

# Social Workers and Civil Liability for Failure to Report Child Abuse

## Introduction

Social workers in all 50 states are required to report instances of child abuse; however, the penalties for failure to report vary. In most states, failure to report is considered a misdemeanor crime punishable by a short term in jail or a limited fine. The extent to which private individuals may sue social workers for the harm caused by failing to report child abuse is less clear.

## Background

According to the NASW Legal Defense Fund Law Note, *Social Workers and Child Abuse Reporting: A Review of State Mandatory Reporting Requirements*, only seven states have statutes specifically permitting monetary damages in civil lawsuits for failure to comply with mandatory reporting requirements. In five of those states ( Arkansas , Colorado , Iowa , New York , and Rhode Island ), a “knowing” or “willful” violation of the reporting law is required before civil damages can be applied. However, in Michigan and Montana , a simple failure to report may form the basis for civil liability.

In the remaining 43 states — when a failure to report is claimed and there is no specific state law authorizing litigation — litigants must rely on court decisions to determine whether private lawsuits against mandatory child abuse reporters are permitted. A decision by the West Virginia high court, *Arbaugh v. Board of Education*, 2003 WL 22852070, provides a recent example. The *Arbaugh* court neatly summarized the current state of the law on failure to report child abuse and whether a private right of action is implied in the absence of a state statute.

Six state courts, out of seven that have examined this issue, have declined to imply a private right to sue mandatory reporters for failure to report suspected child abuse. California is singular in its judicial interpretation, allowing private lawsuits in the absence of specific statutory authorization; however, that decision is limited to “intentional” failures to report. *Landeros v. Flood*, 551 P.2d 389 (1976).

## Case Discussion and Analysis

On December 3, 2003 the Supreme Court of Appeals of West Virginia rendered an opinion in *Arbaugh v. Board of Education*. The facts underlying the case involved a male teacher who sexually abused several students over a period of four years, and who was eventually convicted and incarcerated for his crimes. Arbaugh, a victim of this abuse, filed a private lawsuit against several county education employees and the state's Department of Health and Human Resources in federal court, due to their failure to report suspected child abuse. At a preliminary stage in the proceedings, the federal magistrate determined that West Virginia law permitted civil lawsuits for failure to report suspected child abuse. The federal court eventually asked the West Virginia high court to interpret this matter of state law.

The West Virginia court relied on four factors to determine whether a state statute allows a private cause of action in the absence of specific language. These factors are:

- Whether the plaintiff was one of the individuals for whose benefit the statute was created;

- Legislative intent;
- Whether private litigation is consistent with the underlying purposes of the legislation; and
- Whether there is a conflict with an area exclusively covered by federal law.

The court examined the second and third factors closely before it decided that there is no implied right to sue created by the West Virginia mandatory child abuse reporting law.

The court was unwilling to find that the legislature intended for mandatory reporters to be subject to private lawsuits, due to the difficulties in proving that the failure to report was a cause of the child abuse and the wide range of individuals required to report, each subject to different professional and occupational standards.

Finally, the court examined whether the purpose of the child abuse reporting statute — protecting children — is consistent with the legislative scheme enacted. The court found that allowing private lawsuits would not “meaningfully further the purposes” of the statute, due to the other measures available to protect children and to encourage reporting, such as criminal liability for failure to report and provision of services to families.

Thus, the Supreme Court of West Virginia refused to imply a right to sue mandatory child abuse reporters based merely on the enactment of a reporting mechanism. However, the court left the door open for the possibility of a separate lawsuit based on a theory of simple negligence.

## **Conclusions**

A small minority of states have specified that private individuals have a legal right to sue mandatory reporters of child abuse for failure to report suspected instances of abuse. Even fewer states have decided to judicially create a right to sue in the absence of specific statutory language. However, liability for failure to report is more likely to come from lawsuits based on simple negligence. In those instances, the existence of a mandatory reporting law and a social worker's failure to report may be used as evidence of negligence.

In order to support a finding of negligence against a social worker for failure to report suspected child abuse, a number of factors must be proven by the plaintiff: a duty to report, injury to the plaintiff, sufficient evidence that the failure to report caused the injury, and that it was foreseeable that the failure to report would cause the injury suffered.

In addition to defending potential malpractice claims based on negligence theories, social workers who fail to report suspicions of child abuse may also find that they are subject to sanctions from licensure boards and professional associations. The most prudent course for social workers is to accurately document suspicions of child abuse and the measures taken to report such suspicions, including the use of professional consultation and clinical supervision in ambiguous cases.

## **Resources**

NASW Insurance Trust. (Winter 2001 Version Revised in Spring 2002). *Allegations of Child Abuse*. Practice Pointer [Online]. Available at [http://www.naswinsurance.org/understanding\\_risk\\_management/pointers/v01n11a.asp](http://www.naswinsurance.org/understanding_risk_management/pointers/v01n11a.asp)

NASW Legal Defense Fund. (March 2000). *Social Workers and Child Abuse Reporting* . LDF Law Note [Online]. Available at <http://www.socialworkers.org/ldf/lawnotes/abuse.asp>

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