

Universal Mandatory Reporting of Suspected Child Abuse and Neglect in Nebraska: Current Law and Future Considerations¹

by Sarah Helvey, Juliet Summers, and Sean Conway

Mandatory reporting of suspected child abuse or neglect has received recent attention in Nebraska, as a result of a number of local, high-profile cases and the impact of COVID-19. With school closures due to COVID-19 and directed health measures limiting elective health care visits, children have had less contact with teachers and health care professionals and

other mandated reporters. Indeed, in March and April of this year, calls to the abuse and neglect hotline were down 16-38% in Nebraska, consistent with national trends.² Intakes from schools were down 86% in April 2020 compared to April 2019, and intakes from medical professionals were down 25% during that same time frame.³ There has also been recent attention in our state, and nationally, to teacher and clergy abuse of children and institutional and leadership failures to make required reports.

Sarah Helvey



Sarah Helvey is the child welfare director at Nebraska Applesseed, a nonprofit organization dedicated to fighting for justice and opportunity for all Nebraskans. She received her law degree and master's degree in educational administration from the University of Wisconsin-Madison and her undergraduate degree from the University of Nebraska-Lincoln.

Juliet Summers



Juliet Summers is the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska, where she works to ensure our state systems value, protect, and support every child in Nebraska. She received her J.D. from the University of Chicago Law School in 2011 and is a former juvenile public defender.

Sean Conway



Sean Conway is a partner at Dornan, Troia, Howard, Breitzkreutz & Conway, in Omaha, Nebraska, and focuses his practice in the areas of criminal defense and plaintiff's personal injury. He is a 2006 graduate of the Nebraska College of Law.

Mandatory Reporting Data in Nebraska

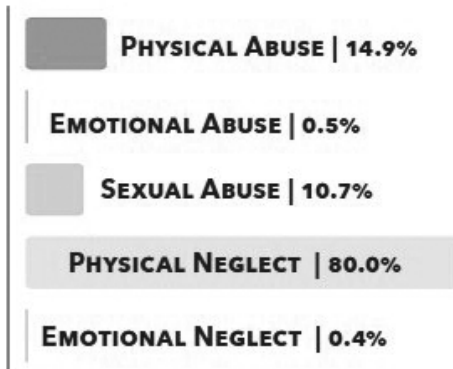
In Nebraska, there were 36,480 reports of alleged maltreatment made to the Child Abuse and Neglect Hotline in 2018.⁴ Of those, 12,808 were assessed by the Nebraska Department of Health and Human Services (DHHS) and/or law enforcement, and ultimately only 2,040—or 5% of the total reports—were substantiated.⁵ The vast majority of substantiated cases (80%) involve physical neglect, which is a failure to meet the child's basic needs, including food, shelter, and clothing—and, in many cases, is an economic issue for families.⁶ After physical



UNIVERSAL MANDATORY REPORTING

neglect, the most common substantiated cases involve: physical abuse (14.9%), sexual abuse (10.7%), emotional abuse (0.5%), and emotional neglect (0.4%).⁷

TYPES OF SUBSTANTIATED MALTREATMENT (2018)



Mandatory Reporting Law in Nebraska

Most states designate specific professionals who interact with children as mandatory reporters, such as teachers, principals, and school personnel; physicians, nurses, and other health care workers; social workers, counselors, therapists, and other mental health providers; child care providers; and law enforcement officers. Nebraska is one of only 18 states that require not only certain professionals—but all persons—to report suspected child abuse or neglect, termed “universal mandatory reporting.”⁸

Specifically, Nebraska’s Child Protection and Family Safety Act at Neb. Rev. Stat. § 28-711 states that “[w]hen any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General..., or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement or to the [hotline].”

Under the Act, any individual having a “reasonable cause to believe” that abuse or neglect has occurred is required to provide certain facts and circumstances that led them to suspect that abuse or neglect occurred to the extent this information is available; however, they do not have any burden of providing proof that such abuse or neglect occurred.⁹ In addition, the Act provides immunity from civil or criminal liability under state law for individuals making a report of child abuse or neglect as required, except for maliciously false statements.¹⁰ The identity of the individual making a report is also confidential and may not be disclosed, absent a court order.¹¹ The exceptions to this

are that the reporter’s name may be released to the appropriate law enforcement agency or the county attorney (if legal intervention is necessary); it is also possible the reporter could be called to testify in court, if the alleged maltreatment requires court intervention.

Under the Act, any person who willfully fails to make such a report may be guilty of a Class III misdemeanor, which is punishable by up to three months imprisonment, up to a five hundred dollar fine, or both.¹² More commonly, a person who fails to report is charged under Neb. Rev. Stat. § 28-707, the general negligent child abuse statute, which carries a more severe penalty as a Class I misdemeanor, punishable by up to one year imprisonment, up to a one thousand dollar fine, or both. When a parent fails to report, particularly with regard to allegations of a partner’s abuse of a child where there is evidence the parent was aware of the partner’s actions, a case may also be filed under Neb. Rev. Stat. § 43-247(3)(a) as a new child welfare case in juvenile court. Finally, although Nebraska has not expressly created a statutory cause of action for failure to report, civil liability could exist under a common law theory of negligence.¹³

In Nebraska, most intakes are received from professionals. For example, in April 2019, 31.6% of intakes came from schools, 14.3% from law enforcement, and 13% from medical professionals.¹⁴ Less than a third of intakes came from non-professional or anonymous/other reporters: relatives or friends (16.4%), other (9.2%), and anonymous (6.5%).¹⁵

Child Abuse Safety Assessment and Investigation Process in Nebraska

In Nebraska, a report of suspected child abuse or neglect can be made to either the Child Abuse and Neglect Hotline or to law enforcement.²¹

The hotline utilizes a nationally-recognized tool called “Structured Decision Making” (SDM) to screen all reports to see if they meet the definition of child abuse or neglect, as defined by state law. It then assigns one of three responses: (1) does not meet definition, (2) accepted for DHHS investigation (“initial assessment”), or (3) referred for law enforcement²² investigation.²³ When allegations do not meet the definition of child abuse or neglect, the report is referred, when appropriate, to other Department services or community resources.²⁴

If a case is accepted for DHHS investigation, the Department proceeds with the Initial Assessment (IA) process using another set of SDM assessments. This stage of investigation involves observations and interviews with the child, parents, siblings, other family members, or collateral contacts and gathering information such as the family’s ability to protect the child, parenting practices, coping skills, and family history to make determinations regarding safety and risk.²⁵

UNIVERSAL MANDATORY REPORTING

Neb. Rev. Stat. § 28-711. Child subjected to abuse or neglect; report; contents; toll-free number.

(1) When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 43-4317, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the department pursuant to section 28-718 on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night, any day of the week, to make reports of child abuse or neglect. Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Neb. Rev. Stat. § 28-710. Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act: ...

(b) **Child abuse or neglect** means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Placed in a situation to be sexually abused;

(vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(vii) Placed in a situation to be a trafficking victim as defined in section 28-830;

At the end of the Initial Assessment process, the worker makes a finding called a “case status determination,” based on “whether there is credible evidence to support the finding that child abuse or neglect as defined by state statute has occurred.”²⁶ The IA worker assigns one of the following case status determinations: agency substantiated, court substantiated, court pending, unable to locate, or unfounded.²⁷

In addition to the case status determination, the worker makes a one of the following decisions regarding the Department’s response:

1) no further intervention services are needed, and the case is closed following notification to the family;

2) there is a need for further services, and the family is willing to participate voluntarily, so the case is closed after engagement of the family in the service;

3) ongoing protective services are required to address the maltreatment and risk identified in the IA, and the family is willing to participate voluntarily, so the case is transferred to the ongoing service for case planning (these are referred to as “voluntary” cases);

4) ongoing protective services are required, the family is unwilling to participate voluntarily, so the worker is required to make a formal request to the county attorney to file a court petition;

UNIVERSAL MANDATORY REPORTING

5) ongoing services are needed, the family is willing to participate voluntarily, but court intervention is still needed to resolve the identified problem; and

6) ongoing services are needed, the family is unwilling to participate voluntarily, but the county attorney has determined there is not enough evidence to pursue court action, so the case is closed.²⁸

The Department is required to provide the subject of the report with written notice of the determination of the case and whether the subject will be entered into the central registry.²⁹

In 2014, Nebraska also established a model for Alternative Response (AR) which is a different way to respond to allega-

tions of abuse or neglect that does not make a formal determination of whether abuse or neglect occurred and does not place parents on the central registry, but connects families to services and supports.³⁰

Concerns With Nebraska's Existing Mandatory Reporting Law

Disproportionality and Inequity

In a 2011 literature review, the Annie E. Casey Foundation and partners concluded that there is evidence to support racial bias and discrimination at the so-called "front door" of the child welfare system.³¹ Specifically, some data suggests that

Substance Exposed Newborns

Substance abuse is one of the most common circumstances that bring children and families to the attention of the child welfare system. In Nebraska, drug abuse by a parent or caretaker was the second most common reason for removal.¹⁶ In addition, about 13% of children involved in Nebraska's foster care system are infants (age 0-1).¹⁷ This raises several legal issues with regard to mandated reporting of substance-exposed newborns, particularly for the physicians and other health care providers treating both pregnant women and babies.

It is important to note that Nebraska law does not specifically criminalize prenatal drug use and Nebraska's mandatory reporting law does not specifically apply to unborn children/fetuses. Moreover, it may violate a pregnant woman's 4th Amendment protection against unlawful search and seizure for a hospital to involuntarily drug test her urine without a warrant or informed consent and, if positive, turn a positive test over to law enforcement.¹⁸ However, after delivery, the provider should decide whether the child is at risk and reporting is necessary.

The federal Child Abuse Prevention and Treatment Act (CAPTA) as amended by the Comprehensive Addiction and Recovery Act (CARA) requires states, as a condition of their receipt of federal funding, to submit a state plan to the federal government with an assurance that the state has policies to address the needs of infants exposed to maternal substance use during pregnancy, including a requirement that health care providers involved in the delivery or care of such infants notify the child protection system.¹⁹ However, this law is broad and non-specific as to how this can and should be carried out—and does not preclude informed consent. So, states and hospitals may develop their own guidelines on how to identify these newborns, within the realm of their mandatory reporting responsibilities and relevant state law.

In Nebraska, the Department of Health and Human Services in partnership with the Nebraska Perinatal Quality Improvement Collaborative (NPQIC) created a protocol to address CARA requirements.²⁰

The protocol directs healthcare providers to:

- **Notify** Child Protective Services (CPS) prior to discharge of a substance exposed infant if there are no child safety concerns. Notification does not include any identifying information. The following requires a notification:

- Mother is stable and engaged in opioid medicated-assisted treatment with a licensed physician;
- Mother is being treated with opioids for chronic pain by a licensed physician;
- Mother is stable and engaged in treatment for other non-opioid substance use, including alcohol, with a licensed provider; or
- Infant is at risk for Fetal Alcohol Spectrum Disorder.

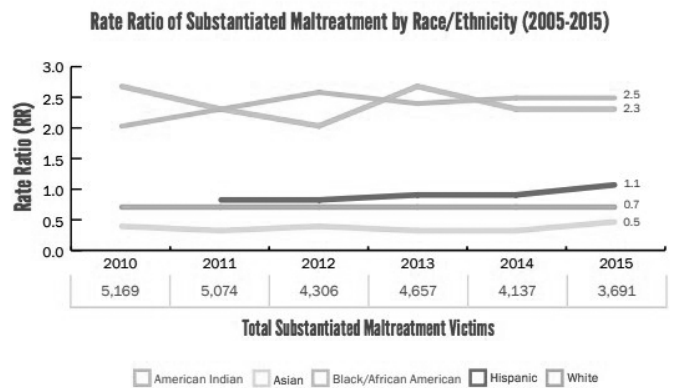
- **Report** child safety concerns to the Child Abuse and Neglect Hotline

In both circumstances, health care providers who are responsible for the care and delivery of a substance exposed infant are asked to complete a Plan of Safe Care prior to the infant's discharge from the hospital and forward it to the infant's primary care provider.

UNIVERSAL MANDATORY REPORTING

community reporters are more likely to report families of color, and families of color are more likely to be investigated and placed in foster care.³²

In Nebraska, there is a disproportionality in reports of maltreatment, with multi-racial youth making up 6.6% of the population but 13.5% of reports, Black youth 5.7% of the population but 14.1% of reports, and American Indian youth 1.1% of the population but 3.6% of reports.³³ Reports involving Black youth were less likely than average to be substantiated by the agency or filed in juvenile court.³⁴ Even so, Black children are overrepresented among substantiated maltreatment victims at a rate twice as high as their share of the general child population.³⁵ Meanwhile, Native American children are not only overrepresented in substantiated maltreatment reports, but also more likely than average to have cases filed in juvenile court, and are 2.5 times more likely to be placed in foster care than non-Native American children.³⁶



SAFE HARBOUR EXCHANGE, LLC
SERVICE BEYOND EXPECTATION

THE QUALIFIED INTERMEDIARY FOR YOUR 1031 EXCHANGE

FAST, SECURE, RELIABLE SERVICE

- Reverse & Improvement Exchanges
- Simultaneous Exchanges
- Deferred Exchanges



safeharbourexchange.com
402.476.8818

UNIVERSAL MANDATORY REPORTING

To begin to address this, we must look at both historical and multigenerational trauma that results from government systems that separate families: immigration, criminal justice, and child welfare. In “Entangled Roots: The Role of Race in Policies that Separate Families,” Elisa Minoff of the Center for the Study of Social Policy explains:

“The roots of these disparities run deep. As the immigration, criminal justice, and child welfare systems developed over the last century, they often targeted families of color for separation. American Indian children were sent off to federally-funded boarding schools and parents were coerced into giving up their children for adoption. African American families were targeted by law enforcement, and youth and adults were removed from their homes and communities at high rates as mass incarceration exploded. Latinx families were the subject of mass deportation drives, dividing families and leading many U.S. citizens determined to remain with their families to leave the only country they had ever known. As the immigration, criminal justice, and child welfare systems continued to develop, family separation affected many more communities of color.”³⁷

In addition, legal scholar Dorothy E. Roberts argues that the abolition of the federal entitlement to cash welfare in 1996, which was fueled by racist stereotypes of Black “welfare queens,” restructured public assistance as a system that seeks to regulate the behavior of poor mothers and surveil the very families and communities most devastated by the evisceration of poverty services and supports.³⁸ These same policies became more punitive and reduced services in communities of color and led to a system of child protection that hinges family assistance on state custody of children and family separation.³⁹

Mandatory reporting is the starting point for involvement in the child welfare system, which can result in the separation of families, inappropriate response to childhood poverty, and, ultimately, cultural bias and institutional racism that results in unequal outcomes for children and families of color. Although disproportionality starts at the front door of the system, once in the system, the race of the child impacts their outcomes at nearly all decision-making points in the process. In addition to variations in reports and substantiation, children of color in Nebraska experience longer average response times for investigation and disposition, and the average number and type of service or intervention offered to children and families in the first three months of a case also differs by race or ethnic group.⁴⁰

Conflicts for Non-Offending Parents and Attorneys

Non-offending parents

The typical scenario that comes to mind with regard to mandatory reporting of child abuse is often a teacher, doctor,

or neighbor reporting abuse of a child by the child’s parent.

However, because Nebraska’s mandatory reporting statute applies when abuse or neglect is perpetrated by a third-party and because the definition of child abuse or neglect in Neb. Rev. Stat. § 28-710 is broad, Nebraska law also requires parents to report peer-to-peer sexual assault or other abuse perpetrated on their child by another youth.

Parents of adolescents may feel that some everyday experiences could meet the broad definition of “permitting [their] minor child to be ... placed in a situation that endangers his or her ... physical or mental health.”⁴¹ But this becomes particularly sensitive in situations in which a teenager discloses or is reluctant to disclose abuse including sexual harassment, rape and sexual assault, or bullying to their parent based on a well-founded fear that the parent will have to make a report.

A recent study found that 1 in 16 women’s first sexual encounter was rape and that most of these women were adolescents at the time and suffered long-term health outcomes.⁴² A high percentage of these incidents are estimated to be peer-to-peer sexual assault, with one study finding over half of high school girls and up to a quarter of high school boys self-reporting sexual assault by another adolescent.⁴³ In addition, many children do not disclose that they have been sexually assaulted; and, of those adolescents who do disclose, most tell a close friend rather than a parent or other adult.⁴⁴ Moreover, some of these victims may not want the incident reported to child protection or law enforcement for privacy reasons, and some parents may not prefer a carceral approach.

It is important to note that most adolescents who commit a sexual assault do not reoffend as adults and are especially responsive to treatment.

Obligations of Attorneys

Another atypical scenario encompassed by Nebraska’s mandatory reporting statute involves attorneys, particularly those representing youth in juvenile justice cases or parents in domestic violence cases. Nebraska’s statute does not specifically abrogate the attorney-client privilege, and therefore attorneys may find themselves contending with a confusing analysis of their competing duties between the reporting statute and the rules of professional responsibility.

Legal scholars have noted the challenges presented to attorneys providing assistance to domestic violence victims seeking restraining orders, who may be required to report when their clients have exposed their children to domestic violence which can be considered child abuse.⁴⁵ Similarly, attorneys representing youth accused of law violations in the juvenile justice context may discover that their clients are the victims of child abuse or neglect.⁴⁶ This is consistent with data showing about 60% of youth in the juvenile justice system have also had a history of child welfare system-contact.⁴⁷

UNIVERSAL MANDATORY REPORTING

Statutory schemes that require all individuals to report suspected child abuse and neglect place attorneys in an ethical dilemma. They must weigh their obligation to protect the child with their duty of confidentiality under Neb. Ct. R. of Prof. Cond. § 3-501.6 and attorney-client privilege.⁴⁸ In this situation, attorneys should inform their clients from the onset of representation that although a confidential relationship exists between the attorney and client, there are exceptions which may include legal requirements to report suspected child abuse.⁴⁹

Use of Resources

With only 5% of total reports to the hotline substantiated, significant resources are put into the assessment and investigation of cases that do not meet the definition of child abuse or neglect. Furthermore, as noted above, about 80% of the 5% of substantiated cases involve neglect. Resources used to investigate the high volume of largely unsubstantiated cases and cases in which the root concern is poverty could be redirected to prevention and support services. This would also reduce pressure on the child welfare workforce, which already struggles with high turnover and caseloads. Instead, the current system and, specifically, Nebraska's universal mandatory reporting law, is prioritizing investigations above the provision of services.⁵⁰

Recommendations

Following the conviction of Jerry Sandusky in 2012 for the sexual abuse of at least eight boys between 1994 and 2009 while he was a football coach at Pennsylvania State University, several state legislatures responded by amending their child abuse reporting statutes to increase the number of mandated reporters.⁵¹

However, despite valid concerns about the tragedy at Penn State and the impact of the COVID-19 pandemic on children

and families, there is no evidence to suggest that an increase in reporting or an expansion of mandatory reporting improves the safety of children.⁵² Similarly, there is no evidence to prove that relaxed mandatory reporting statutes are a barrier to reporting.⁵³ In fact, mandatory reporting by the lay public is more likely to result in unsubstantiated reports, and this overwhelmingly burdens low-income and minority families.⁵⁴

Based on the lack of evidence and concerns raised by universal mandatory reporting, Nebraska should consider reforms to the existing law and practice.

Amend Nebraska's existing statute

Eliminate universal mandatory reporting

Nebraska should consider amending Neb. Rev. Stat. § 28-711 to eliminate "or any other person" from the list of mandatory reporters. This change would still permit all individuals to report if they have concerns about child abuse but would not require them to do so subject to criminal sanctions.

This would also remove attorneys from mandatory reporting and the competing ethical obligations it creates. Legal scholars have noted that lawyers are rarely the first to learn of abuse and the loss of information is counterbalanced by the fact that the confidentiality exception likely discourages disclosure anyway and by the negative precedent set by requiring lawyers to be informants on their clients.⁵⁵ This is perhaps reflected in Nebraska point-in-time data showing less than one percent of intakes coming from legal reporters.⁵⁶

In addition, this would remove parents from mandatory reporting and alleviate the conflict for non-offending parents who are protecting the privacy of their child who does not wish to have the incident reported. This is consistent with research showing that fear of reporting can prevent help-seeking and that confidentiality can increase it.⁵⁷



Untie Online: An Affordable Divorce Service Powered by Koenig|Dunne



a koenig | dunne divorce service

1402 South 13th Street
Omaha, Nebraska 68108
Phone: (531) 721-2001
Web: www.untieonline.com
Email: support@untieonline.com

Koenig|Dunne is proud to announce the launch of Untie Online. Untie Online is a limited scope, online subscription-based divorce service that provides:

- 1 Step-by-Step Guidance**
Everything you need to know about a divorce in Nebraska, including a step-by-step guide, comprehensive workbook, and educational resources.
- 2 Personalized Legal Forms**
Untie Online provides the legal forms necessary to complete your divorce. We take you through a responsive interview process to generate personalized legal documents that can be filed with the Court.
- 3 Attorney Answers**
Our experienced divorce attorneys will answer questions about the divorce process within 24 hours.
- 4 An Affordable Fee**
Membership options range from:
\$299 Flat Fee for 12 months
\$499 Flat Fee + \$199 per month
\$1,499 Flat Fee + \$199 per month



1266 South 13th Street
Omaha, Nebraska 68108
Phone: (402) 346-1132
Web: www.koenigdunne.com
Email: angelal@koenigdunne.com

UNIVERSAL MANDATORY REPORTING

If Nebraska retains universal mandatory reporting, Nebraska should consider creating limited immunity for parents in situations in which the child is of sufficient age and maturity and does not wish to have the abuse reported; the alleged perpetrator is not a family member (to reduce “passive parent” incidents),⁵⁸ and the parent otherwise provides help, protection, and support services to the child.

Create a clearer definition of child abuse

Nebraska should also consider amending Neb. Rev. Stat. § 28-710 to tighten the definition of child abuse for the purpose of mandatory reporting, as well as Neb. Rev. Stat. § 28-707, the general child abuse statute. Specifically, the definition of abuse as permitting a child to be placed in a situation that endangers their mental health is broad and vague, and in practice is often used as a catchall for conduct that does not neatly fit into other subdivisions of the child abuse or neglect definition.

A 2017 article in the *Journal of the American Academy of Pediatrics* noted:

*“Over the past decades, the definitions of child abuse throughout the nation have been expanded, and the number of individuals legally responsible for reporting has greatly increased. Yet as we increase the rate of reports in a system already underfunded and overburdened, we may be reducing the ability to detect and subsequently intervene on behalf of children in danger.”*⁵⁹

Remove neglect due to poverty from the mandatory reporting requirement

Nebraska should also consider amending Neb. Rev. Stat. § 28-710 to remove neglect due to poverty for the purpose of mandatory reporting. This could be accomplished by either striking sub. (iii) from § 28-710(2)(b) “deprived of necessary food, clothing, shelter, or care” or by qualifying, consistent with the termination of parental rights statute at Neb. Rev. Stat. § 43-292(3), that such action only constitutes neglect when the parents are financially able but willfully neglect to provide subsistence. Given that 80% of substantiated cases in Nebraska involve neglect, this would free up significant resources to better identify and intervene on behalf of children who are truly in danger. Particularly now as the country is facing increasing unemployment and an economic downturn due to the COVID-19 pandemic, families are experiencing increasing housing instability, food insecurity, and lack of access to physical and mental health care that should not inappropriately divert families into the child welfare system, which is expensive and inadequate to meet these needs and which can cause additional trauma to children.⁶⁰ As Joyce McMillan, a New York City advocate, says, our message should be: “report abuse, support neglect.”⁶¹

Provide training to professional mandatory reporters with a focus on disproportionality

A number of states offer training resources for mandatory reporters.⁶² Nebraska should provide such a training, with a focus on disproportionality and bias in reporting. This training should be created, informed, and, if possible, provided by trainers of color and individuals with personal foster care experience. One good example of this is Hennepin County which launched a pilot to provide disproportionality training to mandated reporters in the health care and education fields and saw a 10% decrease in reporting during the project.⁶³ Ramsey County, Minnesota has recently started similar efforts.⁶⁴

In addition, because of the breadth of Nebraska’s statutory definition of child abuse and neglect for the purpose of reporting, the training should also include a focus on what does and does not constitute child abuse under Nebraska law. Training should also help mandatory reporters recognize the difference between poverty and neglect and to understand that a report to the child abuse and neglect hotline is not the same thing as a referral to services. Training should provide information about available services in the community, so professionals who come into contact with families can support parents in addressing needs without subjecting them to a legal investigation.⁶⁵ Specific to the education setting, school officials have an obligation to identify special education needs and provide an IEP (Individual Education Plan) evaluation instead of reporting a family that may need help with a child’s behaviors that stem from a disability.⁶⁶

Increase prevention services

The Nebraska Department of Health and Human Services has chosen to take an opportunity under recent federal legislation, the Family First Prevention Services Act (FFPSA or the Family First Act), to draw down federal funding to increase prevention services, including mental health and substance abuse treatment services and in-home parent skill-based services, to children who are at imminent risk of entering foster care but who can safely remain at home if provided these services.⁶⁷ This opportunity to increase “front end” services is a critical component of shifting our state’s child welfare system from an investigation focus to a prevention and services focus.

This is also consistent with a recent shift in Nebraska to implement Alternative Response (AR) as well as Community Response (CR), in which communities develop and coordinate local resources, identify families, determine eligibility, utilize screenings and assessments, and designate point persons for central navigation to professionals for support.⁶⁸ CR is an evidence-based strategy that can be considered a prevention track to AR and includes both formal and informal community supports with the goal of keeping children safely in their homes and out of the public child welfare and juvenile justice

UNIVERSAL MANDATORY REPORTING

systems.⁶⁹ It also allows individuals to access services without a report to the hotline or involvement with the child protection system.⁷⁰

While these child welfare shifts are significant, Nebraska also rates near the bottom of many states in terms of direct economic assistance for families in poverty. Making reforms to Nebraska's economic assistance programs might be the best way we can alleviate tensions on the front end of the child welfare system. In particular, Nebraska should direct more of our federal Temporary Assistance for Needy Families (TANF) block grant funds to direct cash assistance to families through our Aid to Dependent Children (ADC) Program. Currently, Nebraska only directs 25% of TANF funds to direct cash assistance.⁷¹ We should also raise the gross income eligibility threshold within the Supplemental Nutrition Assistance Program (SNAP) to allow people who are on SNAP to take better paying jobs without losing more in nutrition assistance than they gain in new income. Also, across our system of public benefits programs, we should do much more to streamline and simplify the application processes and address our overreliance on imposing counterproductive sanctions on families for non-compliance with program requirements.

In addition, there are racial disparities in access to these services. According to an Annie E. Casey Foundation report, "evidence is fairly consistent with respect to child welfare system factors, namely that there is a broad pattern of inequitable service/resources availability for families of color."⁷²

If we don't invest in and truly commit to building a robust array of prevention services and economic assistance, then any efforts to reform the hotline or investigation process will not only be ineffective but could also cause harm to children and families.


Encourage calls to the Nebraska Family Helpline

In 2009, the Nebraska Legislature established what is now called the Nebraska Family Helpline⁷³ to be a single point of access for children's behavioral health, that is operated 24 hours a day, seven days a week, and that provides screening and assessments and referrals to community-based resources.⁷⁴ The need for the Helpline came to light after parents and guardians dropped off more than 30 children, mostly adolescents with unmet behavioral health needs, under Nebraska's safe haven law before an age limit was added in 2008.⁷⁵ The Helpline is staffed by trained operators and supervised by licensed mental health professionals and can assess immediate safety needs, connect callers to emergency resources and providers, and make referrals to community resources as needed.

In many cases, the Helpline can be an appropriate first step or alternative to making a child abuse and neglect report to the Child Abuse and Neglect Hotline. Reporters may not realize that a report to the hotline is not a referral for services, so train-

ing and public education should focus on the way that the hotline and the helpline in Nebraska differ and also compliment one other.⁷⁶ This would help to more appropriately balance the priority placed on investigations and the provision of services.

Conclusion

In light of the low rate of substantiation of reports to the Child Abuse and Neglect Hotline, the disproportionate and damaging impact of state investigation and community policing of families of color, the fact that universal reporting laws exist in only a minority of states, Nebraska should balance the social and financial costs of its existing statute and consider amending it and redirecting resources into services designed to alleviate poverty, strengthen all families, and prevent child abuse. 

Nebraska Child Abuse and Neglect Hotline:
(800) 652-1999

Nebraska Family Helpline:
(888) 866-8660

Endnotes

- ¹ The authors wish to thank the following individuals for their review of and input into this article: Becca Brune, B.S.W., Allison Derr, J.D., Robert McEwen, J.D., Ken Smith, J.D., and Claudia Brock (3L) of Nebraska Applesseed. The authors also wish to thank their spouses (Jay, Jill, and Matt) and their children (Marigold & Marley James; Anna, Maggie & Audrey; and Teddy, Kit & Leo) for quarantining quietly for a few extra hours to enable the writing of this article.
- ² E-mail from Steve Greene, Deputy Director, DHHS Division of Children and Family Services, to Sarah Helvey, Child Welfare Program Director & Staff Attorney, Nebraska Applesseed (May 28, 2020; 14:54 CST) (on file with author) (tbls. 1, *CAN Hotline Call Volumes 2019-2020*). Note this decrease in hotline calls also occurs annually when school is out for the summer.
- ³ *Id.* at tbls. 2, *Count of Intakes by Reporter Source April 2019 Compared to April 2020*. Note this decrease in hotline calls also occurs annually when school is out for the summer.
- ⁴ Voices for Children in Nebraska, Kids Count in Nebraska (2019), <https://voicesforchildren.com/wp-content/uploads/2020/03/Full-Book-Final-3-4.pdf>.
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ *Id.* at 64 ("Some children experienced more than one type of maltreatment. The numbers here will be higher than the total number of children who experienced maltreatment. Source: Nebraska Department of Health and Human Services (DHHS). It is important to note that only maltreatment cases that were reported are included in this report. The actual incidence of maltreatment may be higher than what is reported here.")
- ⁸ U.S. Dep't of Health and Human Services, Children's Bureau, Child Welfare Info. Gateway, Mandatory Reporters of Child Abuse and Neglect (2019).
- ⁹ Neb. Rev. Stat. § 28-711 (2019); U.S. Dep't of Health and Human Services, Children's Bureau, Child Welfare Info. Gateway, Mandatory Reporters of Child Abuse and Neglect (2019).
- ¹⁰ [1] Neb. Rev. Stat. § 28-716 (2019); *See Shearer v. Leuenberger*, 256 Neb. 566, 591 N.W.2d 762 (1999). The Federal Child

UNIVERSAL MANDATORY REPORTING

Abuse Prevention and Treatment Act (CAPTA) also requires states, as part of their state plan requirements for eligibility for federal funding, to provide immunity from prosecution for individuals making good-faith reports of suspected or known child abuse or neglect, and Children's Bureau (CB) policy further clarifies that this requirements must be met in state law. 42 U.S.C. § 5106a(b)(2)(B)(vii) (2016); see Children's Bureau Child Welfare Policy Manual, § 2.1: CAPTA, Assurances and Requirements (2019).

¹¹ 42 U.S.C. § 5106a(b)(2)(B)(viii) (2016); Neb. Rev. Stat. § 28-725 (2019); Neb. Rev. Stat. § 81-3126 (2019).

¹² Neb. Rev. Stat. § 28-106 (2019); Neb. Rev. Stat. § 28-717 (2019).

¹³ Steven J. Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. Juv. L. 236 (1998).

¹⁴ Greene, *supra* note 1 at tbls. 2 (count of intake reporter by source).

¹⁵ *Id.*

¹⁶ Voices for Children in Nebraska, *Kids Count in Nebraska* (2018).

¹⁷ *Id.*

¹⁸ *Ferguson v. City of Charleston*, 532 U.S. 67 (2001). The American Congress of Obstetrics and Gynecology (ACOG) recommends universal drug screening during prenatal care, rather than testing. This involves something like asking five standard questions to all prenatal mothers to determine if they are at risk of substance use during pregnancy. Then, if the screening points to yes, with the patient's consent, a drug test can be performed. The extent of the consent, discussion of the test's consequences, and follow up reporting required would be based on state law. However, within their best practices, the ACOG emphasizes the importance of patient consent, appropriate consent processes, informing patients of the ramifications of a positive test result, and for medical personnel to focus on treatment needs rather than punitive results. The American Academy of Pediatrics agrees with this best practice.

¹⁹ 42 U.S.C. § 5106(a)(b)(2)(B) (2016); see also Protecting Our Infants Act, Pub. L. No. 114-91 (2015) (mandating that the U.S. Department of Health and Human Services make recommendations on preventing, identifying, and treating the effects of prenatal opioid use on infants).

²⁰ Infants Born Affected by Substance Abuse and an Update on Nebraska's Response to the Comprehensive Addiction and Recovery Act (CARA), *Letter from Danette Smith to Nebraska Birthing Hospitals* (Dec. 23, 2019), <http://dhhs.ne.gov/Pages/Comprehensive-Addiction-and-Recovery-Act.aspx>.

²¹ Neb. Rev. Stat. § 28-711 (2019).

²² 390 Neb. Admin. Code § 3-006.02 (2018),

When law enforcement has investigated a report of suspected child abuse or neglect and has made a report of their findings to the Department, the Department will record the finding onto the Child Abuse and Neglect Registry. The Department won't initiate another assessment unless the law enforcement investigation indicates the child is at continued risk of abuse or neglect or the information on the circumstances of the family is incomplete. All Department assessments on suspected child abuse and neglect will be coordinated with the appropriate law enforcement agency;

390 Neb. Admin. Code § 4-004.01 (2018),

Since both law enforcement agencies and CPS have statutory obligations pertaining to child abuse/neglect cases, it is necessary to establish which agency will take the primary responsibility for a given case and which kinds of cases will initially be a joint effort. The suggestions below do not preclude joint investigations or an independent assessment by the Department. Cases appropriate for joint activities may include but not be limited to: Sexual assault or abuse of a child

by a household member; Abuse/neglect in child care homes, child care centers or institutions; and Abuse/neglect in foster homes or allegations of abuse/neglect committed by foster parents or foster care providers. Cases for law enforcement conducting primary investigation activities depend on established local protocols and may include: Severe physical abuse; Neglect, such as lack of food, unsanitary or dangerous living conditions and lack of essential utilities; Children being left unattended or lack of supervision; Chronic or extreme spouse abuse in the child's presence; and When criminal activity is involved. Cases appropriate for CPS assessment: Physical neglect due to medically related issues; Emotional abuse/neglect; and Physical neglect due to chronic failure of parent to provide for a child's basic needs, where no immediate risk of harm presently exists. Once an assessment has begun, CPS will obtain assistance from law enforcement agencies when any of the following circumstances become evident: Evidence of criminal activity has been discovered; Threatening, assaultive, or otherwise high-risk individuals need to be contacted; Information suggests the need for children to be placed in temporary custody.

²³ 390 Neb. Admin. Code § 3-006.02 (2018).

²⁴ *Id.*

²⁵ 390 Neb. Admin. Code § 4-005-07 (2018).

²⁶ 365 Neb. Admin. Code § 4-008.01 (2018).

²⁷ DHHS must enter agency substantiated, court substantiated, and court pending into the central registry of child protection cases pursuant to Neb. Rev. Stat. § 28-720 (2019). Pursuant to Neb. Rev. Stat. § 28-720 (2019), court substantiated means:

[I]f a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information or there has been an adjudication of jurisdiction of a juvenile court over the child under subdivision (3)(a) of section 43-247 which relates or pertains to the report of child abuse or neglect," court pending means "if a criminal complaint, indictment, or information or a juvenile petition under subdivision (3)(a) of section 43-247, which relates or pertains to the subject of the report of abuse or neglect, has been filed and is pending in a court of competent jurisdiction" and agency substantiated means "if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was supported by a preponderance of the evidence and based upon an investigation pursuant to section 28-712.01 or 28-713.

²⁸ 365 Neb. Admin. Code § 4-008.02 (2018).

²⁹ 365 Neb. Admin. Code § 4-008.03 (2018).

³⁰ Neb. Rev. Stat. § 28-712 (2019); Neb. Rev. Stat. § 28-712.01 (2019); Neb. Rev. Stat. § 81-3136 (2019).

³¹ The Annie E. Casey Foundation, *Disparities and Disproportionality in Child Welfare: Analysis of the Research* (2011), <https://www.aecf.org/resources/disparities-and-disproportionality-in-child-welfare/> (Data also supports alternative theories of disparity/disproportionality).

³² *Id.*

³³ Voices for Children in Nebraska, *Equality Before the Law: Race and Ethnicity in Nebraska's Child Welfare System* (2017), <https://voicesforchildren.com/wp-content/uploads/2016/06/Equality-Before-the-Law.pdf>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ State of Nebraska Foster Care Review Office, *Annual Report 2017-2018* at 56 (2018), <https://fcro.nebraska.gov/pdf/FCRO-Reports/2018-annual-report.pdf>; see also Nebraska Indian Child Welfare Coalition (NICWC), <http://www.nicwc.org> (providing

UNIVERSAL MANDATORY REPORTING

- additional data regarding the removal of Native children from their families).
- ³⁷ Elisa Minoff, Center for the Study of Social Policy, *Entangled Roots: The Role of Race in Policies that Separate Families* (2018), <https://cssp.org/2018/11/institutional-racism-and-the-urgent-need-to-transform-public-systems-that-separate-families/>.
- ³⁸ Dorothy E. Roberts, *Community and Racial Justice: Democratizing Criminal Law as an Abolitionist Project*, 111 Nw. U. L. Rev. 1597, 1601 (2017).
- ³⁹ Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. Rev. 1474, 1485–86 (2012).
- ⁴⁰ Voices for Children in Nebraska, *supra* note 32.
- ⁴¹ Neb. Rev. Stat. § 28-710 (2019).
- ⁴² Laura Hawks, Steffie Woolhandler, David U. Himmelstein, David H. Bor, Adam Gaffney & Danny McCormick, *Association Between Forced Sexual Initiation and Health Outcomes Among U.S. Women*, 179 AMA Internal Med. 1551, <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2751247>.
- ⁴³ Amy M. Young, Melissa Grey & Carol J. Boyd, *Adolescents' Experiences of Sexual Assault by Peers: Prevalence and Nature of Victimization Occurring Within and Outside of School*, 38 J. of Youth & Adolescence (2009), <https://link.springer.com/article/10.1007/s10964-008-9363-y>; David Finkelhor, Anne Shattuck, Heather A. Turner & Sherry L. Hamby, *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, 55 J. of Adolescent Health 329 (2014), <https://www.jahonline.org/action/showPdf?pii=S1054-139X%2813%2900854-9>.
- ⁴⁴ Kamala London, Magie Bruck, Stephen Ceci & Daniel Shuman, *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?*, 11 Psychol., Pub. Pol'y, & L., 194 (2005), <https://pdfs.semanticscholar.org/59ea/f55682807261d1c1b053797074953f9175ab.pdf>; Joshua J. Broman-Fulks, Kenneth J. Ruggiero, Rochelle F. Hanson, Daniel W. Smith, Heidi S. Resnick, Dean G. Kilpatrick & Benjamin S. Saunders, *Sexual Assault Disclosure in Relation to Adolescent Mental Health: Results from the National Survey of Adolescents*, 36 J. of Clinical Child & Adolescent Psychol. 260 (2007), https://libres.uncg.edu/ir/asu/f/Broman-Fulks_2007_Sexual_Assault_Disclosure.pdf.
- ⁴⁵ Adrienne Jennings Lockie, *Salt in the Wounds: Why Attorneys Should Not Be Mandated Reporters of Child Abuse*, 36 N.M.L. Rev. 125 (2006); Brooke Albrandt, *Turning in the Client: Mandatory Child Abuse Reporting Requirements and the Criminal Defense of Battered Women*, 81 Tex. L. Rev. 655 (2002).
- ⁴⁶ Ellen Marrus, *Please Keep My Secrets: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency*, 11 Geo. J. Legal Ethics 509 (1998); Megan M. Smith, *Causing Conflict: Indiana's Mandatory Reporting Laws in the Context of Juvenile Defense*, 11 Ind. Health L. Rev. 439 (2014).
- ⁴⁷ Robert F. Kennedy National Resource Center for Juvenile Justice, *From Conversation to Collaboration: How Child Welfare Agencies & Juvenile Justice Agencies Can Work Together to Improve Outcomes for Dual Status Youth* (2014), http://www.modelsforchange.net/publications/539/From_Conversation_to_Collaboration_How_Child_Welfare_and_Juvenile_Justice_Agencies_Can_Work_Together_to_Improve_Outcomes_for_Dual_Status_Youth.pdf.
- ⁴⁸ Robert P. Mosteller, *Child Abuse Reporting Laws and Attorney-Client Confidences: The Reality and Specter of Lawyer as Informant*, 42 Duke L.J. 203 (1992).
- ⁴⁹ Albrandt, *supra* note 43.
- ⁵⁰ Mical Raz, *Calling child protective services is a form of community policing that should be used appropriately: Time to engage mandatory reporters as to the harmful effects of unnecessary reports*, 110 Child. & Youth Serv.s Rev. 104817 (2020).
- ⁵¹ Erica M. Kelly, *The Jerry Sandusky Effect: Child Abuse Reporting Laws Should No Longer Be "Don't Ask Don't Tell,"* 75 U. Pitt. L. Rev. 209 (2013).
- ⁵² Mical Raz, *Unintended Consequences of Expanded Mandatory Reporting Laws*, Pediatrics (2017), <https://pediatrics.aappublications.org/content/early/2017/03/10/peds.2016-3511>.
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ Mosteller, *supra* note 46.
- ⁵⁶ Greene, *supra* note 1 at tbls. 2 (count of intake reporter by source).
- ⁵⁷ Raz, *supra* note 50.
- ⁵⁸ Amy L. Nilsen, *Speaking Out Against Passive Parent Child Abuse: The Time Has Come to Hold Parents Liable for Failing to Protect their Children*, 37 Hous. L. Rev. 253 (2000).
- ⁵⁹ Raz, *supra* note 50.
- ⁶⁰ E-mail from Diane L. Redleaf, Principal, Family Defense Consulting, to Shriver Center on Poverty Law, Racial Justice Training Institute (RJTI) (May 20, 2020; 21:42 CST) (on file with author).
- ⁶¹ Telephone interview with Joyce McMillan, Director of Programming, Child Welfare Organizing Project (May 26, 2020).
- ⁶² U.S. Dep't of Health and Human Services, Children's Bureau, Child Welfare Info. Gateway, Child Welfare Information Gateway, State Training Resources for Mandatory Reporters of Child Abuse and Neglect, https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspList&rolType=Custom&RS_ID=162&rList=ROL.
- ⁶³ Telephone interview with Kelis Houston, Co-Chair, Minneapolis NAACP Child Protection Committee and Founder, Village Arms (May 27, 2020).
- ⁶⁴ *Id.*
- ⁶⁵ Rise, *Recommendations to Address Schools' Over-Reporting to Child Protective Services* (Mar. 2, 2020), <http://www.risemagazine.org/2020/03/rise-recommendations-schools-over-reporting/>.
- ⁶⁶ *Id.*
- ⁶⁷ See Family First Prevention Services Act, Pub. L. No. 115-123 (2018).
- ⁶⁸ Nebraska Children and Families Foundation, *Evidence Based Strategies: Community Response* (2019), <https://www.nebraska-children.org/our-approach/evidence-based-strategies/community-response.html>.
- ⁶⁹ *Id.*
- ⁷⁰ *Id.*
- ⁷¹ Center on Budget and Policy Priorities, *Nebraska TANF Spending* (2018), https://www.cbpp.org/sites/default/files/atoms/files/tanf_spending_ne.pdf.
- ⁷² The Annie E. Casey Foundation, *supra* note 30.
- ⁷³ Neb. Dep't of Health & Human Serv., *About the Helpline* (2020), <http://dhhs.ne.gov/Pages/Nebraska-Family-Helpine-About.aspx>.
- ⁷⁴ Neb. Rev. Stat. § 71-822 (2019); LB 603 § 6, 101st Neb. Legis. (2009).
- ⁷⁵ Nebraska Family Helpline, *Printable Flyer*, https://gms.gpsne.org/UserFiles/Servers/Server_551327/File/News/Printable%20Flyers/Nebraska%20Family%20Helpline/NEFAMHELPLINE.pdf.
- ⁷⁶ Rise, *supra* note 62.