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Do I Report This? Understanding Variation in the Content of State Mandatory Reporting Laws

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ABSTRACT

Since accusations went public that administrators at Pennsylvania State University ignored reports of child abuse during the Jerry Sandusky trial almost a decade ago, several educational and state agencies have reinterpreted aspects of their respective laws requiring certain persons to report suspected child maltreatment (mandatory reporting laws). These reinterpretations were possible due to the ambiguity of statutory language used in the law and, subsequently, may have exposed individuals to a legal responsibility to report to which they were previously unaware. In this study, we use a thematic content analysis to examine variation across state mandatory reporting statutes from all fifty states as of 2016. Three themes emerged from this analysis: definitions for reasonableness, immediacy of danger, and inclusion of mandated reporters. Generally, we found that the vague language and variation in the content of the law, though well intentioned, may contribute to uncertainty in knowing when a report is necessary and who must report it. We conclude with considerations for future research, as well as highlight potential implications for instructors and researchers in higher education. These findings can contribute to our understanding of ambiguity in the law. Further, the sources of variability we identify in this analysis may help to anticipate potential shifts in legal risk in the wake of recent and future reinterpretations of ambiguously worded policy.

Introduction

First established in the 1960s, state mandatory reporting laws required specific professionals, namely physicians and teachers, to report suspected child abuse. Until 2011, the interpretation of these mandatory reporting laws remained largely consistent. In the wake of the Jerry Sandusky trial, evidence surfaced that Penn State administrators had learned about the allegations against Sandusky but failed to take action (Kelly, 2013). Subsequently, educational institutions and governmental agencies began to expand only their interpretation of mandatory reporting laws (Holland et al., 2018; Steinbuch, 2012). The implementation of this change, then, required no revision to policy due to the ambiguous language used mandatory reporting statutes at the time. Perhaps, albeit unintentionally, the reinterpretation of these laws may have extended legal vulnerability to individuals who work with adults that experienced victimization in childhood (e.g., treatment providers, victims' advocates, professors) without their awareness if states (or institutions) reinterpret the ambiguously worded existing laws to include them as mandatory reporters (Holland et al., 2018).

It certainly seems reasonable to expect people trained to identify signs of child maltreatment to report these indicators. Such incidents represent an existing danger to children who may not be capable of advocating for themselves. However, institutional reinterpretations of mandatory reporting laws in response to high-profile cases like Sandusky's have expanded its use to incidents reported years after the abuse occurred, often by the victim. In such a case, mandated reporters would be expected to share information about the abuse with authorities regardless of the victim's wishes (or perhaps in direct opposition to them). Further, given the ambiguous language in existing statutes, these changes can be made beyond the more public nature of legislative processes.

In light of recent reinterpretations of mandatory reporting laws by state agencies and officials (Holland et al., 2018), we explored areas of ambiguity in mandatory reporting statutes to accomplish two purposes. First, we sought to analyze variation in the law to identify potential sources of ambiguity in mandatory reporting laws. To the degree that existing mandatory reporting laws allow for reinterpretations without public processes, perhaps through ambiguous or discretionary wording, potential reporters should be especially vigilant as the implementation of policy might change without their knowledge. Therefore, our second purpose was to apply our analysis of variation in mandatory reporting laws to identify sources of legal vulnerability for people who work in a "gray zone" for mandatory reporting. We discuss the paths to vulnerability for each state based on our thematic analysis of state statutes for instructors working in institutes of higher education. This analysis, then, not only serves to raise awareness about potential shifts in legal obligation to report reinterpretation, but we also hope to contribute to scholarly discourse about the tradeoffs surrounding ambiguity in public policy.

Development of mandatory reporting laws

Mandatory reporting laws were adopted in the United States during the mid-1960s. These laws were a response to a perceived social problem surrounding child maltreatment, especially regarding the newly identified battered child syndrome (Hutchison, 1993; Nelson, 1984; Paulsen, 1967). Mandatory reporting laws continue to serve as a means of preventing witnesses of child abuse from withholding information pertaining to child maltreatment. Many states, however, initially had laws that required only physicians and medical personnel to report suspected physical child abuse, although anyone could report child abuse and neglect with immunity (Kalichman, 1999; Paulsen, 1967). These original restrictions resulted from the beliefs

that maltreated children would inevitably be attended to by physicians as medical doctors had the training and skills to accurately identify child maltreatment, and, prior to the passage of these laws, physicians were thought to be less likely to report suspected child abuse and neglect than other professionals working with children (e.g., school teachers or social workers; Paulsen, 1967). In 1974, states widened their mandatory reporting laws to meet the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA; Matthews & Kenny, 2008). As a result of CAPTA, state legislators expanded the groups of professionals required to report child maltreatment, broadened the range of maltreatment to be reported (i.e., sexual, emotional, and psychological abuse and neglect), and removed the qualifier of "serious harm," which widened the scope of mandatory reporting laws to include less serious injury (Kalichman, 1999; Matthews & Kenny, 2008). As of August 2016, all 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the US Virgin Islands had statutes requiring the reporting of suspected child maltreatment, sexual or otherwise (Children Welfare Information Gateway, 2016).

Despite their widespread enactment, states' laws vary on who mandatory reporters are and the procedures by which they are expected to report suspicions. As of 2016, forty-eight states mandate specific types of professionals required to report, which commonly include social workers, teachers, physicians, counselors/therapists, childcare providers, medical examiners, and officers of the law or court (Child Welfare Information Gateway, 2016). These professionals are mandated to report when they "suspect or [have] reason to believe that a child has been abused or neglected" (Child Welfare Information Gateway, 2016, p. 3).

The Jerry Sandusky trial and the (re-)interpretation of mandatory reporting laws

In July of 2011, Jerry Sandusky, the then-retired defensive coordinator for the Penn State football program was indicted for the sexual molestation of eight boys that occurred both during and after his career at Penn State. Although these incidents occurred at several locations, most notable were the sexual crimes that occurred in the showers and locker room on the Penn State campus. Jerry Sandusky was eventually convicted for his crimes and sentenced to 30 years in prison (Pennsylvania Attorney General, 2011). During the investigation into Sandusky's offenses, it came to light that other members of the Penn State football staff and higher-ranking administrators had been made aware of Sandusky's sexually abusive behavior toward the young boys. At that time, the staff and administrators did not report the incidents to the police. By not

reporting the accusations to authorities, these individuals were in direct violation of Pennsylvania's mandatory reporting law (23 PA CS §6311), which states that, "Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made [of suspected child abuse]." To date, Penn State has paid more than $225 million dollars in legal fees, settlements, and fines as a direct result of their violation in not reporting Sandusky's abuse (Thompson, 2017). This case brought public attention to mandatory reporting, which in turn may have motivated educational institutions and governmental agencies to revisit their interpretation of their state's mandatory reporting laws.

Mandatory reporting laws have traditionally been applied to professionals who deal with children, typically defined as persons 18 years or younger. However, the labeling of Sandusky as a "predatory pedophile" by prosecutors in the case (Muskal, 2012) likely encouraged legislators and the public to embrace the notion, "once a sex offender, always a sex offender" (Sample & Kadleck, 2008). In this case, then, it was possible the inference expanded to include "if there was one victim, there must have been others before," thereby promoting a retrospective inquiry of prior sex offending cases to determine if abuse is ongoing. Additionally, this retrospective inquiry was promoted by changes to the statutes of limitations for reporting child sexual assault in the 1990s. For instance, if a 19-year-old person self-reports that they were abused as an adolescent, in some states, citizens are required to report this admission to government authorities in the hopes of preventing the abuser from "moving on" to new victims. Therefore, if it is believed that sex offenders inevitably continues offending, the mandatory reporting of prior child abuse, even if the victim is an adult, can be thought of as a child-saving measure.

Although well-intentioned, these laws have not been without debate, particularly with regard to requiring professionals to break confidence even when the victim expressly requests discretion (Hutchison, 1993; Paulsen, 1967). Some mandatory reporters, such as mental health professionals or attorneys, may face ethical dilemmas surrounding the principle of confidentiality. That is, breaking confidence to report child maltreatment, despite good intentions, could create harm for victims both through invasive criminal investigations or the stigma of public trials (Crenshaw et al., 1994; Schoeman & Reamer, 1983). Further, by mandating that professionals report child maltreatment, we may be ignoring the desires of victims, effectively revictimizing those who the law was intended to protect (Bowman & Mertz, 1996).

The intersection of mandatory reporting and criminal justice teaching and research

Classes and research interviews related to criminology and criminal justice often lend themselves to disclosures of prior criminal behavior and victimization. In some states, even though disclosed to college faculty members by adults, mandatory reporting laws require those faculty to report past childhood victimizations to prevent continued offending with new victims. For instance, a faculty member that teaches a victimology course may have to caution students who wish to share their childhood victimization experiences with the class or who are seeking counseling related to childhood victimization. On the one hand, such caution may be viewed as a cost of teaching necessary to preserve public safety and protect children; on the other hand, this approach may also discourage students from seeking help from faculty who may otherwise be able to assist them.

Although legislative prioritization of public safety is certainly a noble endeavor, as researchers, college faculty members have an ethical obligation to provide confidentiality for those who share their experiences under the federal regulation (Protection of Human Subjects, 2009). To comply with their professional, ethical, and legal responsibilities, it is important that college faculty members be aware of relevant changes to legislation and their application to college faculty. By raising awareness to such legislation and how it may be interpreted, college faculty members can adjust their methods to better resolve any resulting ethical dilemmas. When no acceptable resolutions are available, those faculty can seek guidance from administrators and legal counselors.

Herein lies the quandary for criminology and criminal justice professors and scholars. Their classes and research often prompt discussions of childhood victimization. Their students and research participants often disclose personal experiences of abuse to professors and researchers. Prior to the Sandusky case, rarely would college faculty members have been required to report such experiences to the police or Health and Human Services. After this highly publicized trial, however, state agencies and authority figures may consider professors, lecturers, and researchers to be mandatory reporters, creating a dilemma in which those researchers and educators must choose between their legal responsibilities and ethical obligations to privacy and confidentiality.

This paper intends to raise awareness surrounding the potential impact legislative change related to mandatory reporting may have on faculty collegiate duties. To do

this, we have two aims. First, we seek to examine variation across state mandatory reporting statutes from all fifty states utilizing a five-stage thematic qualitative text analysis (Kuckartz, 2014). Second, based on the findings produced in our thematic analysis, we present the potential for hidden shifts in the expectation to report for college faculty teaching about and researching criminal justice problems. This demonstration is intended to reveal the potential impact that ambiguity in these laws may have for professions that historically have not fallen within the scope of mandatory reporting.

Method

Data

As a starting point, we generated a list of state mandatory reporting statutes using the most recent list compiled by the Children's Bureau (Child Welfare Information Gateway, 2016). A copy of each statute in this list was collected using LexisNexis and verified using each state's searchable archive database in its respective State Legislature website (e.g., New York General Assembly, Nebraska State Legislature). All state statutes listed in the Children's Bureau report were collected in September 2017. The final dataset included 168 statutes (304 pages) representing all 50 states.

Analysis

In qualitative research, scholars can answer their research questions using a variety of different methods and analytic techniques. As no single qualitative analytic technique is considered to be more or less valid than others in addressing qualitative research questions, scholars using qualitative analytic techniques choose strategies out of personal preference or research philosophy more than in response to methodological concerns. What is especially important in qualitative analysis, then, would be the use of a systematic, transparent process. This section reviews the systematic process used in this analysis in detail.

To answer our research questions, we used an inductive, five-stage qualitative thematic textual analysis (e.g., Kuckartz, 2014) to identify sources of variation and ambiguity in the content of state mandatory reporting laws. This process began with a read-through of all data (i.e., state mandatory reporting statutes). A thorough reading of the data prior to coding text segments or establishing categories allows the researcher to understand the messages, symbols, and relationships communicated within the text. As our text are made up of state statutes, this process revealed text that was produced through a deliberate process meant to establish expectations for

individual behavior in given situations. The words, definitions, and relationships described in these statutes, then, were selected to convey a more specific, tailored message to implementers and the public alike. In addition to the context and tone of the text under analysis, we also generated memos (i.e., analytic notes) that reflected common attributes of the mandatory reporting laws that would be used when constructing our initial coding structure.

The second stage of our analysis involved the generation of an initial coding structure. We used a combination of memos generated during the first stage read-through and existing literature related to the key attributes of MR laws. The initial coding structure included 11 initial categories: definitions of maltreatment, timing of danger to children, exceptions to reporting, and eight categories of reporters.

Once we had developed our initial coding structure, the third stage of the analysis involved assigning these initial codes to text segments (i.e., initial coding; Kuckartz, 2014). More specifically, we coded subsections of the statutory code. For example, if our "definition of maltreatment" code was already applied to a hypothetical "Section A" of the statute, we did not use that code again for the remainder of Section A. Our decision to restrict text segments to statutory subsections meant that, in later phases of the analysis (wherein we condense and interpret our codes into broader (sub)categories), our findings would be less biased toward states that used certain words more frequently (e.g., "reasonable"). We believe that this decision, then, allowed us to focus our analysis on the underlying meaning and patterns in laws rather than generating counts of word usage (i.e., Classical Content Analysis; Neuendorf, 2002). This phase of the analysis produced 1,024 coded segments.

During the initial coding phase, we used consensual coding between two members of the research team. In consensual coding (Hopf & Schmidt, 1993; Kuckartz, 2014), two or more coders first complete initial coding independently then come together and compare codes. Any discrepancies are discussed and resolved between the two coders. Consensual coding is beneficial to qualitative text analysis as it requires greater transparency and precision in coding processes shared across a team of collaborators (Kuckartz, 2014). In our analysis, there were few discrepancies between the two coders due, in large part, to the need to develop clear and precise coding structures prior to the initial coding phase. In the unlikely case that the two coders could not come to an agreement on some discrepancy, the remainder of the research team would be asked to resolve differences between coders. The few discrepancies between the two coders (less than 20) were a result of differences in assigning particularly specific

groups of reporters to the miscellaneous category or some other category. For example, one discrepancy resulted from California's statute regarding the segment, "Any employee of a county office of education or the State Department of Education" (California *Penal Code §11165.7(a)(9)*). Specifically, one coder assigned this segment to the educator category and the other assigned it to the miscellaneous category. Ultimately, all discrepancies were resolved during the meeting of the two independent coders.

After the initial coding phase, the research team reduced the main categories into subcategories by revising coding frames (David & Sutton, 2004). Coding frames are used to clump codes together based on shared attributes. This process led to an expanded coding structure that included 17 categories. Tables 1 through 3 present this expanded coding scheme with subcategories and descriptions for each of the three thematic categories produced later in the analysis. Specifically, the definitions of maltreatment category expanded to three subcategories: reasonableness of person, reasonableness of reason, and defining reasonableness. Further, the timing of danger to children category was restructured to include four subcategories: immediate danger ("is" in danger), past danger ("has been" in danger), ambiguous danger (unclear), and statute of limitations. Additionally, the list of reporters was expanded from eight categories to nine because social workers were treated as a distinct category from mental health workers. Specifically, social workers were reconceptualized as distinct because they do not primarily serve their clientele through therapy like the remainder of the mental health worker category (i.e., counselors, psychologists, and psychiatrists). Finally, the exceptions to reporting category was merged with the list of reporters into a single larger category that represented the definition of mandated reporters in the statutes—Mandated Reporters and Exceptions.

Table 1. Thematic and expanded coding structure: Reasonableness

Thematic category	Thematic category description	Subcategory	Subcategory description	Representative segment

Reasonableness (45 States)	States presented child maltreatment in vague terms. To describe child maltreatment in terms that would be flexible, states relied on reasonableness in the harm, situation, or reporter.	Reasonableness of the Reason (n=163)	The evidence or perception associated with suspected maltreatment.	"When any practitioner…has reasonable cause to believe that a child has suffered abuse or neglect…" (Washington RCW 26.44.030)
		Reasonableness of the Person (n=7)	The disposition possessed by a person who is expected to report.	"… based on facts that would cause a reasonable person in a similar position to suspect…" (Ohio RCA §2151.421)
		Definition of Reasonableness (n=7)	An explanation for the use of the term "reasonable."	"For purposes of this article, 'reasonable suspicion' means 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." (California Penal Code §11166(a)(1))

Note: n = Number of coded segments. The main categories and their descriptions were developed during the second stage of the analysis. Subcategories and their descriptions were developed in the fourth stage of the analysis.

Table 2. Thematic and expanded coding structure: Immediacy of danger

Thematic category	Thematic category description	Subcategory	Subcategory description	Representative segment
Immediacy of Danger (50 States)	States varied in how they situated the maltreatment in time. MRLs required mandated reporters to report suspected child maltreatment based on the danger posed to children. This danger ranged from immediate to undefined, and sometimes was not addressed in the law at all.	"Has been" in danger (n=27)	Danger from suspected maltreatment existed during some undefined time in the past.	"Any person who has reasonable cause to know or suspect that any child has been abused or neglected…" (Rhode Island §40-11-3(a))
		"Is" in danger (n=22)	The suspected maltreatment poses some immediate danger to children.	"an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article." (Indiana §31-33-5-1)
		Ambiguous (n=7)	The timing of danger posed by suspected maltreatment is not clear.	"Any mandated reporter who reasonably suspects abuse or neglect of a child shall report…" (Vermont §4913(c))

Statute of Limitations (n=1)	The length of time following the reported offense in which one is legally required to report maltreatment.	"A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency…" (Minnesota §626.556, Subd. 2)

Note: MRLs = Mandatory Reporting Laws; n = Number of coded segments. The main categories and their descriptions were developed during the second stage of the analysis. Subcategories and their descriptions were developed in the fourth stage of the analysis.

Table 3. Thematic and expanded coding structure: Mandated reporters and exceptions

Thematic category	Thematic category description	Subcategory	Subcategory description	Representative segment

Mandated Reporters and Exceptions (50 States)	States varied widely in the list of persons expected to report suspected maltreatment. In many states, personnel in these lists were grouped based on their responsibility for children (educators) or ability to identify maltreatment (e.g., medical and mental health professionals).	Exceptions to Reporting (n=45)	Personnel who are not expected to report maltreatment under specific conditions (typically common for their profession).	"… the duty to report imposed by this section, except that a psychiatrist, psychologist, member of the clergy, attorney or guardian ad litem … is not required to report such information communicated by a person if the communication is privileged" (Oregon ORS 419B.010)
		All Persons (n=11)	A requirement that all adults in the state are considered mandated reporters.	"Any person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report…" (Delaware §903)
		CJ Agents (n=88)	Actors in the criminal justice system (law enforcement, courts, corrections).	"… law enforcement officer; a judge presiding during a proceeding…" (New Mexico §32A-4-3(A))

Therapists (n=78)	Mental health workers who are involved in interpersonal therapy.	"Any…registered psychologist and assistants working under the direct supervision of a psychologist, psychiatrist, …" (Illinois 325 §4)
Child Care (n=73)	Persons whose work centers around taking care of children (not educators).	"Reporters in the following occupation categories are required to provide their names to the hotline staff … day care center worker, or other professional child care, foster care…" (Florida §39.201(1)(d))
Educators (n=97)	Persons who are responsible for either educating children or adults.	"When acting in a professional capacity … (11) A teacher, (12) A guidance counselor, (13) A school official …" (Maine RSA 22-4011-A(1))
Clergy (n=31)	Religious leaders who serve as spiritual advisors.	"The following adults shall make a report of suspected child abuse…(6) A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader…" (Pennsylvania CSA §6311(a))
Medical Staff (n=142)	Physicians and other medical workers who treat physical ailments and illness.	"Any dentist; optometrist; dental hygienist…or any other medical or mental health professional…" (North Dakota 50-25.1-03(1))
Social Workers (n=41)	Social workers, social services, or other civil servants responsible for the welfare of vulnerable populations (non-CJS).	"…'mandated reporter' is defined as any of the following… "A social worker, …" (California Penal Code 11165.7(a))

Miscellaneous (n=171)	Any mandated reporters not otherwise accounted for by one of the other categories.	"The following persons shall be mandated reporters…any paid youth camp director or assistant director" (Connecticut §17a-101(b))

Note. CJS = Criminal Justice System; n = Number of coded segments. The main categories and their descriptions were developed during the second stage of the analysis. Subcategories and their descriptions were developed in the fourth stage of the analysis.

We applied this expanded coding structure to the data in a second round of coding sometimes referred to as secondary coding (Kuckartz, 2014). In this phase, we returned to each of the coded segments from our initial coding phase (i.e., text retrieval). Specifically, each coded segment within a category was recoded to assign it into one of the subcategories identified in the expanded coding structure. Therefore, the research team did not produce new coded segments; rather, we recoded the existing 1,024 segments from the initial coding phase.

Finally, with the expanded coding structure applied to our coded text segments, we conducted a category-based analysis to generate thematic categories (i.e., thematic analysis). In this analysis, the research team had two goals. First, the subcategories in the expanded coding structure needed to be reduced into broader thematic categories that were both convergent (subcategories within themes are similar) and divergent (subcategories not in the theme are different from those within the theme; Guba, 1978). Second, the research team needed to interpret the thematic categories in a way that can be presented clearly and transparently to the reader. The thematic analysis produced three themes that we present in the following section.

Findings

Mandatory reporting laws represent a common legislative response to public concerns about the reporting of child maltreatment. Previous literature validates this concern (Mathews et al., 2006); however, the specific policy tools used to remedy this problem vary significantly across states. To the degree that states differ in how they define, perceive, and respond to the problem of underreporting of child maltreatment, we would expect to see differences in the legislation created to encourage reporting. Our thematic textual analysis explored the content of state mandatory reporting laws and uncovered three themes related to differences in the content of these laws in the United States. These themes may represent key ways in which the interpretation of the

law vary across states, which serves as evidence of the ambiguity of mandatory reporting legislation across states.

"Reasonableness" in the law

There has been a long-standing debate about the impact of discretion in criminal justice policy (Gottfredson & Gottfredson, 1988; Walker, 1993). Although discretion has been tied to concerns for irregularities in implementation (Melton, 2005), there seems to be a functionality to allowing agencies the flexibility to tailor their implementation of state law to the needs and available resources in their jurisdiction (i.e., self-regulatory approach; Schulhofer, 1988; Tyler, 2009). It was unsurprising, then, that we found that states differed in the degree to which discretion for mandatory reporting of child maltreatment was integrated into state law.

One way in which states differed in how they included discretion in their laws involved the use of a "reasonable person" standard in three states (CA, OH, WV) to determine what should be considered abuse (see Table 4). For example, Ohio qualifies reasonable cause as a suspicion that would "cause a reasonable person … to suspect" some form of child maltreatment (Ohio §2151.421A1a). Similarly, West Virginia requires school personnel to report any information received by a witness that "a reasonable prudent person would deem credible" (West Virginia §49-2-803c). In these examples, states mandated reporting of suspected child maltreatment based on the hypothetical perceptions of a reasonable person. This allows discretion in that reasonableness may be defined based on the knowledge or perceptions of people in a broad sense.

Table 4. Statutory references to reasonableness as discretion in state statutes (2016)

State	Reasonable suspicion	Reasonable person	Defined reasonable
AL	2	0	No
AK	5	0	No
AZ	7	0	No
AR	4	0	No
CA	7	1	Yes
CO	6	0	No

CT	8	0	No
DE	0	0	No
FL	6	0	No
GA	8	0	No
HI	2	0	No
ID	2	0	No
IL	5	0	No
IN	3	0	No
IA	5	0	No
KS	2	0	No
KY	2	0	No
LA	0	0	No
ME	5	0	No
MD	3	0	No
MA	3	0	No
MI	5	0	Yes
MN	3	0	Yes
MS	1	0	No
MO	4	0	No
MT	2	0	No
NE	1	0	No
NV	4	0	No

NH	1	0	No
NJ	3	0	No
NM	1	0	No
NY	4	0	No
NC	0	0	No
ND	5	0	No
OH	5	5	No
OK	0	0	No
OR	1	0	No
PA	3	0	No
RI	1	0	No
SC	3	0	No
SD	1	0	No
TN	7	0	No
TX	0	0	No
UT	2	0	No
VT	2	0	No
VA	2	0	Yes
WA	8	0	Yes
WV	2	1	No
WI	7	0	No
WY	1	0	No

Perhaps the most common definition for reportable child maltreatment related to the ambiguity of the evidence made aware to the mandatory reporter. Five states either required some form of “knowing or wanton” evidence of maltreatment or did not specify how obvious the evidence for maltreatment needed to be to require a report (DE, LA, NC, OK, TX). The remaining 45 states, however, considered a report legally necessary if the evidence raised a “reasonable suspicion” of maltreatment. For example, Alabama required any person to report suspected child abuse or neglect “if such person has reasonable cause to suspect that a child is being abused or neglected” (Alabama §26-14-4). In New Jersey, any citizens who had “reasonable cause to believe” maltreatment was occurring were required by law to report their suspicions to the authorities (New Jersey §9:6-8.10). The inclusion of such discretionary language allowed reporters a degree of flexibility when deciding to report based on a “reasonable suspicion” of harm to children.

Five states did not define reasonableness in their mandatory reporting statutes at all. Instead, these states left the standard of proof for child maltreatment open to interpretation. In Delaware, all citizens were expected to report suspected child abuse if they have a “good faith” suspicion (Delaware §903). In the remaining three states, the law refers to having “cause to believe” child abuse or neglect is occurring without a defined level of reasonableness attached to the cause. In North Carolina, for example, citizens who have “cause to suspect that any juvenile is abused, neglected, or dependent” were required by law to report (North Carolina §7B-301a).

Though it varied across states, then, the definition of what and who is “reasonable” remained open to interpretation. How state institutions (e.g., child welfare agencies, public universities) and authorities (e.g., law enforcement, prosecutors) define reasonable suspicion could change with public sentiments or heightened media attention. In such a situation, a change in the definition of terms left open to interpretation in the law would not require any change to the content of the law. Further, reasonable suspicion may also depend on how strongly state officials adhere to the belief that “once a sex offender, always a sex offender” as was the case of the prosecutor in the Sandusky case.

One reason for the vagueness of these laws might be to allow state governments the flexibility necessary to adjust to changing technologies, criminal justice processes, public concerns, and the like. Despite these good intentions, however, such discretion in the law opens the door for change in the implementation of the law without any formal revision to the content of the law. As a result, legal expectations to report abuse

might not be effectively communicated to those included within the new boundaries of the law. This has the potential to create obstacles to effective implementation of the policy as intended by legislators, which in turn threatens the consistency and accuracy of reporting within jurisdictions.

Immediacy of danger

One element of mandatory reporting laws in all states was the timing of the maltreatment. Specifically, with the exception of Minnesota, mandated reporters were expected to intuitively estimate when the danger was present in a case of maltreatment. This theme, which we call Immediacy of Danger, was separated into three different subcategories across states (see Table 5). First, 22 states used language that seemingly required that a child is currently experiencing abuse to require a report. For example, in Maine, mandatory reporters must report suspected child abuse if the reporter has a reasonable suspicion "that a child is or is likely to be abused or neglected" (Maine Title 22, § 4011-A, §4011-B). Additionally, New Mexico's statute required any citizen in the state to make a report with authorities if one suspects "that a child is an abused or a neglected child" (New Mexico Statute §32A-4-3). In these cases, the reference to a child that is being mistreated indicates the expectation to report applies to the reasonable suspicion of a present (or imminent) danger to the child. Under such statutes, maltreatment that occurred in the past would not carry with it a legal obligation to report.

Table 5. The immediacy of danger to children required to report abuse (2016)

Immediacy of danger	States
Ambiguous (7 states)	CT, DE, IL, MI, MS, NV, VT
Child "is" currently in danger (22 states)	AL, AZ*, FL, IN, KY, LA, ME*, MA, MN*, MT, NM, NY, NC, ND, OH*, OK, PA, TN*, UT*, VA, WV, WY*
Child "has been" in danger (28 states)	AK, AZ*, AR, CA, CO, GA, HI, ID, IA, KS, ME, MD, MN*, MO, NE, NH, NJ, OH*, OR, RI, SC, SD, TN*, TX, UT*, WA, WI, WY*

Note: * indicates a state with both current and past immediacy of danger in their law.

Second, 28 states allowed for a longer and less defined period of time for the abuse (i.e., the child "has been" in danger). For example, in Missouri, mandatory reporters are obligated to report when they have "reasonable cause to suspect that a child has been subjected to abuse or neglect" (Missouri §210.115, §568.110). In these states, the use of "has been" in the law effectively creates a more inclusive definition of child maltreatment, meaning that both immediate and historical cases of child abuse would apply in these 28 states.

Finally, seven states defined the immediacy of danger ambiguously, which created problems with clarity in the wording of the laws. One way that immediacy of danger became ambiguous in five states was if there was both a present and past danger. For example, Tennessee used both the current ("is") and past ("has") immediacy of danger language in their mandate for reporting child maltreatment, "Any person who has knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound" (Tennessee §37-1-403[a][1]). The other five states defined immediacy of danger without either temporal reference (Delaware, Illinois, Michigan, Mississippi, Vermont). In Delaware, there was no immediacy of danger defined in their explanation of the duty to report child abuse, "Any person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report" (Delaware §903).

The language behind the immediacy of danger is important because it introduces additional variation into the implementation of these laws. If a state uses the "current" danger language, victims of child abuse who are no longer in danger have the ability to suppress their stories if they wish; however, in states that have less immediate language regarding danger to children, victims may lose ownership over their story even if the present danger to children is disputable. Although the primary difference between the expectation to report in "current" and "past" language states may seem semantic, this distinction may allow for great discretion in the interpretation and implementation of the law. For example, mandatory reporters in Maine would be required to report suspected child abuse only if that suspicion involves current abuse, whereas reporters in Missouri, depending on the interpretation of the law, may be expected to report abuse regardless of current danger to children.

Mandated reporters and exceptions

The third theme in the differences in content of mandatory reporting laws that emerged from our analysis included the list of mandated reporters. The variation in

statutory content in state mandatory reporting laws included which persons were expected to report suspected child maltreatment. Further, states varied in the exceptions to reporting amongst some mandated reporters (see Table 6 below).

Table 6. Exceptions to mandatory reporting (2016)

Privileged communication	States
Clergy-Patient	AL, AK, AZ, AR, DE, ID, KY, LA, ME, MD, MA, MI, MO, MT, ND, OR, PA, SC, UT, VT, VA, WI
Attorney/Advocate-Client	AR, DE, DC, KY, MD, MI, MO, NV, NC, ND, OH, OR, PA, RI, SC, TX, WV
Physician-Patient	OH
Psychologist-Client	OR
None Stated/Not Addressed	CA, CO, CT, FL, GA, HI, IL, IN, KS, MN, MS, NH, NJ, NM, NY, OK, TN, WA, WY
No Privileges	IA, NE, SD

Note: “None stated” indicates that no instances of privileged information was expressly provided in the statute. This does not necessarily mean that no privilege is permitted and should not be interpreted as such.

Persons who have the most contact with children are usually required to be mandatory reporters. Some of these groups of people include criminal justice agents, those who work in the medical field, childcare workers, and members of the clergy. However, states varied widely in the breadth of their mandated reporters lists—some were quite broad (e.g., “all persons” must report) while others included a more specific list of reporters. Many states that established lists of reporters applied a legal expectation to persons in specific job titles, such as animal control officers (California Penal Code §11165.7[a][31]). In other states with specific lists of mandated reporters, the law includes more broad job titles often discussed in separate sections of the state code, including “any safety-oriented position” (South Dakota §26-8A) or an “early intervention provider” (Illinois Act 325 §5-4).

States also identified exceptional cases or situations in which an otherwise mandated reporter would not be required to report suspected maltreatment (see Table 6). These privileges were generally based on professional expectations of confidentiality. Examples of common exceptions included clergy-member (22 states) and attorney-client (16 states). However, 19 states did not identify any exceptions and only three states explicitly prohibit any exceptions to mandated reporting.

The variation in the mandatory reporter lists has implications for the assignment of responsibility for reporting across states. Especially in cases where state law is ambiguous about groups who are required to report (e.g., “safety-oriented position” in South Dakota), there may be an unanticipated shift in legal requirement to report child abuse. Even in cases of reduced ambiguity, however, the inclusion of specific job titles on state lists of mandated reporters seems to include persons who may not have training in identifying and reporting suspected child abuse (e.g., “animal control officer” in California). Therefore, this may be particularly difficult to implement amongst persons in jobs who do not regularly interact with children or are not trained to identify the signs of child maltreatment (e.g., professors, office administrators in middle schools, custodians at schools, etc.).

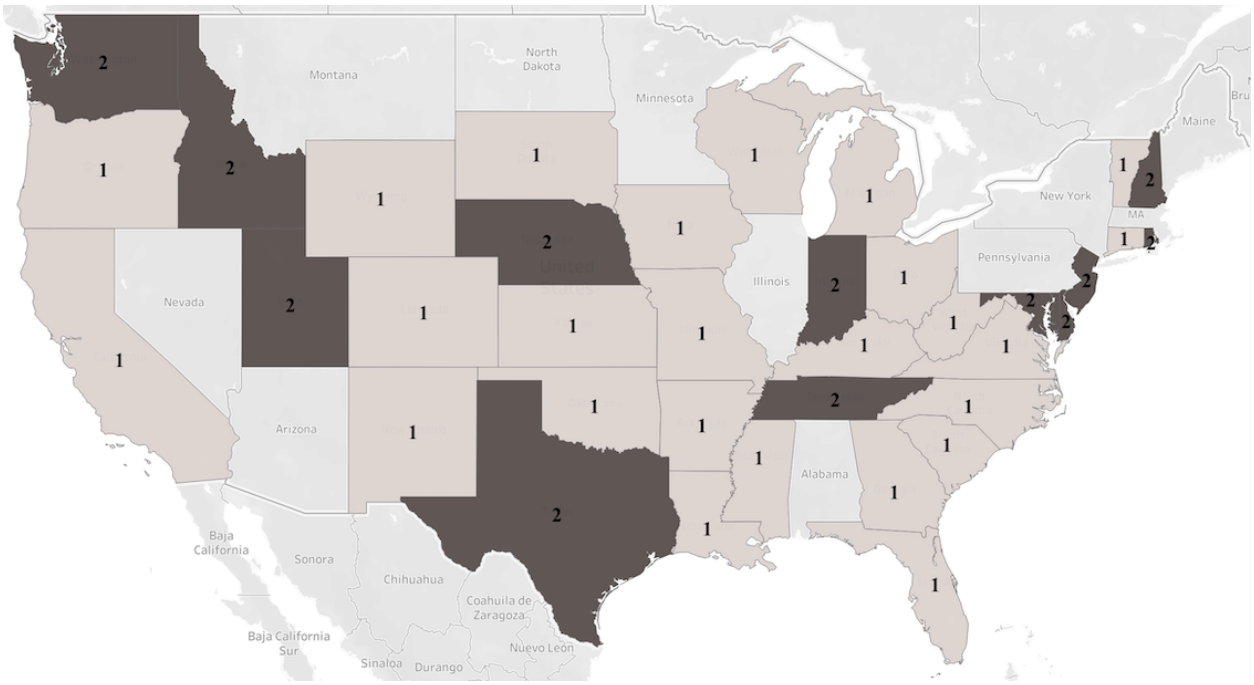
A relevant example: The variable application of mandated reporting to college faculty

In an attempt to explore the potential repercussions of ambiguity in mandatory reporting laws, we applied the current state of these laws to a relevant field for much of this journal’s audience—college and university faculty. For brevity, we will use “college faculty” throughout this section to refer to research and teaching faculty at institutions of higher education. College faculty may become mandated reporters through any one of several pathways based on the content of their state’s mandatory reporting law. These “pathways to vulnerability” might include how the state defines its list of mandated reporters, either all persons or college faculty specifically, or through more flexible language relating to the criteria for inclusion on mandatory reporting lists.

We use the themes identified in this manuscript to identify states in which college faculty might be considered mandatory reporters (see Figure 1 for a map depicting pathways to vulnerability and Table 7 for details). First, college faculty could be required to be mandated reporters through their state’s list of mandated reporters. Perhaps most broadly, college faculty would be mandatory reporters in the states that require all persons to report child maltreatment (see “All Persons” in Table 7).

Additionally, several states explicitly list college faculty as mandated reporters (see "Explicit Inclusion" in Table 7). College faculty were explicitly included in lists of mandated reporters in five states. Specifically, two states required "community college faculty" to report suspected child maltreatment (IN, OR) and three states identified "university or higher education faculty" more broadly in their list of mandatory reporters (LA, VA, WA).

Figure 1. Pathways to vulnerability by state (2016)



Note: No Shading = No pathways; Light Gray = 1 pathway; Dark Gray = 2 pathways. To provide more detail for the 48 contiguous US states, Alaska and Hawaii are not included in this map. Both Alaska and Hawaii had one pathway to vulnerability.

Table 7. An example: Relevance of mandatory reporting for higher education

State	All persons	Past immediacy	Explicit inclusion	Paths to vulnerability	Statutory vulnerability
Alabama	No	No	No	None	Exempt
Alaska	No	Yes	No	One	Vulnerable
Arizona	No	No	No	None	Exempt

Arkansas	No	Yes	No	One	Vulnerable
California	No	Yes	No	One	Vulnerable
Colorado	No	Yes	No	One	Vulnerable
Connecticut	No	Yes	No	One	Vulnerable
Delaware	Yes	Yes	No	Two	Vulnerable
District of Columbia	No	Yes	No	One	Vulnerable
Florida	Yes	No	No	One	Vulnerable
Georgia	No	Yes	No	One	Vulnerable
Hawaii	No	Yes	No	One	Vulnerable
Idaho	Yes	Yes	No	Two	Vulnerable
Illinois	No	No	No	None	Exempt
Indiana	Yes	No	Yes	Two	Vulnerable
Iowa	No	Yes	No	One	Vulnerable
Kansas	No	Yes	No	One	Vulnerable
Kentucky	Yes	No	No	One	Vulnerable
Louisiana	No	No	Yes	One	Vulnerable
Maine	No	No	No	None	Exempt
Maryland	Yes	Yes	No	Two	Vulnerable
Massachusetts	No	No	No	None	Exempt
Michigan	No	Yes	No	One	Vulnerable
Minnesota	No	No	No	None	Exempt

Mississippi	Yes	No	No	One	Vulnerable
Missouri	No	Yes	No	One	Vulnerable
Montana	No	No	No	None	Exempt
Nebraska	Yes	Yes	No	Two	Vulnerable
Nevada	No	No	No	None	Exempt
New Hampshire	Yes	Yes	No	Two	Vulnerable
New Jersey	Yes	Yes	No	Two	Vulnerable
New Mexico	Yes	No	No	One	Vulnerable
New York	No	No	No	None	Exempt
North Carolina	Yes	No	No	One	Vulnerable
North Dakota	No	No	No	None	Exempt
Ohio	No	Yes	No	One	Vulnerable
Oklahoma	Yes	No	No	One	Vulnerable
Oregon	No	No	Yes	One	Vulnerable
Pennsylvania	No	No	No	None	Exempt
Rhode Island	Yes	Yes	No	Two	Vulnerable
South Carolina	No	Yes	No	One	Vulnerable
South Dakota	No	Yes	No	One	Vulnerable
Tennessee	Yes	Yes	No	Two	Vulnerable
Texas	Yes	Yes	No	Two	Vulnerable
Utah	Yes	Yes	No	Two	Vulnerable

Vermont	No	Yes	No	One	Vulnerable
Virginia	No	No	Yes	One	Vulnerable
Washington	No	Yes	Yes	Two	Vulnerable
West Virginia	No	Yes	No	One	Vulnerable
Wisconsin	No	Yes	No	One	Vulnerable
Wyoming	No	Yes	No	One	Vulnerable

Statutory ambiguity can be further compounded by the immediacy of danger in a state's definition of reportable maltreatment. States that use either past ("has been" in danger) or ambiguous immediacy of danger language in their statutes permit an expanded eligibility for reportable maltreatment. Admittedly, this language has little impact in scenarios wherein the victim is still a child. However, for college faculty, this form of ambiguity in the law can be more consequential. Through their instruction or research endeavors, college faculty may become aware of experiences with childhood abuse in students or participants who are well into adulthood. Though there may be fewer opportunities to discuss trauma and violence in business or hard science disciplines, other disciplines are much more likely to cover topics of victimization and harm (e.g., such as education and social sciences).

Relevant examples might include a criminal justice professor teaching a course on victimology or a counseling education professor teaching material on family violence. Given the topics and relevant class material, college faculty may be navigating the murky waters of teaching students about sensitive subjects which, by its nature, could carry with it a need for disclosure (e.g., classroom discussions, one-on-one conversations faculty, written assignments, etc.). Furthermore, consider social scientists who may engage in empirical research that requires study participants to discuss experiences with childhood victimization and trauma years ago.

These scenarios may produce an ethical dilemma for college faculty—does one accept legal risk to respect their student's confidence or break confidentiality to meet their obligations to mandatory reporting laws? The correct answer may not always be clear. For example, how would a college faculty member approach the ethical dilemma when the study participant discloses child abuse that occurred several years prior (e.g., a 50

year old study participant discloses child abuse that occurred while she was 12 years old)? In these situations, legislative language referring to a current immediacy of danger may permit faculty to withhold reporting for maltreatment that occurred in a student or participant's distant past, especially if the student or participant wishes to avoid such a report. Conversely, in states that use a past immediacy of danger, faculty may be legally obligated to report instances of child maltreatment that are decades old regardless of the victim's wishes, though this obligation may depend on state officials' interpretation of this language. Finally, in states with ambiguous language related to the immediacy of danger expected for a report, college faculty would receive little guidance from state law about the need to report maltreatment amongst adult victims.

Implications

Professors, administrators, and staff at institutions of higher education in the 38 states that do not explicitly consider college faculty to be mandatory reporters should consult upper-level administrators and legal counsel at their universities to determine the application of mandatory reporting laws to their work as faculty. Perhaps by anticipating changes in the interpretations of these laws, university personnel may be able to comment on law that may influence their teaching and research duties. Further, faculty should seek information from university administration regarding the interpretation of these laws before research protocols are rejected by IRB committees or students share experiences that put professors in ethical dilemmas regarding confidentiality of student information and a duty to report prior child abuse. Also, students should seek faculty mentoring before designing research on victimization-related topics or teaching subjects that may prompt individual disclosure of prior childhood victimization.

Relatedly, ambiguous language in public policy can contribute to difficulties implementing policy in an effective manner. A frequently identified obstacle to effective implementation in the literature has been lack of clarity in the goals or intended execution of law by the policymakers (Mears, 2010; Pressman & Wildavsky, 1973; Smith & Larimer, 2017). For example, in their seminal work on policy implementation, Mazamian and Sabatier (1983) identified statutory coherence as a key predictor of implementation success. Amongst other things, a coherent statute should have clearly identified objectives and procedures to achieve those objectives (Mazamian & Sabatier, 1983; McFarlane, 1989). Based on our analysis, it would be difficult to classify mandatory reporting laws as a coherent statute, which might raise concerns about the consistency of its implementation across states. Further, the lack of

clear objectives or implementation procedures in ambiguous policy can make it difficult to predictably enforce these laws. However, we analyzed the design of mandatory reporting laws in this study, not its implementation. Future research can continue to explore the consequences of ambiguity in the content of state laws by examining variability in implementation procedures across jurisdictions.

Though well intentioned, recent reinterpretations of mandatory reporting laws may have sabotaging effects on victimization-related research and violence prevention programs, many of which are intended to help the victims this law was intended to protect. Interpreting mandatory reporting laws as it has been in this case study directly affects the information researchers are able to collect when developing, implementing, running, and evaluating violence prevention programs. The research that advises what should be used in prevention programming may be significantly limited, as empirical studies that involve childhood victimization may be absent. Consequently, prevention programs may not be informed by research, which can have an effect on their ability to reduce and prevent victimization. Additionally, without empirical research to guide them, prevention programs may apply their funds inefficiently, effectively wasting already limited resources.

Mandatory reporting legislation, as it is currently interpreted, may decrease the number of incidents reported to researchers. This is especially concerning given the already low reporting numbers associated with childhood victimization (Finkelhor et al., 2001). Victimization experiences can be life altering, and, in many cases, can be difficult for victims to describe. Although victims of child abuse may wish to discuss their victimizations with researchers, they may not wish to have their experiences reported to authorities. In effect, depending on the interpretation, their state's mandatory reporting laws may inadvertently discourage victims from disclosing their victimization to individuals who help provide resources (e.g., college faculty, counseling services). For example, students may confide in a college faculty member with whom they feel safe to share with during a conversation, and unknowingly set into motion a process that they would want to avoid. This is particularly salient for college faculty working in disciplines where violence, victimization, and trauma are more apt to be studied (e.g., criminology and criminal justice, mental health counseling, psychology, social work, sociology) and discussed in classroom instruction.

College faculty researchers might employ strategies to protect themselves from an expectation to report that may lead to ethical and legal dilemmas while conducting their studies. For instance, researchers may choose to include a statement within their

study consent forms that advises potential participants that responses will be kept confidential, except in cases where the researcher is required by law to divulge the contents of their disclosures. To ensure participants are properly informed, however, researchers may provide examples of what types of information may be requested, such as prior childhood victimization. While this safeguard may be effective for some topics of research, this would not be an effective safeguard for studies that directly examine childhood victimization. Relatedly, another option for researchers would be to obtain a National Institute of Health (NIH) Certificate of Confidentiality. The intent of the certificate is to protect researchers from being compelled to disclose study participants' identifying information. However, the NIH has specifically noted that disclosed child abuse is a circumstance in which the researcher may voluntarily disclose certificate-protected identifying information (National Institute of Health, 2014). Essentially, college faculty researchers may choose to employ safeguards to insulate themselves against various interpretations of a mandatory reporting law; however, the safeguards noted here do not ensure complete protection from potential mandatory reporting situations.

Further, the aforementioned safeguards, limited as they are for research, are more difficult to implement within an instructional setting. Although college faculty may include a statement about expectations of confidentiality for reports of victimization in their syllabi, such expectations may be forgotten over the course of the semester, especially as college faculty build rapport with their students. Ultimately, then, the only certain method for faculty to legally protect themselves, at least in states where faculty instructors and researchers are mandated reporters, is to: 1) inform students and research participants about the legal requirement to report any information concerning childhood abuse and, 2) when made aware of childhood victimization, report such information to their respective reporting agency if mandated to do so, regardless of the victim's desire to report to authorities.

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