



Pergamon

Child Abuse & Neglect 29 (2005) 9–18

Child Abuse  
& Neglect

Invited Commentary

## Mandated reporting: a policy without reason

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Received 27 March 2004; accepted 6 May 2004

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### Introduction

About 40 years ago, Denver pediatrician **C. Henry Kempe and his colleagues (1962)** “discovered” the battered child syndrome. Although I did not have the privilege of knowing Kempe, I have enough friends who did that I am certain that he was thoughtful, caring, and charismatic. Even without those first-hand accounts, however, this picture could easily have been discerned from Kempe’s influence. As the principal founder of the International Society for Prevention of Child Abuse and Neglect, the Kempe Children’s Center, and *Child Abuse & Neglect The International Journal*, Kempe has had a remarkable legacy: a worldwide movement of professionals concerned with the safety of children.

Kempe’s most extraordinary influence, however, may have been in public policy. He and his colleagues had concluded that child maltreatment in the United States was a problem annually affecting a few hundred children subjected to the violent behavior of some seriously disturbed parents. Therefore, Kempe reached the conclusion that the best policy response would be to require health professionals to report those egregious cases to public authorities. In action that is probably without parallel in the history of US

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<sup>1</sup> *Author note:* This article was prepared as the stimulus paper for a Virtual Issues Discussion for the International Society for Prevention of Child Abuse and Neglect ([www.ispcan.org](http://www.ispcan.org)) in fall 2003. Although diverse views were expressed by the many commentators in that forum, the author was impressed by the thoughtfulness and civility of the discussion. In the not very distant past, serious criticism of a policy at the cornerstone of child protection practice would have been viewed by many in the field as intolerable. That the discussion was so open and informed shows an impressive maturation of the field that I hope can translate into concrete action to implement new policies that are better tailored to meet the purpose of ensuring children’s safety.

The author was lead author of the 1993 report of the US Advisory Board on Child Abuse and Neglect (*Neighbors Helping Neighbors: A New National Strategy for the Protection of Children*) and lead editor of two related volumes (Melton & Barry, 1994; Melton, Thompson, & Small, 2002). The ideas therein are scattered throughout this article. However, the opinions expressed herein are not necessarily those that were espoused by the Board as a whole.

child and family policy, each of the 50 states adopted a mandated reporting law within 3 years after the publication of the seminal article on the battered child syndrome. [For a history of the enactment of early child protection legislation in the United States, see [Nelson \(1984\)](#).]

Interestingly, this unanimity of response was the product of grassroots action, not federal incentives. The federal government did not enter the child protection arena until more than a decade later with the enactment of the [Child Abuse Prevention and Treatment Act of 1974](#). Ironically and perhaps tragically, the primary requirement that the law specified for states to be able to receive the funds available under CAPTA was the establishment of a system of mandated reporting and investigation of suspected child abuse and neglect—a step that all of the states had already taken!

### **How policy went awry**

No one can reasonably question that the pioneers in the modern child protection system acted with good intentions and even a certain measure of courage. Notwithstanding the charitable motives of the system's founders, however, the evidence is overwhelming that many of the catastrophic problems in contemporary child protection work in the United States are a direct product of the system's design. Analogous problems have appeared in other jurisdictions with mandated reporting (e.g., most of the Australian states; see [Ainsworth, 2002](#); [Harries & Clare, 2002](#); [Scott, 2002](#)). Later in this article, I will elaborate this point about the system's unintended effects.

For now, though, it is important to recognize that *experience has shown that the assumptions that guided the enactment of mandated reporting laws were largely erroneous*. To be clear, my intention in drawing attention to these mistakes is not to criticize Kempe or any of the other pioneers in child protection. Indeed, they are justly venerated for drawing public attention to an important social problem. It is not reasonable to expect that any of the early advocates on behalf of maltreated children should have known what professionals have learned from decades of research and clinical experience. Today, however, leaders in child protection should know better. Nonetheless, in the United States and numerous other jurisdictions that have copied the US model, policymakers maintain a child protection system that is now known to lack a grounding in valid empirical assumptions and indeed to have terrible unintended effects.

The most fundamental mistake that the designers of modern child protection systems made was grossly to underestimate the scope of the problem of child abuse and neglect. The incidence of reports of suspected child maltreatment—a statistic that anonymous representative surveys of parents (e.g., [Gallup, Moore, & Schussel, 1995](#)) show is a fraction of the actual incidence—is in the *millions*, not the *hundreds*, in the United States each year ([Administration on Children and Families, 2003](#)). Whatever else one can say about child protection policy in the United States, it is clear that the primary problem is no longer case-finding!

With the huge error in assessment of what then was truly a hidden social problem came gigantic new problems of public administration. Given that the number of maltreated children was believed to be so small, policymakers believed that an effective state response could be applied with existing resources. Hence, only one of the 50 US states initially adopted an appropriation to accompany its mandated reporting law ([Nelson, 1984](#))!

Kempe and his colleagues made one more fundamental error. Although they justly asserted society's moral responsibility to ensure the safety of dependent children, they grossly underestimated the

complexity of the problem. The assumption early in the history of the modern child protection system was that the problem of child maltreatment was reducible to “syndromes”—in effect, that abusive and neglecting parents were either very sick or very evil and that they thus could be appropriately characterized as “those people” who were fundamentally different from ourselves.

Although such cases do occur, they are relatively rare. Most cases involve neglect (*Administration on Children and Families, 2003*). In my conversations with several senior physicians who have long worked on child protection teams at major medical centers in various US regions, all have said that they very rarely encounter the severe battering that *Kempe et al. (1962)* described.

Further, searches for distinctive behavioral syndromes have proven elusive (*Wolfe, 1994*). Those factors that have appeared reliably are directly related to ability to cope with poverty (*Pelton, 1994*). Rather, the norm is that families in which maltreatment occurs have a multiplicity of serious personal, social, and economic problems (*US Advisory Board on Child Abuse and Neglect, 1993*). Indeed, as neighborhood researchers (e.g., *Coulton, Korbin, & Su, 1999; Drake & Pandey, 1996; Garbarino & Crouter, 1978; Garbarino & Kostelny, 1992, 1994; Garbarino & Sherman, 1980; Gracia & Musitu, 2003; Korbin, 2003; Searly & Lauderdale, 1983; Vondra, 1990; Young & Gately, 1988; Zuravin, 1989*) have shown, the communities in which maltreated children live are themselves often dangerous and seriously disadvantaged (cf. *Sampson, Raudenbush, & Earls, 1997*).

As the US Advisory Board on Child Abuse and Neglect summarized:

Even the psychological variables that are associated with child maltreatment—depression, low self-esteem, sense of powerlessness, general inadequacy, impulsivity, substance abuse—relate directly to ability to cope with poverty. So too are the related demographic factors, such as family size, and the individual-child characteristics, such as disability, which stretch already thin family budgets.

... Child maltreatment reporting rates vary according to neighborhood quality even when income levels and cultural composition are similar. In neighborhoods in which children are protected, there is friendship among neighbors, watchfulness for each other’s families, physical safety of the environment, common knowledge of community resources, visible leadership, and, perhaps most critically, a sense of “belonging,” ownership, and collective responsibility. By contrast, some neighborhoods have been so drained of these qualities that they are disastrous for children and families. . . . (*US Advisory Board on Child Abuse and Neglect, 1993, pp. 8–9, footnotes omitted*)

In some measure, of course, the seeming failure initially to recognize the complexity of the problem is a product of the expansion that has occurred in the concept of *child maltreatment*. Cases of severe battering are undeniably tragic, and the behavior is abhorrent. Nonetheless, the action that is necessary is usually not difficult to determine; the child must be placed in a safe home. When society assumes responsibility to protect children from profound assaults on their bodily integrity, however, the duty to protect children from less egregious but chronic threats to their personal security is likely ultimately to be recognized. The harm from such situations may be clear, but it is also diffuse, and the steps that should be taken to protect children are apt to be both uncertain and multi-faceted.

Further, the misperception of the nature and frequency of child maltreatment may be an inevitable early step in the development of child protection systems. In visits to new democracies in Eastern Europe and southern Africa, I have been struck by the nature of the debate about child and family policy. When the realities of family violence and other social problems first become matters that can be openly discussed, the initial step seems typically to be a focus on uncovering truly egregious maltreatment. The resulting

singular emphasis on reporting and investigation seems to occur even in societies in which a majority of children lack adequate nutrition and shelter.

### **The consequences of a policy without reason**

Whatever the basis, though, for the initial misjudgments about the nature and frequency of child abuse and neglect, the result has been a formal child protection system that is increasingly ill-matched to the needs of the children and families who enter it. This point can be illustrated by imagining a prototypical case in Child Protective Services. Ms. Jones calls CPS and makes the following report:

I'm calling because I'm very concerned about the Williams children, who are aged 8 and 5 and who live next door. Their mother is single, and she is an unskilled assembly-line worker at a nearby factory. When Ms. Williams goes to work at about 6:00 every morning, she leaves the children alone until it is time for them to go to school. There are times when they show up at my doorstep. From the way that they eat the snacks that I give them, I suspect that they're not getting enough to eat. It's been cold, but the only outer garments that they've worn have been tattered thin sweaters.

I doubt if Ms. Williams makes more than \$7 or \$8 an hour. She recently went for weeks without any work at all, because the plant furloughed many of the workers in response to low sales of the goods made there. I don't know Ms. Williams very well, but she seems to have some chronic health problems, and she often appears depressed. I don't think that she has any relatives nearby.

Ms. Jones's reason for calling CPS is straightforward: she wants help for the Williams family. She undoubtedly imagines that the social worker who takes the call will be able quickly to arrange some basic services: child care a few hours a day, some food, perhaps an emergency income subsidy, and a sympathetic ear for Ms. Williams.

But what actually happens? The call is treated as an allegation of wrongdoing, not a concerned neighbor's plea for help. The social worker's principal legal obligation is to collect evidence to determine whether neglect has occurred. If the decision is made that there was no neglect, the case will be closed. Even if neglect is substantiated, there is a good chance that no further "service" will be offered. If there is, it will often be a required parent education class, which will also be viewed as an opportunity to gather evidence—simply checking off whether Ms. Williams attends the classes—and which will also bear little if any relation to the particular threats to safety that her children may be experiencing.

Meanwhile, Ms. Jones takes no other action to help the family—not even checking to see how they are doing—because she is satisfied that she has fulfilled her legal and moral obligation. Moreover, she believes that the social worker is an expert who will ensure that necessary services are delivered. Indeed, Ms. Jones is apt to think that any further action on her part may interfere with the help that she understands that CPS is supposed to give.

In short, there is no logical relation between the problems presented and the response undertaken. The United States and other societies that have adopted the central tenets of US child protection policy have an enormously successful calamitous system that has neither a realistic scientific foundation nor well articulated normative underpinnings. On the one hand, millions of people pick up the telephone each year to let public authorities know about their concerns about particular children and families. Any policy that elicits that much citizen involvement would ordinarily be perceived to be a great success. On the other hand, failures abound in the child protection system—so much so that the [US Advisory Board on](#)

[Child Abuse and Neglect \(1990\)](#) proclaimed a national emergency more than a decade ago on the basis of the crisis it identified throughout the child protection system, broadly defined. Unfortunately, the situation today is only marginally better ([Melton, 2002](#)).

(Some commentators on an earlier version of this article suggested, probably accurately, that the scenario described in the composite Williams case *supra* would be unusual in developing and transitional countries, where most of the cases entering formal child protection systems still involve serious physical or sexual abuse. However, that scenario also typified the early history of modern child protection systems in North America and Western Europe. Unfortunately, it is a reasonable hypothesis that mandated reporting in developing and transitional countries will evolve in coming years into the same or worse explosion of cases and misdirection of resources that have occurred in the West. In societies in which the majority of children lack fulfillment of basic material needs, a requirement to report and investigate the families in which parents may be neglecting is almost certain ultimately to overwhelm the child protection system and to distract policymakers from attention to the core problem.)

In diagnosing “chronic and critical multiple organ failure” within the child protection system, the [US Advisory Board on Child Abuse and Neglect \(1990, p. 2\)](#) made clear that the principal origins of the problem lay in neither a failure of will (although the Board did call for greater collective and personal exercise of responsibility to address the crisis) nor a dearth of resources (although the Board did note inadequate funding in some domains, notably research). Instead, the Board held that the recurring crisis in the child protection system is the product of errors in design—specifically, making mandated reporting and investigation the centerpieces of the system:

The most serious shortcoming of the nation’s system of intervention on behalf of children is that it depends upon a reporting and response process that has punitive connotations and requires massive resources dedicated to the investigation of allegations. State and County child welfare programs have not been designed to get immediate help to families based on voluntary requests for assistance. As a result, it has become far easier to pick up the telephone to report one’s neighbor for child abuse than it is for that neighbor to pick up the telephone and receive help before the abuse happens. ([US Advisory Board on Child Abuse and Neglect, 1990, p. 80](#))

The result of the current design of the child protection system is that investigation often seems to occur for its own sake, without any realistic hope of meaningful treatment to prevent the recurrence of maltreatment or to ameliorate its effects, even if the report of suspected maltreatment is validated. ([US Advisory Board on Child Abuse and Neglect, 1993, pp. 10–11](#))

After decades of injunctions to report cases of suspected child maltreatment to CPS, both the general public and the relevant professions equate child protection with reporting and investigation. Child protection is perceived, therefore, as primarily the responsibility of CPS. This perception ironically and tragically diminishes the safety of children, given (a) the multiplicity of problems (and, therefore, the need for diverse sources of help) that typically are present in child maltreatment (especially neglect) cases, (b) the impossibility of constant monitoring of families by CPS, and (c) the probable reduction in direct action by the general public and by professionals outside CPS to reduce risk to children. Child protection is now perceived by most adults as a coercive dramatic act, not a part of everyday life.

CPS itself is diverted from the task of increasing the safety of children. It is largely engaged instead, as a matter of legal obligation, in evidence gathering and preparation of actual or potential court cases. Attention to children’s own security is diminished as workers spend their time checking off boxes in

regard to parental conduct. By law, social workers' time is focused first and foremost on the question of "What happened?", not "What can we do to help?"

Vast human and fiscal resources that could be spent in prevention or treatment are instead expended in investigations that usually result in significant disruption of family life but little if any benefit. Approximately one-eighth of the referrals to CPS agencies in the United States are screened out without investigation (Administration on Children and Families, 2003).

Approximately two-thirds of the reports of suspected child maltreatment that are investigated are never substantiated or found to be indicated (Administration on Children and Families, 2003). Surveys of public social service authorities have elicited acknowledgments that a substantial proportion of the remainder—families in which allegations are both investigated and substantiated—receive no "service" other than the investigation itself (Administration on Children and Families, 2003; DePanflis & Zuravin, 2002). Similar findings have been noted in Australia, where mandated reporting dramatically increased the number of referrals to CPS but not to family support services (Ainsworth, 2002; Harries & Clare, 2002; Scott, 2002).

Analogous effects may occur on health professionals' attention. A panel of the Institute of Medicine (one of the National Academies of Science) concluded that mandated reporting laws may increase consideration of child maltreatment in professional education but that this increased coverage often reflects a "focus on required reporting procedures to the exclusion of health professionals' roles in treating, referring, and preventing family violence" (Committee on the Training Needs, 2002, p. 72).

Similarly, policymakers are drawn to arcane issues about the legal definition of child abuse and neglect, rules for gathering evidence and admitting it in legal proceedings, and standards for coercive intervention. They are distracted from the fundamental question of the ways that law and policy can be used to make families and communities safer for children.

Even the attention of researchers is misdirected as a result of the central role of reporting and investigation (Melton, 1997; Melton et al., 1995). Extensive bodies of knowledge exist about professionals' decisions whether to report suspected child maltreatment and the factors affecting the quality of children's testimony and other statements. However, research relevant to prevention and treatment plans and to related policy development and program administration, although significantly improved in recent years, is still proportionately much less developed (Melton, 2002).

Meanwhile, the threat of reporting probably deters many families from seeking help. The act of reporting leads to disruption of treatment in families in approximately one-fourth of cases among families already receiving mental health services (Levine & Doueck, 1995). Implementation of mandated reporting has been shown to result in a dramatic decline in offenders' revelations of child sexual abuse (Berlin, Malin, & Dean, 1991). On the other hand, the experience in the Low Countries shows that new assurances of confidentiality increase families' self-referral for treatment (Marneffe, 1997).

Although researchers have seldom examined negative side effects beyond the formal child protection system, mandated reporting may have reverberating negative effects on the integrity of the broader service systems. It is plausible, for example, that health professionals' involvement in mandated reporting compromises their own or their clients' perception of them as helpers. Further, the rampant civil disobedience of mandated reporting laws by professionals who are convinced that children are worse off as a result of reports to CPS (Kalichman, 1999; Melton et al., 1995, and citations therein) may diminish their respect for legal policy in other contexts. Moreover, it is clear that mandated reporting has transformed public child welfare agencies into investigatory bodies with diminished involvement in the provision of social services per se (Faver, Crawford, & Combs-Orme, 1999; Kamerman & Kahn, 1990a, 1990b).



It is also plausible that mandated reporting at times increases distrust among neighbors. If so, it may contribute to increased isolation and interfere with norms of reciprocal help and thus ironically may aggravate the social conditions that are most closely related to child maltreatment (cf. [US Advisory Board on Child Abuse and Neglect, 1993](#)).

### **The remaining conundrum**

Both common sense and empirical research lead naturally to the conclusion that mandated reporting is a bankrupt policy. The assumptions on which the system was built are now known to be plainly erroneous. Further, the current system appears to have paradoxical effects. It has had clearly negative side effects, some of which probably adversely affect children's safety.

In the aggregate, there can be little question that jurisdictions with mandated reporting laws should be revising their system to facilitate voluntary assistance to children and families—to create or sustain the norms of caring that prevent harm to children. Those countries without the US-style child protection system should develop other models.

The dilemma that arises is in regard to the small proportion of cases in which there is serious risk of imminent or repeated harm and in which forceful action may be necessary. There is at least the possibility that policy reform to increase the safety of children in general and to diminish ineffective, intrusive intervention will result in circumstances in which society knowingly accepts egregious mistreatment of some individual children who would have come to the attention of public authorities in a system of mandated reporting and investigation.

In that regard, although the [Convention on the Rights of the Child \(1989\)](#) specifically and, in my view, unfortunately requires states parties (countries that have ratified the Convention or otherwise recognized it as law) to implement a system of “identification, reporting, referral, [and] investigation” (art. 19, § 2), the underlying principle is that children have a right to personal security ([Melton, 1991](#)). Indeed, the [Convention \(1989\)](#) expresses governments' duty to develop “*effective* procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child” (art. 19, § 2, emphasis added). Hence, in keeping with the Convention's general respect for children's dignity and for parents' and children's privacy, strategies should pass muster if they are less intrusive than mandated reporting and have fewer side effects and, overall, they are more effective in ensuring children's safety.

The Convention gives implicit support to the view expressed by the [US Advisory Board on Child Abuse and Neglect \(1993\)](#) that the right to personal security is so fundamental and that child maltreatment is so complex that a comprehensive effort to build communities in which adults watch out for children and provide easily available and non-stigmatizing help to their families is a public responsibility. Art. 19, § 1, expressly requires states parties to “take *all* appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” ([Convention, 1989](#), emphasis added).

Although it is beyond the scope of this article to propose such an overarching strategy, one model comes from mental health and public health contexts, in which the trend has been to try to minimize heavy-handed control on people with serious mental illnesses or infectious diseases but instead to build “friendly” systems of monitoring and control in which the individual has a say and in which care is

given to provide polite, respectful care (e.g., *assertive treatment*; see Dennis & Monahan, 1996). In essence, the idea is analogous to that of the US Advisory Board on Child Abuse and Neglect (1993) in its approach to primary prevention of child maltreatment: Governments ought to facilitate the development of community environments that by their nature provide family support and that ensure watchfulness for children. Help—and, if necessary, monitoring and control—ought to be built into primary community settings in a manner that minimizes intrusions on privacy and that improves the everyday quality of life for children and families, whatever their vulnerability and needs.

Unfortunately, we in the United States have far to go to fulfill that vision. In an era in which distrust and alienation are increasingly commonplace (see, e.g., Fukuyama, 1995; Pharr & Putnam, 2000), so do most other societies. However, there are glimmers of positive change. In the child protection system specifically, the *Zeitgeist* is changing. There have been some well-financed efforts by foundations to support the development of broad-based neighborhood systems to promote children's safety (see, e.g., [www.clemson.edu/strongcommunities](http://www.clemson.edu/strongcommunities)).

Further, there have been chinks in the armor of mandated reporting and investigation, long a sacrosanct—even if much regretted—policy. Several states have amended their law to provide for multiple tracks in response to referrals to CPS, so that some cases that are unlikely to require court action go into an “assessment” rather than an “investigation” mode. Although I suspect that this distinction is often without a difference, it at least signals a new willingness to try to adapt policy to fit the current situation for particular families, not to hold unquestioningly to procedures based on long-discredited assumptions.

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