis. Ct. App. 1986).

⁸³ Richard G. Salmon & M. David Alexander, *Child Abuse and Neglect: Implications for Educators*, 28 ED. L. REP. 9, 15-17 (1986); Eric A. Hamilton, *Commonwealth v. Allen: An Eye-Opener for Kentucky’s Teachers*, 27 N. KY. L. REV. 447, 450 (2000).

⁸⁴ See *Hurd*, 400 N.W.2d at 45-48. While a number of the other criminal prosecutions deal with claims attacking the constitutionality of reporting statutes due to vagueness, this paper will use *Hurd* as the example, particularly because it is the first reported case pertaining to criminal punishment and school personnel. See also: *State v. Grover*, 437 N.W.2d 60, 62-63 (Minn. 1989) (holding that the state statute was not unconstitutionally vague); *Morris v. State*, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992) (holding that defendant’s claim that “the Texas Family Code [is] unconstitutionally vague because they provide no standard by which a person of reasonable intelligence can be guided in his conduct” was without merit).

⁸⁵ See *Hurd*, 400 N.W.2d at 45-48.

⁸⁶ This case does not pertain to a public institution of education, but is nonetheless pertinent for the purposes of this paper.

⁸⁷ *Hurd*, 400 N.W.2d at 44.

⁸⁸ *Id.*

⁸⁹ *Id.*; WIS. STAT. ANN. § 48-981 (WESTLAW through Mar. 11, 2005).

required by the statute.”⁹⁰ In holding that the statute was not unconstitutionally vague, the court stated that “the test becomes whether a prudent person would have had reasonable cause to suspect child abuse if presented with the same totality of circumstances as that acquired and viewed by the defendant.”⁹¹ Given that *Morris* and *Hurd* each rejected the vagueness claim pertaining to the reasonable belief standard, courts will likely uphold the reasonable person standard when analyzing a failure to report case pertaining to school personnel.⁹²

Pinpointing another issue that arises in such cases, the court of appeals held that the trial court also neglected to inform the jury that the failure to report had to be willful.⁹³ *Hurd* was therefore unable to use any defenses that may have negated this element and while it may not have made a difference, the case was remanded for a new trial.⁹⁴ Even still, the appellate court stated that “the evidence adduced at trial was sufficient to prove that he had a reasonable cause to suspect child abuse and that he willfully failed to report this suspicion.”⁹⁵

While the reasonable belief standard is an excellent starting point, the central issue pertaining to the criminal prosecution of school personnel under the mandatory reporting statutes, is legislative intent.

⁹⁰ *Hurd*, 400 N.W.2d at 44.

⁹¹ *Id.* at 45. Subsequent state courts have created a similar standard, also basing their judgments on the fact scenario in the particular case. See e.g.: *Morris v. State*, 833 S.W.2d 624, 627 (Tx. Ct. App. 1992) (While imprecise, “these statutes give a person of ordinary intelligence fair notice that he is required to file a report with the appropriate agencies when he has cause to believe that a child is being abused. Reviewing the facts in the present case, appellant certainly had ‘cause to believe’ that the child was being subjected to abuse”).

⁹² This idea is strengthened by looking not only at *Morris* and other cases, but also state statutes, see e.g.: CAL. PENAL CODE § 11166 (WESTLAW through ch. 7 2005 Reg. Sess.) (Reasonable suspicion “[m]eans that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect”).

⁹³ WIS. STAT. ANN. § 48-981 (WESTLAW through Mar. 11, 2005) (Subpart (6) pertains to the penalty affixed: “whoever willfully violates this section by failure to report maybe fined not more than \$1,000 or imprisoned not more than 6 months or both.”). See also *Morris*, 833 S.W.2d 624. Many states also contain similar knowing and/or willful violation requirements, see e.g.: KAN. STAT. ANN. § 38-1522 (WESTLAW through 2003 Sess.) (“(f) Willful and knowing failure to make a report required by this section is a class B misdemeanor”); 325 ILL. COMP. STAT. ANN. 5/4 (WESTLAW through P.A. 93-1102 of 2004 Regular Sess.) (“Any person who knowingly and willfully violates any provision of this Section other than a second or subsequent violation of transmitting a false report as described in the preceding paragraph, is guilty of a Class A misdemeanor”).

⁹⁴ *Hurd*, 400 N.W.2d at 48.

⁹⁵ *Id.*

2. *People v. Beardsley*:⁹⁶ *The Centrality of Legislative Intent*

Recently, the Court of Appeals of Michigan held that two school officials were not guilty for failure to report, because sexual contact between minors at school did not constitute abuse under the state's mandatory reporting statute.⁹⁷ This decision is particularly significant because it highlights the purposes and intended protections behind such statutes and, while the most recent of the cases discussed in this paper, it helps lay groundwork for analyzing the other cases.

In April 2002, defendants, a school administrator and a middle school principal, had "reasonable cause to suspect that sexual contact between a twelve-year-old boy and a thirteen-year-old girl occurred at the school during school hours."⁹⁸ Based upon that suspicion, the defendants reported the matter to the police and the parents of the two students, but because the defendants did not inform the Family Independence Agency (FIA), the state charged them with a failure to report.⁹⁹ The court, however, rejected the state's argument.

The court looked heavily at legislative intent, and focused part of its attention on the preamble to Michigan's child abuse reporting statute.¹⁰⁰ Using that preamble, the court stated that the Child Protection Law's purpose is, "to require the reporting of child abuse and neglect by certain persons,"¹⁰¹ in order to "protect[] children in situations, where abuse and neglect go unreported."¹⁰² The court held that because the neither party in the sexual contact was "a parent, legal guardian, teacher, teacher's aide, or other person responsible for the child's health and welfare," the defendants did not need to report the matter to the FIA.¹⁰³ Indeed, child abuse

⁹⁶ *People v. Beardsley*, 688 N.W.2d 304 (Mich. Ct. App. 2004).

⁹⁷ *Id.*

⁹⁸ *Id.* at 305.

⁹⁹ *Id.* The Michigan reporting law states that the mandated reporters that have "(b) . . . reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department: (i) Eligibility specialist, (ii) Family independence manager, (iii) Family independence specialist, (iv) Social services specialist, (v) Social work specialist, (vi) Social work specialist manager, (vii) Welfare services specialist." MICH. COMP. LAWS ANN. § 722.623(1)(b) (West 2004).

¹⁰⁰ MICH. COMP. LAWS ANN. Ch. 722, Prec. 722.621 (West 2004).

¹⁰¹ *Id.*

¹⁰² *Beardsley*, 688 N.W.2d at 307.

¹⁰³ *Id.* at 308. The statute defines child abuse as, "harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for

reporting statutes are intended to cover the maltreatment and abuse by persons who can exercise some form of authority or control over the child.¹⁰⁴ When this authoritative role is absent, the action does not fit the legislature's definition of abuse, and punishing such an action would be beyond the legislature's intent.

This idea of legislative intent is crucial in analyzing and understanding the criminal liability of mandatory reporters, as exemplified by a California case in the late 1980s.¹⁰⁵

3. People v. Bernstein:¹⁰⁶ *The Centrality of Fulfilling Legislative Intent*

When the reporting process works, it protects children from further abuse, thereby upholding legislative intent as seen when the Appellate Department for the Superior Court of Los Angeles County, California, overturned a school administrator's conviction for failure to report.¹⁰⁷ Stuart Bernstein was an administrative official in Los Angeles with administrative authority over the 68th Street School.¹⁰⁸ He received several telephone calls between November 30 and December 17, 1984, wherein the principal of that school "advised [Bernstein] of reports concerning purported acts of sexual abuse in the classroom performed by a third-grade teacher at the school."¹⁰⁹ The two discussed the procedures for substantiating the claims but substantiation came of its own accord. Indeed the principal informed Bernstein on December 17 that the teacher "had admitted to a teacher's aide that he was a pedophile" at which point Bernstein reported the suspected child abuse to the Los Angeles Unified School District Police Department (LAUSD PD).¹¹⁰ The LAUSD PD promptly reported the matter to the Los Angeles Police Department, who subsequently investigated the matter.¹¹¹

A jury found Bernstein guilty of failure to report based on the idea that the LAUSD PD was not a child protective agency because it did not have the "investigative ability to investigate child abuse allegations and lacked necessary computer facilities" that tapped into the department of

the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy." MICH. COMP. LAWS ANN. § 722.622 (West 2004).

¹⁰⁴ *Id.* at 308.

¹⁰⁵ *People v. Bernstein*, 243 Cal.Rptr. 363 (Cal. App. Dep't. Super. Ct. 1987).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 364.

¹⁰⁹ *Id.*

¹¹⁰ *Bernstein*, 243 Cal.Rptr. at 364.

¹¹¹ *Id.* at 367.

Justice's child abuse index.¹¹² Accordingly the trial court held that Bernstein's report to that body did not discharge his statutory duty and he was sentenced to probation and 400 hours of community service.¹¹³

The appellate court reversed, stating that the paramount issue pertaining to the statute's intent – the “immediacy of the report being made for the protection of the minor victim”– was fulfilled;¹¹⁴ the system employed to do so was merely secondary, particularly because the legislature had provided for a system of cross-reporting that did not require certain technologies.¹¹⁵ Indeed, once he learned of the teacher's pedophilia, Bernstein phoned the LAUSD PD, whom the Appellate division held to be a child protective agency,¹¹⁶ who immediately cross-reported the information, both orally and in writing, to the LAPD.¹¹⁷ The LAPD began an immediate investigation,¹¹⁸ thereby upholding the desire of the legislature to have immediate action taken to protect potential victims of child abuse.

Bernstein therefore shows that if the statutory intent is fulfilled and the children are protected, courts are much less likely to impose criminal liability for failure to report. This is not to

¹¹² *Id.* at 365. The statute states that “The mandatory child abuse report must be made to a ‘child protective agency,’ i.e., a police or sheriff's department or a county probation or welfare department. The professional must make the report “immediately or as soon as practically possible by telephone.” Cal. Pen. Code §11166(a) (1987). The trial court held that because LAUSD PD did not have certain technologies mentioned in the statute that permitted file-sharing and notification to other departments, the LAUSD PD was not properly a “child protective agency. Yet the crux of the case before the appellate department stated,

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies *by means of a system of cross-reporting*. An initial report to a probation or welfare department is shared with the local police or sheriff's department and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney.

Cal. Pen. Code §11166(g) (1987).

¹¹³ The California Penal Code states that “[f]ailure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a \$1,000 fine.” Cal. Pen. Code §11172(e) (1987).

¹¹⁴ Bernstein, 243 Cal.Rptr. at 365.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 364-65. LAUSD PD “is the fourth largest police department in the county of Los Angeles, having under its arena of responsibility the safety and welfare of approximately 600,000 students. It's peace officers attend the 18-week Los Angeles Sheriff's Academy course and are fully trained peace officers.” *Id.* Furthermore, the facts at trial proved that “LAUSD PD officers have full police power in connection with school district property and its employees” and they “conduct interviews, file reports, and make arrests like any other peace officers. And the LAUSD PD has investigators assigned primarily to investigate sex crimes in connection with the schools.” *Id.*

¹¹⁷ *Id.* at 367 (“[e]ach party implemented the exact kind of cooperative arrangements designed to coordinate existing duties in connection with the investigation of suspected child abuse cases”).

¹¹⁸ *Id.* at 367.

say that procedure is unimportant, rather Bernstein discharged his duty because he reported to a group that the court held was a child protective agency¹¹⁹, but the concurrence sheds light on what might have happened if the court held that the LAUSD PD was not a child protective agency. Indeed, the concurrence felt that the “[d]efendant was lucky” because the LAUSD PD “acted promptly, and although that department was not a child protective agency, someone in that department did report to the Los Angeles Police Department.”¹²⁰ Even under this scenarios the purpose of the statute was fulfilled, because the LAUSD PD passed on the report to the proper authorities, and Bernstein was accordingly absolved of his responsibility. *Id.* This should give some ease to school personnel because it means that at least some courts will not hold a person criminally liable if the proper authorities are notified promptly and the children are protected from the alleged abuser. *Morris* helps further clarify this point.

In *Morris*, the proper authorities were also notified of the teachers’ aides’ abuse, yet the court still found *Morris* guilty of failing to report.¹²¹ Employing the *Bernstein* logic it would seem that *Morris* should have been absolved of her responsibility because the authorities were promptly notified, and children were protected from further harm. *Bernstein*, however, made a good faith effort to notify the proper authorities, while *Morris* did nothing. Thus courts are likely to hold in the future that even if the purpose of the statute is fulfilled, it must be, at least in part, due to the good faith actions of the defendant.

While the abuse stopped in *Bernstein* and *Morris*, the abuse continued in all the remaining cases, thereby displaying the need for a stronger threat of criminal liability for failing to report.

4. Commonwealth v. Allen:¹²² *Protection and Proper Reporting*

¹¹⁹ *Id.* at 364. The concurrence, however, disagreed with this holding and therefore stated that “Defendant was lucky” because the LAUSD PD “acted promptly, and although that department was not a child protective agency, someone in that department did report to the Los Angeles Police Department.” *Id.* at 368. Thus the purpose of the statute was fulfilled, because the LAUSD PD passed on the report to the proper authorities, and Bernstein was accordingly absolved of his responsibility. *Id.*

¹²⁰ *Id.* at 368.

¹²¹ *Morris v. State*, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992).

¹²² 980 S.W.2d 278 (Ky. 1998).

Recently, Kentucky's Supreme Court strictly adhered to the state's reporting statute in *Commonwealth v. Allen*¹²³ by holding a teacher "criminally liable for failing to report suspected child abuse to proper authorities, despite making a report to her supervisor."¹²⁴ The *Allen* case is particularly enlightening because it underscores a few of the major issues and policy arguments surrounding mandatory reporting for school teachers and the attached criminal liabilities. Indeed teachers must be aware of, and follow proper reporting procedures in order for immunity to attach. It also illustrates the protective role reporting statutes can play if properly followed and why legislatures attach criminal liability to those who fail to follow them.

In November 1992, two sixth grade girls attending an elementary school in Kentucky reported to Betty Allen, one of the school teachers, and Pamela Cook, the school's counselor, that another teacher, Donald Mullins, sexually assaulted them earlier that fall.¹²⁵ Both Allen and Cook then reported the matter to the school's principal, feeling, in good faith, that doing so discharged their legal duty to report.¹²⁶ Yet none of the three reported the suspected abuse to state or local law enforcement officials, state or county attorneys, or state human resources employees¹²⁷ and the school took no further action.¹²⁸

In March 1993, another sixth grade girl reported, along with several eyewitnesses, to an assistant principal that Mullins had recently sexually abused her.¹²⁹ At that point, the school reported all three instances to the proper authorities.¹³⁰ Shortly thereafter, the state charged the teacher and the counselor¹³¹ with a Class B misdemeanor¹³² for failure to properly report suspected child abuse in violation of the Kentucky child abuse reporting statute.¹³³

¹²³ *Id.*

¹²⁴ Eric A. Hamilton, *Commonwealth v. Allen: An Eye-Opener for Kentucky's Teachers*, 27 N. KY. L. REV. 447 (2000) (contains and in-depth analysis of the Court's decision).

¹²⁵ *Allen*, 980 S.W.2d at 279, 282. *Allen* and *Cook* were the Appellees in the case before the Kentucky Supreme Court.

¹²⁶ *Id.* (adding that the teacher and the counselor claim that school protocol required their reporting to their supervisor).

¹²⁷ *Id.* at 279. These are the persons to whom a report can and should be made under KY. REV. STAT. ANN. § 620.030(1) (Michie 1990).

¹²⁸ *Allen*, 980 S.W.2d at 279, 282.

¹²⁹ *Id.*

¹³⁰ *Id.* at 282.

¹³¹ *Id.* It is interesting to note that the school's principal is conspicuously absent from this suit before the Supreme Court, yet the court notes that the principal was separately charged for a failure to report. *Id.* at 282. Still, the court held that the principal also had a duty to report the

The Kentucky Supreme Court held that the teacher and the counselor were criminally liable¹³⁴ for failing to report to the proper authorities.¹³⁵ The court relied heavily upon its reading of the Kentucky statute which read,

Any person who knows or has reasonable cause to believe that a child is dependent, neglected or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Kentucky Police; the cabinet or its designated representative; the Commonwealth's attorney or the County Attorney; by telephone or otherwise.¹³⁶

The court held that reporting to the principal did not discharge the teacher's and the counselor's statutory duties,¹³⁷ even though the law goes on to state that a supervisor must report if an employee informs them of suspected child abuse.¹³⁸ Rather the court reasoned that the duty upon the supervisor was evidence that the legislature intended reports at all levels of knowledge, and as such did not relieve the appellees of their duty to properly report.¹³⁹ Unlike *Bernstein*, children were not properly protected because the report in *Allen* was not promptly passed on to the proper authorities.¹⁴⁰ The Minnesota Supreme Court reached a similar conclusion.

5. State v. Grover:¹⁴¹ Abuse is a Continuous Cycle

The State of Minnesota charged Curtis Lowell, an elementary school principal, with two counts of failing to report child abuse.¹⁴² The case reached the Minnesota Supreme Court on a

suspected abuse, but because the principal was not a party in the suit, that holding did not specifically apply to the principal in this case. *Id.* at 279-281.

¹³² KY. REV. STAT. ANN. § 620.990(1) (WESTLAW through 1992) (“(1) Any person intentionally violating the provisions of this chapter shall be guilty of a Class B misdemeanor”).

¹³³ KY. REV. STAT. ANN. § 620.030(1) (WESTLAW through 1992). The only possible criminal charge under this statute is a misdemeanor.

¹³⁴ In Kentucky a Class B misdemeanor was punishable by imprisonment not to exceed ninety days (KY. REV. STAT. ANN. § 532.090 (WESTLAW through 1992)) and a fine of no more than \$250 (KY. REV. STAT. ANN. § 534.040 (WESTLAW through 1992)).

¹³⁵ *Allen*, 980 S.W.2d at 281 (“All individuals with firsthand knowledge or reasonable cause to believe that a child is abused have a mandatory duty to report the abuse”).

¹³⁶ KY. REV. STAT. ANN. § 620.030(1).

¹³⁷ *Allen*, 980 S.W.2d at 280-281.

¹³⁸ KY. REV. STAT. ANN. § 620.030(1).

¹³⁹ *Allen*, 980 S.W.2d at 280. The court also held that the teacher and the school counselor were not immune from criminal or civil liability, despite their good faith belief that they discharged their duty by reporting to the principal. *Id.* at 281 (Holding that “[a] report to a supervisor based upon school protocol is not a report within the meaning of” the statute, “and therefore appellees do not meet the threshold requirement for the protection of this immunity statute”).

¹⁴⁰ In fact, the authorities did not hear about the first two girls' allegations until school officials reported the third one of the authorities the next year. See *Allen*, 980 S.W.2d at 282.

¹⁴¹ *State v. Grover*, 437 N.W.2d 60, 61 (Minn. 1989).

pre-trial motion to dismiss, claiming that the statute was unconstitutionally vague and overbroad, yet the court ultimately held that he could be prosecuted for his inaction.¹⁴³ While the court explicitly stated that its decision was not “intended to express any opinion concerning” Lowell’s “culpability or nonculpability,”¹⁴⁴ the case gives further insight as to the process of criminal liability pertaining to a failure to report.

In 1984, a mother complained to Lowell that a teacher “had choked her son in class, leaving marks on the boy’s neck.”¹⁴⁵ Later that year, another mother informed him that the same teacher “had patted her daughter on the buttocks . . . and almost choked her son in the boy’s bathroom.”¹⁴⁶ Lowell did not report either of the incidents, thereby violating Minnesota law which states that “A professional . . . who is engaged in the practice of . . . education . . . who knows or has reason to believe a child is being neglected or physically or sexually abused shall immediately report the information to the local welfare agency, police department, or the county sheriff.”¹⁴⁷ In 1986, two other mothers complained to the principal about the same teacher’s actions. One claimed that the teacher “pinched her son on the buttocks on two occasions,”¹⁴⁸ and the other said that the teacher “squeezed the buttocks of her 11-year-old son sometime that fall.”¹⁴⁹ Lowell again failed to report the allegations. The information only came to the attention of the authorities when two of the parents complained to the Washington County Social Services Department, who then informed the police, and triggered the investigation that brought the incidents to the fore.¹⁵⁰ Lowell did not fulfill his duty and the abuse continued its cycle.

Likewise, a South Dakota case highlights the fact that abuse is cyclical, and if it goes unreported, the abuse is likely to continue.

¹⁴² *Id.* Under Minnesota law, as in all other states providing criminal liability for failure of a mandated reporter to report, failure to report is a misdemeanor. MINN. STAT. § 626.556(6) (1986).

¹⁴³ Grover, 437 N.W.2d at 65.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 61. The mother spoke to the principal in February 1984. *Id.*

¹⁴⁶ *Id.* She spoke with the principal in September 1984. *Id.*

¹⁴⁷ MINN. STAT. § 626.556(3)(a) (1986).

¹⁴⁸ Grover, 437 N.W.2d at 61.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

6. Hughes v. Stanley County School District:¹⁵¹ *Reporting and the Cycle of Abuse in the Home*

The only case pertaining child abuse in the home and a school employee's failure to report stems from an elementary school guidance counselor who was fired for violating school district policy.¹⁵² Though a civil case where the ultimate issue was one of terminating a teacher's employment,¹⁵³ the case makes mention of an attempted criminal prosecution of a school employee who did not report alleged abuse by a parent.¹⁵⁴ As such it is helpful to see what circumstances prompted a prosecutor to charge a teacher with criminal liability for a failure to report. The case also displays the cyclical nature of abuse, and a school employee's contravention of school policy that delineated the employee's role to that of reporter, not fact-finder.

M.B., a third grade girl, told Mary Hughes, the school's guidance counselor, that in Fall 1994 M.B.'s father, G.B., walked around the house naked after a shower.¹⁵⁵ In another conversation, M.B. told Hughes that G.B. "touched her in the area of her breast during a playful wrestling match" and in a third conversation Hughes learned that M.B. walked in on her father while he was masturbating.¹⁵⁶ On all three occasions, Hughes told M.B. to talk to her mother about the situations.¹⁵⁷ In May 1995, M.B. told Hughes that G.B. asked M.B. to touch his penis.¹⁵⁸ M.B., however, had a history of fabricating and exaggerating facts when talking with Hughes, so Hughes was unsure about how seriously to take the allegations.¹⁵⁹ Accordingly she spoke with the high school counselor to get a second opinion, and both felt that Hughes should speak with

¹⁵¹ *Mary Hughes v. Stanley County School Board*, 594 N.W.2d 346 (S.D. 1999) (Hughes I); *Hughes v. Stanley County School District*, 638 N.W.2d 50 (S.D. 2001) (Hughes II).

¹⁵² *Hughes I*, 594 N.W.2d 346; *Hughes II*, 638 N.W.2d 50. In *Hughes I*, the South Dakota Supreme Court reversed and remanded the circuit court's decision to uphold Hughes' termination for violating school district policy. See 594 N.W.2d at 348. In *Hughes II* the court upheld the trial court's decision to reverse the termination of Hughes' employment. See 638 N.W.2d at 51.

¹⁵³ *Hughes II* states, "[t]his decision concerns itself only with procedure in firing a teacher and has nothing to do with interpreting the reporting statutes." 638 N.W.2d at 55.

¹⁵⁴ *Id.* at 52; *Hughes I*, 594 N.W.2d at 350.

¹⁵⁵ *Hughes I*, 594, N.W.2d at 348. While many of the same facts are also in *Hughes II*, *Hughes I* contains a more thorough version and will accordingly be cited more frequently regarding the facts of the case.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

the parents.¹⁶⁰ So in contravention of school policy,¹⁶¹ Hughes contacted the parents in an apparent attempt to validate or dismiss the allegations as false.¹⁶² The parents told her that while “the first three allegations were essentially true and G.B. had taken steps to avoid reoccurrence in the future,” the last allegation was false.¹⁶³ While Hughes did check up on the situation with M.B. daily,¹⁶⁴ she never reported the incidents and allegations to the authorities.¹⁶⁵

The failure to report, however, came to light in July 1996 when the police questioned Hughes in connection with a complaint that G.B. had sexually assaulted a neighbor girl.¹⁶⁶ G.B. “ultimately pled guilty to the sexual assault charge arising out of the incident with the neighbor child,”¹⁶⁷ and while hindsight is 20-20, one wonders if a more realistic threat of criminal liability would have induced Hughes to report the abuse, despite her own reservations.

B. Additional Insights Gleaned From the Caselaw

Firstly, caselaw, through *Allen*, *Bernstein*, and *Grover*, gives credence to the proposition that many school personnel do not know the proper procedures to report suspected child abuse. Indeed, if the administrator had in *Bernstein* had reported to a more openly appropriate agency,

¹⁶⁰ Hughes II, 638 N.W.2d at 52.

¹⁶¹ The school district had a policy that stated,

School employees shall not contact the child’s family of any other persons to determine the cause of the suspected abuse or neglect. It is not the responsibility of the school employees to prove that the child has been abused or neglected, or to determine whether the child is in need of protection. It is only their responsibility to report his/her suspicions of abuse or neglect.

Hughes I, 594 N.W.2d at 349 n.1 (quoting Stanley County School District No. 57-1, heading “Child Abuse/Neglect” (1994-95)).

¹⁶² Hughes II, 638 N.W.2d at 52.

¹⁶³ Hughes I, at 594 N.W.2d at 348-49.

¹⁶⁴ *Id.* at 349. Hughes did learn during this time that G.B. now wore a bathrobe after taking a shower. *Id.*

¹⁶⁵ *Id.* Though it should be noted that Hughes *did not suspect* that the abuse occurred. Hughes II, 638 N.W.2d at 54.

¹⁶⁶ Hughes I, at 594 N.W.2d at 349. After the police questioned her, Hughes informed the principal and the superintendent of both the police questioning, her conversations with M.B., and her visit with M.B.’s parents. *Id.* Two months later received a termination notice for failing to report suspected child abuse and for talking with M.B.’s parents; both actions violated school policy. *Id.*; see also *id.* at 349 n.1 (quoting the school district’s policy in its entirety).

¹⁶⁷ *Id.* at 349. The school district also fired Hughes for violating school district policy through her failure to report and for talking with the alleged abuser’s parents. *Id.* She appealed and was eventually successful in retaining her employment. Hughes II, 638 N.W.2d at 54-55.

the entire lawsuit could have been avoided.¹⁶⁸ Yet more than this, a failure to follow proper procedure can have much more dramatic consequences because the abuse, as in *Allen* and *Grover* was able to continue.¹⁶⁹ Furthermore, failure to follow procedure naturally flows into a major issue pertaining to criminal caselaw in this area, the exemplification of the protective role the reporting statutes are meant to play.

Allen, *Hughes*, and *Grover*, illustrate the protective or mitigating role the reporting statutes are supposed to play and why the legislature places the threat of criminal liability on teachers who fail to report. Indeed, “[e]arly detection and reporting of child abuse and neglect by educators can help eliminate its long-term consequences, and help prevent the continuing cycle of abuse.”¹⁷⁰ Child abuse is indeed a cycle that can not only continue, but also escalate.¹⁷¹ Had the teacher, the counselor, or the principal in *Allen* reported the initial allegations to one of the authorities prescribed by the statute, Mullins’ abuse of the third sixth grade girl would likely have been avoided.¹⁷² In *Grover*, if the principal had reported the choking and buttock touching from the first round of abuse in 1984, the second round of victims could have been spared the trauma they experienced. *Hughes* was similar because if the counselor had reported M.B.’s allegations to the authorities then the sexual assault on the neighbor girl likely could have been avoided. Yet because the statute, as prescribed by the legislature, was not followed in these cases, the abuse was, for all intents and purposes, permitted to continue.

In *Morris*, a proper report would certainly have fulfilled the purpose of the mandatory reporting statute by immediately halting any further abuse. While this ultimately occurred in *Morris* because Jerry went to the hospital, abuse is not always that readily apparent. For instance, would

¹⁶⁸ *People v. Bernstein*, 243 Cal.Rptr. 363 (Cal. App. Dep’t. Super. Ct. 1987).

¹⁶⁹ See *Commonwealth v. Allen*, 980 S.W.2d 278 (Ky. 1998); *State v. Grover*, 437 N.W.2d 60, 61 (Minn. 1989).

¹⁷⁰ Linda L. Hale & Julie Underwood, *Child Abuse: Helping Kids Who Are Hurting*, 74 MARQ. L. REV. 560, 561 (1991):

¹⁷¹ See *id.* at 562 (stating that reporting can “prevent cases from becoming so severe that they require medical or court involvement”).

¹⁷² “The *Allen* decision supports the intent of the reporting statute because a report made to the proper authorities will allow an investigation to begin, and allow authorities to take the proper precautions in an effort to prevent further potential child abuse.” Eric A. Hamilton, *Commonwealth v. Allen: An Eye-Opener for Kentucky’s Teachers*, 27 N. KY. L. REV. 447 (2000). Justice Cooper, concurring in *Allen*, also expressed the same idea, “If appellees had obeyed their statutory duty when they were informed of Mullins’ abuse of his first two victims, the third victim might have been spared the same fate. *Allen*, 980 S.W.2d at 282 (Cooper, J. concurring);

the incident have been reported if Jerry had been sexually abused in the washroom instead, particularly given that he would likely not have gone to the hospital? These were aides hired specifically to deal with disabled and retarded children, yet they took it upon themselves to inflict severe punishment on one of them. Morris, who sat by and actually recommended the aides get a towel to staunch the sound of Jerry's screams, is hardly less culpable. Yet would she have acted differently if criminal liability was more than a vague threat?

Answers to these questions are certainly speculative but when the threat of criminal liability in *Morris* was weak enough to permit the teacher to sit idly by while the two aides tortured a retarded child,¹⁷³ it would seem that the threat needs greater strength. Accordingly, most potential prosecutions, particularly those pertaining to abuse in the home, are simply not pursued, meaning that the legislative inducement of criminal sanctions for mandatory reporters who fail to report is without teeth. Giving the penalty some teeth requires the threat to be employed more frequently.

Failure to follow in these cases negated the protective purpose of the statute, meaning that the inducement of criminal liability was not enough for these potential reporters.¹⁷⁴ Yet this is not to say that something is needed in addition to criminal liability; rather the situation is a reflection the virtually non-existent criminal prosecutions of school personnel who fail to report. Indeed, criminal liability is little more than an empty threat. The majority of legislatures, however, seem to remain immovable in imposing only criminal liability as an inducement for mandated reporters.¹⁷⁵ Furthermore, attempting to get more than forty states to change their statutes to create some other inducement is a monumental task, thus it is more realistic and more efficient to work within the confines of the structures that are already in place. Accordingly, it seems that the best solution to induce reporters like those in *Allen*, *Grover*, and *Hughes* is to give the threat of criminal liability some teeth through an increased level of prosecution for failing to report.

V. CONCLUSION

¹⁷³ See *Morris v. State*, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992).

¹⁷⁴ Though one would likely be safe in assuming that the officials and teachers involved in this litigation no longer saw the imposition of criminal liability as an empty threat.

¹⁷⁵ See Steven J. Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters* 19 J. Juv. L. 236, 247 (1998).

School personnel occupy a particularly prominent position in the realm of mandatory child abuse reporters, and while the initial efforts to imbibe mandatory reporting focused on physicians, legislatures soon discovered that teachers and other school officials are crucial to recognizing and reporting signs of child abuse. By the mid-1970s, school personnel were integral figures of child abuse protection laws¹⁷⁶ and today every state in the U.S. mandates that school personnel report suspected cases of child abuse.¹⁷⁷ Additionally, these states impose criminal liability on those school teachers and employees who fail report.¹⁷⁸

Research, however, uncovered only seven cases imposing criminal liability on a school teacher, official, or employee for failing to report suspected instances of child abuse.¹⁷⁹ Significantly, only one of the seven dealt with child abuse in the home,¹⁸⁰ the center of approximately ninety percent of all abuse cases.¹⁸¹ Thus it seems that prosecutors are not employing the statutory enforcement procedure against school personnel for failure to report suspected abuse originating in the home. As such, the laws do not have the inducement strength that state legislatures intended, implying that the legislative intent behind the statutes, protecting the children, is currently neglected to some extent. Criminal liability can and should be employed with greater frequency.

Caselaw also firmly supports this conclusion because it exemplifies the integral role school personnel can play in preventing child abuse and protecting its victims from the cycle of abuse. Indeed, had the statutes been followed, further abuse could have been avoided, the intent of the legislature would have been upheld, and the children would have been protected from further abuse. Thus while proper reporting procedure is crucial, courts show some leniency when

¹⁷⁶ See *supra* note 51.

¹⁷⁷ See *supra* note 14. See also LOUIS FISCHER, DAVID SCHLIMMEL & CYNTHIA KELLY, *TEACHERS AND THE LAW* 83 (5th ed. 1999).

¹⁷⁸ See *supra* note 14.

¹⁷⁹ *State v. Hurd*, 400 N.W.2d 42 (Wis. Ct. App. 1986); *People v. Bernstein*, 243 Cal.Rptr. 363 (Cal. App. Dep't. Super. Ct. 1987); *State v. Grover*, 437 N.W.2d 60, 61 (Minn. 1989); *Morris v. State*, 833 S.W.2d 624, 626 (Tx. Ct. App. 1992); *Commonwealth v. Allen*, 980 S.W.2d 278 (Ky. 1998); *Mary Hughes v. Stanley County School Board*, 594 N.W.2d 346 (S.D. 1999) (Hughes I); *Hughes v. Stanley County School District*, 638 N.W.2d 50 (S.D. 2001) (Hughes II); *People v. Beardsley*, 688 N.W.2d 304 (Mich. Ct. App. 2004).

¹⁸⁰ *Hughes I*, 594 N.W.2d 346 (S.D. 1999); *Hughes II*, 638 N.W.2d 50.

¹⁸¹ See *supra* note 19.

the intent of the statute – the protection of the child – is upheld.¹⁸² Furthermore, caselaw suggests that teachers are not as well versed in reporting procedures as they should be.¹⁸³

Currently the criminal liability affixed to mandatory reporting statutes for school personnel is hardly more than window dressing, or a vague, unrealized threat. This situation contributes, or at least does little to prevent children like Jerry Conner or the sixth grade girl in *Allen* from suffering at the hands of those entrusted with their care.¹⁸⁴ Increasing the number of prosecutions of school personnel, however, would further the purpose of the statutes and protect the children from facing events, or at least recurrences thereof, which could detrimentally impact their lives forever.

¹⁸² See *supra* section 4(A)(3)-(4).

¹⁸³ See *supra* section 4(A)(4).

¹⁸⁴ See *Morris*, 833 S.W.2d 624, *Allen*, 980 S.W.2d 278.