

MANDATING SUPPORT FOR SURVIVORS

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This Article explores the impact of mandated reporting on survivors of violence and their children. It details the history of mandated reporting laws to demonstrate why these laws should not apply to situations involving intimate partner violence (IPV). It examines the pernicious effects of mandated reporting on survivors, including but not limited to the removal of their children for “failing to protect” them from the very violence that they are experiencing. Further, it analyzes how rather than helping, removing children from their protective parents causes even greater harm. Finally, this Article explains why mandated reporting is counterproductive in the context of IPV and recommends “mandated supporting” an approach developed and championed by experts with lived experience in the family policing system.

INTRODUCTION

Leah Garcia was mother to a three-year-old daughter and a five-month-old son named Joseph. Mr. Chacón, Joseph’s father, had been increasingly violent with her for months. Ms. Garcia called the police, but they did nothing to assist. When police did finally take an interest, it was to report her to the Los Angeles County Department of Children and Family Services (DCFS).¹ Ms. Garcia’s last call to the police — that Joseph’s father was threatening her with a knife while her children slept in another room — triggered the department’s mandatory reporting obligation to inform DCFS that the children were at risk of harm.²

DCFS caseworkers began investigating whether Ms. Garcia could protect her children. DCFS interviewed Ms. Garcia and inspected her home. Caseworkers found no evidence that she was unfit, abusive, or neglectful. The only problem was that her children were present during the violent incident and Ms. Garcia had not left her home or obtained a protective order. DCFS did not offer her any assistance in obtaining the protective order or alternative housing.³

On her own, Ms. Garcia obtained a temporary protective order, but because she did not know Mr. Chacón’s whereabouts, she was unable to

¹ There are various names for the agencies in charge of the “child welfare” system. In some states, it is called the Department of Children and Family Services, in some the Department of Social Services, in others Child Protective Services, etc.

² Latino USA, *Unsafe in Foster Care, Part I*, PUB. RADIO EXCH. (Jul. 9, 2021), <https://beta.prx.org/stories/353379>.

³ *Id.*

serve him the order — a common problem for survivors.⁴ Rather than assist her, caseworkers removed her children, alleging that Ms. Garcia “failed to protect” them. Ms. Garcia’s daughter was placed with her biological father and her infant, Joseph, was placed in the foster system. Tragically, Joseph died after being placed in a foster home that was already under investigation for the death of another foster child.⁵

Mandatory reporting laws were the catalyst for the removal of Ms. Garcia’s children because they require people in certain professions to report suspected abuse or neglect.⁶ These laws required the police officers Ms. Garcia turned to for help to contact DCFS.⁷

Like Garcia, when a person is experiencing intimate partner violence (IPV),⁸ they may call the police, seek medical care, or go to therapy. If the survivor is a parent, these helpers are mandated by law to report perceived child neglect.⁹ Far too often, allegations are raised against the survivor for “failure to protect” her¹⁰ children from the very violence that she could not stop.¹¹ These allegations occur most frequently when the survivor fails to leave her partner, report an assault to the police, or seek a protective order — complicated decisions that have far-reaching consequences for the survivor and her family.¹² If the survivor refuses or is unable to take

⁴ See generally Andrew C. Budzinski, *Reforming Service of Process: An Access to Justice Framework*, 90 U. COLO. L. REV. 167 (2019).

⁵ Latino USA, *supra* note 3.

⁶ Child Welfare Info. Gateway, *Mandatory Reporters of Child Abuse and Neglect*, CHILDREN’S BUREAU 1 (2019), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/mandat/> [hereinafter *Mandatory Reporters*].

⁷ CAL. PENAL CODE § 11165.7 (West 2021).

⁸ The Center for Disease Control defines IPV as “abuse or aggression that occurs in a romantic relationship.” An intimate partner can be a current or former spouse or a dating partner. *Fast Facts: Preventing Intimate Partner Violence*, CTR. DISEASE CONTROL (Oct. 11, 2022), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

⁹ *Mandatory Reporters*, *supra* note 6, at 2.

¹⁰ While people of all genders and non-binary people can be and are subject to violence, this article is focused on violence specifically against women. Women make up the majority of parents accused of child neglect as well as the majority of people subjected to intimate partner violence. See National Coalition Against Domestic Violence, *Domestic Violence* (2020); Human Rights Watch, “*If I Wasn’t Poor, I Wouldn’t Be Unfit*” *The Family Separation Crisis in the US Child Welfare System* (2022), <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare> (“The majority (62 percent) of parents identified as culpable for neglect were women.”).

¹¹ Bryan G. Victor et al., *Child Protective Services Guidelines for Substantiating Exposure to Domestic Violence as Maltreatment and Assigning Caregiver Responsibilities: Policy Analysis and Recommendations*, 24 CHILD MALTREATMENT 452, 452 (2021).

¹² Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1114, 1120 (2022); see also *Adoption of Bernadette*, 2021 Mass. App. LEXIS 765 (Dec. 10. 2021).

these steps, she is threatened with the removal of her children and will be separated from them if she does not cooperate.

This Article explores how requiring the reporting of exposure to IPV when there is no allegation of physical harm to the child is contrary to the original goals of these laws. Further, it demonstrates that these “failure to protect” allegations are most often levied against low-income and minority women whose judgment and insight is questioned. It argues that this approach is counterproductive as it dissuades people from seeking help, leading to children and their mothers being at greater risk of harm. It ultimately proposes that to achieve the stated goals of the child welfare system — protecting children — mandated reporting laws should not apply to cases involving IPV. Instead, mandated reporters should support survivors without infringing on their autonomous decision-making.

I. THE EVOLUTION OF MANDATED REPORTING LAWS

The most recent data shows that family policing agencies receive about 3.9 million referrals per year, with almost 67% coming from mandatory reporters.¹³ This enormous flood of reports is largely the result of the broad definitions of abuse and neglect found in most states’ laws.¹⁴ History shows that these laws were never meant to cover the broad range of circumstances they do today. Because of the expansion of both who must report and what must be reported, many families are unnecessarily swept into the “surveillance tentacles of the child welfare system.”¹⁵

If mandated reporting can be attributed to a single person, it is Dr. C. Henry Kempe. In 1962, Kempe and his colleagues published their seminal article, *The Battered-Child Syndrome*. This article suggested specific methods of diagnosing child abuse by investigating injuries such as “fracture of any bone, subdural hematoma, multiple soft tissue injuries, poor skin hygiene, or malnutrition.”¹⁶ One of Kempe’s many proposals was that physicians report any “possible willful trauma” to the police or child protective services.¹⁷ Underlying his recommendation was the idea that such reports would be backed up with “objective findings that can be verified” and, where possible, could be supported with photographic and x-ray evidence.¹⁸ Kempe’s article received extensive media attention and became a blueprint for child protection policies moving forward.¹⁹

¹³ CHILDREN’S BUREAU, CHILD MALTREATMENT 2020 x-xi (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>.

¹⁴ MICAL RAZ, ABUSIVE POLICIES: HOW THE AMERICAN CHILD WELFARE SYSTEM LOST ITS WAY 58, 68 (2020).

¹⁵ Charlotte Baughman et al., *The Surveillance Tentacles of the Child Welfare System* 11 COLUM. J. RACE & L. 501, 506-507 (2021).

¹⁶ C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MED. ASS’N 17, 24 (1962).

¹⁷ *Id.* at 23.

¹⁸ *Id.* at 20.

¹⁹ RAZ, *supra* note 14, at 55.

That same year, the 1962 Public Welfare Amendments to the Social Security Act formally defined “child welfare services” and mandated these services be available on a statewide basis by 1975.²⁰ The following year, the Children’s Bureau convened a meeting to discuss the issue of how best to address child abuse.²¹ The Bureau posited that the country was experiencing a new “increase [in child abuse] and violence in the attacks on infants and young children by parents and other caretakers.”²² Model rules were proposed requiring doctors to report suspicion of child abuse to police or child welfare services.²³ This history was the genesis of today’s mandated reporting laws.²⁴ Within only four years every state had adopted mandatory reporting laws.²⁵

Initially, the response to child abuse existed almost entirely at the state level. However, in 1973, Senator Walter Mondale held hearings before the Senate Subcommittee on Children and Youth²⁶ to discuss a federal response to the problem.²⁷ At first, Mondale adopted Kempe’s narrow focus on severe physical abuse.²⁸ This focus made it easier to craft a legislative response that was punitive, rather than supportive and rehabilitative, in nature.²⁹ The resulting legislation, however — the Child Abuse Prevention and Treatment Act (CAPTA) — established a much broader definition that included both abuse *and* neglect.

²⁰ The Public Welfare Amendments of 1962, Pub. L. No. 87-543 § 528 (“... ‘child welfare services’ means public social services which supplement, or substitute for parental care and supervision for the purpose of (1) remedying or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.”).

²¹ John E. B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 455-56 (2008).

²² Leonard G. Brown III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States’ Current Mandatory Reporting Laws with a Review of Laws in the Commonwealth of Pennsylvania*, 56 VILL. L. REV. 37, 39 (2014), <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=3262&context=vlr>.

²³ Myers, *supra* note 21, at 456.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Child Abuse Prevention Act: Hearing Before S. Subcomm. on Children and Youth*, 93rd Cong. 1-3 (1973).

²⁷ RAZ, *supra* note 14, at 11-12.

²⁸ Susan Vivian Mangold, *Challenging the Parent-Child-State Triangle in Public Family Law: The Importance of Private Providers in the Dependency System*, 47 BUFF. L. REV. 1397, 1432 (1999).

²⁹ *Id.* at 1434.

CAPTA provided federal funding to states to support the “prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect.”³⁰ The legislation defined child abuse and neglect as “the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen . . . under circumstances which indicate that the child’s health or welfare is harmed or threatened . . .”³¹ Although it did not establish a federal mandated reporting law, it conditioned federal funding on states passing laws that “provide for the reporting of known and suspected instances of child abuse and neglect.”³²

To receive much-needed CAPTA funding, states quickly adopted compliant laws.³³ Pressure from the federal government, the media, and others resulted in continued expansion of mandated reporting laws.³⁴ Throughout the 1970s, states expanded mandated reporters to include other medical professionals such as nurses, dentists, and pharmacists, as well as to include non-medical personnel such as teachers, social workers, police officers, clergymen.³⁵ By 1978, twenty states adopted universal mandated reporting laws that required “any person” to report known or suspected child abuse or neglect.³⁶ Failure to report could lead to loss of professional licenses, fines, and even criminal penalties.³⁷ To further incentivize reporting, CAPTA also gave reporters protections such as immunity against civil and criminal liability.³⁸

The result of CAPTA and subsequent state laws was a surge of child abuse and neglect reports that the system was not equipped to handle.³⁹ Although Kempe envisioned a system in which serious physical abuse of a child could be reported and addressed, what emerged was one in which tens of thousands of reports poured in, the vast majority alleging child neglect — a vague concept.⁴⁰ CAPTA, however, was not designed to offer the services and support necessary to address reports of child neglect,⁴¹

³⁰ CHILDREN’S RIGHTS, FIGHTING INSTITUTIONAL RACISM AT THE FRONT END OF CHILD WELFARE SYSTEMS 8 (2021), https://www.childrensrights.org/wp-content/uploads/2021/05/Childrens-Rights-2021-Call-to-Action-Report.pdf?utm_source=dailykos&utm_medium=email&utm_campaign=ciofr.

³¹ Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247 § 3.

³² *Id.* at § 4(b)(2)(B).

³³ *Mandatory Reporters*, *supra* note 6.

³⁴ *See generally* RAZ, *supra* note 14; Douglas J. Bersharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 VILL. L. REV. 458, 468 (1978).

³⁵ Bersharov, *supra* note 34, at 467-68.

³⁶ *Id.* at 469.

³⁷ Child Welfare Info. Gateway, *Penalties for Failure to Report and False Reporting of Child Abuse and Neglect*, CHILDREN’S BUREAU (2019), <https://www.childwelfare.gov/pubpdfs/report.pdf>.

³⁸ *Mandatory Reporters*, *supra* note 6.

³⁹ RAZ, *supra* note 14, at 57.

⁴⁰ *Id.*

⁴¹ Human Rights Watch, *supra* note 10.

many of which were simply instances of poverty.⁴² Instead, all cases were treated equally, often resulting in child removal even when no serious threat existed.⁴³

II. EXPOSURE TO INTIMATE PARTNER VIOLENCE AS CHILD NEGLECT

The amorphous concept of neglect was never meant to be included in mandated reporting because the broad range of non-physical harm it encompasses cannot be verified in the ways Kempe suggested. Despite that, IPV in the home, without any evidence of harm to a child, can be reported as neglect. Currently, only four states offer IPV survivors complete protection from family policing intervention, while eleven states offer conditional protection whereby, for example, victims will not be accused of neglect unless they fail to leave the person accused of violence.⁴⁴

The idea of “failure to protect” as neglect is primarily based on the belief that exposure to IPV is harmful to children. Although there is no doubt that children who are exposed to IPV may experience negative effects,⁴⁵ the current response assumes that intervention and removal is the best way to help these children.⁴⁶ In reality, however, rather than reducing harm, removal from the protective parent often exacerbates it.⁴⁷

As I have written elsewhere, removing children from their parent(s) and placing them foster care can have life-altering and permanent consequences.⁴⁸ Research also shows that removal from parents can have

⁴² Jerry Milner & David Kelly, *It's Time to Stop Confusing Poverty With Neglect*, IMPRINT (Jan. 17, 2020), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>.

⁴³ See, e.g., *Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002). Like the case of Leah Garcia discussed above, in this case, Ms. Nicholson's children were removed after she was assaulted by her boyfriend. When she went to the hospital, her children were safely being cared for by a friend and neighbor. At no time were the children in danger, however, New York's child protective service, ACS, removed the children from the friend's home, refused to send the children to willing family members, and instead placed them in the foster system.

⁴⁴ Victor et al., *supra* note 11, at 458.

⁴⁵ See, e.g., Melissa M. Stiles, *Witnessing Domestic Violence: The Effect on Children*, 66 AM. FAM. PHYSICIAN 2052 (2002), <https://www.aafp.org/pubs/afp/issues/2002/1201/p2052.html>.

⁴⁶ See, e.g., *Removing Children From Domestic Abuse*, HARBOR HOUSE (Jun. 20, 2016), <https://www.harborhousefl.com/removing-children-domestic-abuse/>; Elizabeth Brico, *State Laws Can Punish Parents Living in Abusive Households*, TALK POVERTY (Oct. 25, 2019) (“[A] child can be removed if the state convinces a judge they have been or will likely be psychologically harmed by witnessing the abuse.”).

⁴⁷ Joy D. Osofsky, *The Impact of Violence on Children*, 9 FUTURE CHILDREN 33, 39 (1999).

⁴⁸ See generally Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523 (2019).

similar or even worse effects on children as exposure to violence.⁴⁹ For these children, maintaining a secure attachment with their protective parent is crucial to mitigate the effects of this exposure.⁵⁰ Fracturing that relationship can leave children confused and scared and may even lead them to blame themselves for the loss of their parents.⁵¹ Removal from parents is always traumatic, but for children who have been exposed to violence, the effect is compounded if they are removed from the one person who can help them to restore their sense of order.

For this reason, the current one-size-fits-all approach that the family policing system employs does not necessarily provide benefits to children, nor does it help their survivor parents. For survivors who choose to stay, they risk experiencing harm at the hand of both the state and their partners.⁵² A complex problem requires a nuanced response. Thus, it is necessary to consider the goals of mandated reporting alongside the goals of the domestic violence movement to determine a path forward.

III. MANDATED REPORTING IS COUNTERPRODUCTIVE

When a woman seeks help for IPV, she may call the police or seek medical treatment without knowing that these actions could lead to child welfare involvement. The resulting intervention has several deleterious effects, including retraumatizing survivors, disincentivizing women from seeking help, producing bias reporting, and increasing harm to the children involved.⁵³

When CPS officials investigate a mother for “engaging in domestic violence” or being “involved in . . . abusive and volatile relationships,” they ignore that the survivor was subjected to the violence, not perpetrating it.⁵⁴ Survivors then face intrusive investigations, threats of child removal, and possibly actual child removal if they do not comply with CPS

⁴⁹ Ijeoma Nwabuzor Ogbonnaya & Cara Pohle, *Case Outcomes of Child Welfare-involved Families Affected by Domestic Violence: A Review of the Literature*, 35 CHILD AND YOUTH SERV. REV. 1400 (2013).

⁵⁰ Victor et al., *supra* note 11, at 454; Jeanne M. Kaiser & Caroline M. Foley, *The Revictimization of Survivors of Domestic Violence and Their Children: The Heartbreaking Unintended Consequence of Separating Children from Their Abused Parent*, 43 W. NEW ENG. L. REV. 167, 185 (2021).

⁵¹ Allison Eck, *Psychological Damage Inflicted by Parent-Child Separation is Deep, Long-Lasting*, NOVA NEXT (Jun. 20, 2018), <https://www.pbs.org/wgbh/nova/article/psychological-damage-inflicted-by-parent-child-separation-is-deep-long-lasting>.

⁵² Courtney Cross, *Harm Reduction in the Domestic Violence Context*, in THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES 339 (Jane K. Stoeber, ed., 2019).

⁵³ Ohio Domestic Violence Network, *2021 Ohio Statewide Survey Results: Domestic Violence Survivors’ Experiences with Law Enforcement, Courts, Child Welfare and Social Services System* (2021), https://www.odvn.org/wp-content/uploads/2022/02/Seeking_Safety_Equity_and_Justice_Appendices.pdf.

⁵⁴ Washington, *supra* note 12, at 1155-56.

demands.⁵⁵ Those who fail to leave the person accused of harm, engage with the criminal system, cooperate with CPS, or seek a protective order are often accused of lacking “insight” into their situation in a way that is dangerous to their children.⁵⁶ Many survivors are unwilling or unable to leave their partners for a host of valid and complex reasons: they love them, they are good parents, they cannot afford to leave them, they would face cultural or other social stigma, or they have nowhere else to go.⁵⁷ Many also know that leaving can actually be more dangerous for them and their children and may precipitate increased violence or even homicide.⁵⁸ CPS, rather than recognizing this and trying to assist, tries to force survivors to leave by threatening to or actually removing of their children if they fail to comply. Often, CPS frames this as a choice between their partners and their children.⁵⁹

This can be an extremely traumatic experience not only for the survivor, but for her whole family. Thirty-five-year-old Violet Sanchez called the police for help when she was experiencing IPV. Once CPS became involved, she was truthful with them about her situation.⁶⁰ In recounting her experience, she said, “I feel like every time I was honest with DCFS about anything and needed help, I was penalized for it and humiliated.”⁶¹ Ms. Sanchez described the embarrassment and pain that the CPS investigation caused her family: her cabinets were examined to ensure she had enough food, her children were questioned at school in a way that caused hallway chatter, and her children were also forced to have their naked bodies examined by strangers.⁶² These actions left Ms. Sanchez’s daughter traumatized years after the investigation concluded.⁶³

Ms. Sanchez’s experience is not unique. One study showed that over half of IPV survivors surveyed who had sought help experienced CPS involvement.⁶⁴ Another survey (“the Hotline Study”) demonstrated that more than half of the IPV survivors who sought help felt that having a mandated reporter call CPS or the police made things “much worse.”⁶⁵ An

⁵⁵ *Id.* at 1149-51.

⁵⁶ *Id.* at 1121-22.

⁵⁷ Kaiser & Foley, *supra* note 50.

⁵⁸ LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 76 (2008).

⁵⁹ Ogbonnaya & Pohle, *supra* note 49.

⁶⁰ Human Rights Watch, *supra* note 10.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Ohio Domestic Violence Network, *supra* note 53.

⁶⁵ Carrie Lippy, Connie Burk & Margaret Hobart, *There's no one I can trust: The impact of mandatory reporting on the help-seeking and well-being of domestic violence survivors*, NAT'L LGBTQ DV CAPACITY BUILDING LEARNING CTR. (2016), http://www.ncdsv.org/Natl-LGBTQ-DV-CBLC_There%27s+No+One+I+Can+Trust_2016.pdf.

additional 12% said it made the situation “a little worse” while only 20% said it made no difference.⁶⁶ Like Leah Garcia once reported, many survivors are charged with “failure to protect.” As one woman explained, “[t]hey removed my children from my home and charged me with allowing domestic violence to happen to me.”⁶⁷

For those who are aware of these consequences, mandated reporting laws serve to disincentivize IPV survivors from seeking help at all. In one study, 23% of those who experienced family policing involvement following a report of IPV said they would be afraid to call the police for a similar incident in the future.⁶⁸ In the Hotline Study, 53% of transgender and gender-variant parents were afraid to ask for help due to fear of being reported.⁶⁹ Overall, parents who were warned they would be reported to CPS no longer sought medical care, and they lied or withheld information to avoid their children being taken or because they feared being killed by their partners if police arrived.⁷⁰ Some parents withheld information about physical abuse of the children.⁷¹ One study showed that mandated reporting even discouraged survivors from seeking help from their friends and family because of universal mandated reporting laws.⁷² Given that most people are likely to turn to their informal networks first, this finding is particularly alarming as it further isolates survivors.⁷³

Some medical professionals also caution that mandated reporting of IPV could lead to biased reporting.⁷⁴ Research confirms this. One study found that women of color who experienced violence were 21% more likely to have CPS involvement than their white counterparts.⁷⁵ Overall, caseworkers seem more willing to blame Black women for the problems in their families — in part based on stereotypes about Black women — and may see non-physical acts such as arguing as equivalent to the actual violence these women experience.⁷⁶

⁶⁶ *Id.*

⁶⁷ Carrie Lippy et al., *The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change*, 35 J. FAM. VIOLENCE 255, 264 (2020).

⁶⁸ Ohio Domestic Violence Network, *supra* note 53.

⁶⁹ Lippy et al., *There’s no one I can trust*, *supra* note 65.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Lippy et al., *supra* note 67.

⁷³ *Id.*

⁷⁴ *Race Equity Review: Findings from a Qualitative Analysis of Racial Disproportionality and Disparity for African American Children and Families in Michigan’s Child Welfare System* CTR. STUDY SOC. POL’Y (Jan. 16, 2009), <https://ocfs.ny.gov/main/recc/presentations/Race-Equity-Review-Michigan-2009.pdf>.

⁷⁵ Ohio Domestic Violence Network, *supra* note 53.

⁷⁶ Tina Lee, *Child Welfare Practice in Domestic Violence Cases in New York City: Problems for Poor Women of Color*, 3 WOMEN, GENDER, & FAMS. COLOR 58, 65 (2015).

IV. MANDATED SUPPORTING SHOULD REPLACE MANDATED REPORTING

For all the damage mandated reporting can do to IPV survivors and others, there is no evidence that it increases the likelihood of identifying children at risk of abuse and neglect. A recent study showed that universal reporting requirements led to an increase in unfounded reports while also failing to uncover actual cases of abuse and neglect.⁷⁷ In other words, mandated reporting leads to more reports, not more protection.

What a person experiencing violence needs can only be determined by that person. Mandated reporting creates state involvement in the very personal decisions that survivors need to make about their families and how best to protect their children. Forcing survivors to follow a prescribed response like leaving their partners or seeking protective orders undermines their autonomy and agency and often leads to worse outcomes for them and their children.⁷⁸ In many cases, it may even increase harm to survivors — they may face retaliation, heightened violence, homelessness, or the loss of their children.⁷⁹

Mandated reporting to CPS should never be required in cases involving IPV. As discussed, mandated reporting was never meant to apply to cases of neglect, much less to a parent who has not caused harm. It prevents people from getting the help that they need or from being able to trust professionals whose job it is to provide these important services.⁸⁰

Further, mandated reporting to CPS for IPV cases prevents these helpers from fulfilling the goals of their professions — they can't actually help.⁸¹ Rather than allowing advocates to help restore power and control to survivors, it forces them to instead “exert[] power and control *over*” them.⁸² Advocates also recognize the systemic biases that many mothers face at the hands of CPS, such as punishing minority mothers more

⁷⁷ Grace W. K. Ho, Deborah A. Gross & Amie Bettencourt, *Universal Mandatory Reporting Policies and the Odds of Identifying Child Physical Abuse*, AM. J. PUB. HEALTH (Apr. 11, 2017), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.303667>.

⁷⁸ Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U.L. REV. 1, 26 (2009).

⁷⁹ See GOODMAN & EPSTEIN, *supra* note 58; Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (2000).

⁸⁰ Lippy et al., *supra* note 67, at 262.

⁸¹ See, e.g., Mike Hixenbaugh, Suzy Khimm & Agnel Philip, *Mandatory Reporting Was Supposed to Stop Severe Child Abuse. It Punishes Poor Families Instead.*, PROPUBLICA (Oct. 12, 2022) (“For the most part, these mandated reporters are in their jobs because they want to help people, they want to improve conditions for children and families. And so here is this agency that offers them this possibility of getting help to parents and children.”).

⁸² Lisa A. Goodman et al., *Power with and Power Over: How Domestic Violence Advocates Manage their Roles as Mandated Reporters*, 35 J. FAM. VIOLENCE 225, 226 (2020).

harshly or applying heightened scrutiny to the parenting practices of mothers but not fathers.⁸³ Advocates note that many CPS workers do not understand the complicated dynamics involved in IPV, which can lead to inconsistent responses.⁸⁴ Overall, advocates feel tension between their duty to support survivors and their mandated reporting requirements.⁸⁵

Impacted people and progressive scholars including Kimberlé Crenshaw, Mimi Kim, Beth E. Ritchie, Leigh Goodmark, Donna Coker, and others have long urged that the response to IPV be intersectional.⁸⁶ There must be a fundamental recognition that IPV is connected to larger structural inequalities and oppression.⁸⁷ We cannot address IPV in a way that ignores race, socioeconomic status, immigration status, sexual orientation, education, and other privileges. We need to build coalitions with communities of color and engage with communities most impacted to learn what people need. As Mimi Kim puts it, “our approach to violence intervention must be guided by the knowledge held by everyday people, carried out by those closest to and most impacted by violence, and situated in the very spaces and places where violence occurs — within our homes, neighborhoods, and communities.”⁸⁸ We must align the domestic violence movement with other movements fighting for systemic change.

The family regulation abolitionist movement has closely examined the impact of mandated reporting on low-income and minority parents. This movement includes social workers who are mandated reporters calling for an end to punitive responses and “disavowing and removing [themselves] from systems of harm.”⁸⁹ One approach that is borne of this movement is “mandated supporting” — a phrase coined by Joyce McMillan, founder of Just Making a Change for Families, (“JMac for Families”), a parent-led organization working to “abolish the current punitive child welfare system and to strengthen the systems of supports that keep families and communities together.”⁹⁰ JMac for Families describes mandated

⁸³ *Id.* at 229.

⁸⁴ *Id.* at 226-27.

⁸⁵ *Id.* at 229.

⁸⁶ Jamie R. Abrams, *Is Domestic Violence Politicized Too Narrowly?*, in *THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES* 339 (Jane K. Stoeber, ed., 2019); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1245–50 (1991); Beth E. Ritchie, *A Black Feminist Reflection on the Antiviolence Movement*, 25 *SIGNS: J. WOMEN IN CULTURE & SOC’Y*, 1133 (2000); Mimi Kim, *Alternative Interventions to Intimate Violence: Defining Political and Pragmatic Challenges*, in *RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN* (James Ptacek, ed., 2010); LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE* (2018).

⁸⁷ Abrams, *supra* note 86.

⁸⁸ Kim, *supra* note 86, at 195.

⁸⁹ Alan Detlaff, *End Carceral Social Work*, *INQUEST* (June 15, 2022), <https://inquest.org/end-carceral-social-work/>.

⁹⁰ JMACFORFAMILIES, <https://jmacforfamilies.org/who-we-are>.

supporting simply: rather than reporting to the state, ask people what they need and provide them with it.⁹¹ “For a child regularly arriving at school without a coat, find him a coat. For a pregnant teenager without medical care, make a doctor’s appointment.”⁹²

In 2020, after taking required mandated reporting training, social work students at the Columbia School of Social Work rewrote the curriculum in partnership with community organizations and social work professors to transform “mandated reporting to ‘mandated supporting,’ incorporating the importance of critically analyzing themes of power, race, oppression, and privilege.”⁹³ Further, the curriculum focuses on solutions that are “liberatory, harm reductive, decolonial, and centers families.”⁹⁴ Social Workers Against Mandates (SWAM) recognizes that the current mandated reporting regime prevents social workers from actually supporting the families they work with, in opposition to their professional and ethical responsibilities.⁹⁵ It proposes “alternative approaches to ensuring child welfare by providing families resources and support.”⁹⁶

For many, what they actually need is simple: money. Phoebe Jones proposes a universal basic income.⁹⁷ Jones is a leader at DHS - Give Us Back Our Children, a Philadelphia organization that advocates for caregivers who have had their children removed due to poverty and IPV.⁹⁸ She asks “[r]ather than taking children from their mothers and paying foster parents to care for them, why don’t we invest that money in families?”⁹⁹

Mandated supporting should also incorporate harm reduction principles.¹⁰⁰ Rather than focusing on a singular response to byzantine problems, harm reduction principles seek to reduce risk without requiring total abstinence — in this context, leaving the abusive partner. Here, harm reduction practices could be incorporated at individual, community, and societal levels.¹⁰¹ At the individual level, this could involve safety planning surrounding staying in the relationship while simultaneously providing supports like housing and public benefits assistance, financial planning

⁹¹ Emily Cooke, *Defund Social Workers*, NEW REPUBLIC (Sept. 23, 2022), <https://newrepublic.com/article/167627/defund-social-workers>.

⁹² *Id.*

⁹³ *Mandated Supporting*, JMACFORFAMILIES, <https://jmacforfamilies.org/mandated-supporting> (last visited May 24, 2023) (internal quotations omitted).

⁹⁴ *Id.*

⁹⁵ Jennifer Benson et al., *Mandated Supporting*, SOC. WORKERS AGAINST MANDATES 1 (2021), <https://static1.squarespace.com/static/5c8ad6374d546e4cda43d02e/t/61bba98df456a46da4ca4035/1639688591387/Mandated+Supporting+Module+2021.pdf>.

⁹⁶ *Id.*

⁹⁷ Hixenbaugh et al., *supra* note 81.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Cross, *supra* note 52.

¹⁰¹ *Id.*

counseling, and physical and behavioral health services.¹⁰² Advocates highlight the importance of helping parents strengthen their informal networks by regaining lost connections or facilitating new connections between parents who fear mandated reporting.¹⁰³

At the community level, there could be campaigns that educate about “healthy relationships, early signs of abuse, how best to support survivors . . .” and why it can be difficult to leave.¹⁰⁴ Other advocates note that who the mandated reporters are makes a huge difference. They highlight how crucial it is to have staff who share culture and experiences so that they can understand parenting in context.¹⁰⁵

And at the societal level, the response to IPV could be diverted from the criminal and family policing systems to community accountability efforts that employ transformative and restorative justice models.¹⁰⁶ Such efforts can create interventions that “aid rather than endanger” while still ensuring that the person who caused harm is held accountable for their actions.¹⁰⁷ Finally, harm reduction within the confines of the law would prohibit the inclusion of “failure to protect” as a type of child neglect and revisit mandated reporting laws so that IPV does not automatically trigger family policing intervention.

CONCLUSION

Mandated reporting of IPV not only fails to meet the objective of child protection, in many cases it causes greater harm. Similarly, mandated reporting undermines the goals of the domestic violence movement, making it harder for survivors to access care and stay safe. Survivors are clear that mandated reporting does not benefit them or their children. Future approaches should focus on survivors’ actual needs because ultimately, if the survivor is empowered, supported and secure, her children will be too.

¹⁰² *Id.*

¹⁰³ Goodman et al., *supra* note 82.

¹⁰⁴ Cross, *supra* note 52.

¹⁰⁵ Goodman et al., *supra* note 82.

¹⁰⁶ GOODMARK, *supra* note 86, at 75-95.

¹⁰⁷ *Id.* at 85.