

Child Maltreatment:
Contemporary Issues in Research and Policy 4

Ben Mathews
Donald C. Bross *Editors*

Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect

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Child Maltreatment

Contemporary Issues in Research and Policy

Series Editors

Jill E. Korbin, Ph.D.
Professor of Anthropology
Associate Dean, College of Arts and Sciences
Director, Schubert Center for Child Studies
Crawford Hall, 7th Floor
10900 Euclid Avenue
Cleveland, OH 44106-7068, USA
jill.korbin@case.edu

Richard D. Krugman, MD
Professor of Pediatrics and Dean
University of Colorado School of Medicine
Room C-1003 Bldg 500
Anschutz Medical Campus
13001 E. 17th Place
Aurora, CO 80045, USA
richard.krugman@ucdenver.edu

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Ben Mathews • Donald C. Bross
Editors

Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect

 Springer

Editors

Ben Mathews
Australian Centre for Health Law Research
Faculty of Law, Queensland University
of Technology
Brisbane, QLD, Australia

Donald C. Bross
Program in Pediatric Law, Policy and Ethics
Kempe Center for the Prevention and
Treatment of Child Abuse and Neglect
Aurora, CO, USA

Department of Pediatrics, School
of Medicine
University of Colorado Denver
Aurora, CO, USA

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Contents

Part I Historical and Current Context of Mandatory Reporting Laws

1	Mandatory Reporting Laws: Their Origin, Nature, and Development over Time.....	3
	Ben Mathews	
2	Who Is Maltreated and How Mandated Reporting Might Help	27
	Desmond K. Runyan	
3	Competing Values and Evidence: How Do We Evaluate Mandated Reporting and CPS Response?.....	33
	Brett Drake and Melissa Jonson-Reid	
4	An Inter-reporter Analysis of Mandated Child Maltreatment Reporting in the USA.....	61
	John E. Kesner and Bridget V. Dever	
5	Privacy and Legal Duties to Warn About Unsafe Behaviors, Conditions, or Hazards: The Example of Child Abuse and Neglect Reporting.....	77
	Donald C. Bross	
6	The Historical Background for Mandatory Reporting Laws in Public Health.....	105
	Edward P. Richards	

Part II Theoretical/Ideological Debates and Issues

7	A Theoretical Framework for Designing and Evaluating Strategies to Identify Cases of Serious Child Abuse and Neglect.....	127
	Ben Mathews	

8	Ethics and the Identification and Response to Child Abuse and Neglect	157
	Jacqueline J. Glover and Lisa M. Justis	
9	Medical Perspectives: Bioethics/Ethics and the Duties of Medical Professionals and the Nature, Advantages, and Limits of Public Health Approaches	173
	Donald Woodhouse	
10	Economic Issues in the Community Response to Child Maltreatment	193
	Leonie Segal	
Part III Legal and Conceptual Debates/Issues		
11	Neglect: Should There Be Mandatory Reporting?	219
	Edward Goldson	
12	Mandatory Reporting and the Difficulties Identifying and Responding to Risk of Severe Neglect: A Response Requiring a Rethink	245
	Bob Lonne	
13	The Sins of the (Irish) Fathers: Is Mandatory Reporting the Best Response?	275
	Helen Buckley and Roni Buckley	
14	Mandatory Reporting of Child Sexual Abuse by Religious Leaders	295
	Patrick Parkinson	
Part IV Practical Issues and Challenges for Reporters		
15	Practical Issues and Challenges for Physicians Reporting Suspected Child Maltreatment	311
	Emalee Flaherty	
16	Training in Reporting of Child Maltreatment: Where We Are and Where We Need to Go	327
	Maureen C. Kenny	
17	An Evidence-Supported Approach to Reporting Child Maltreatment	347
	Brad Donohue, Krisann M. Alvarez, and Kimberly N. Schubert	
18	Mandatory Reporting of Child Abuse and Neglect by Health Professionals	381
	Debbie Scott and Jennifer Fraser	

**19 The Social Construction of Disclosure:
The Case of Child Abuse in Israeli Society** 395
Zvi Eisikovits, Jonathan Davidov, Laura Sigad,
and Rachel Lev-Wiesel

**Part V Relationship of Reporting with Response Systems,
and Practical Issues and Challenges for Response Systems**

**20 What Will Happen to This Child If I Report?
Outcomes of Reporting Child Maltreatment**..... 417
Theodore P. Cross, Betsy Goulet, Jesse J. Helton,
Emily Lux, and Tamara Fuller

21 Rethinking the Functioning of Child Protective Services 443
John D. Fluke and Katherine Casillas

**22 The Role of Mandatory Reporting in Preventative
Child Welfare Reforms: An Uneasy Fit?**..... 467
Leah Bromfield

**23 Mandatory Reporting of Child Abuse
and Marginalised Families** 491
Heather Douglas and Tamara Walsh

Part VI International Variations/Challenges

**24 The Identification and Reporting of Severe Violence
Against Children: International Standards and Practices**..... 513
Jaap E. Doek

**25 Legislation Concerning Reporting of Child Sexual Abuse
and Child Trafficking in India: A Closer Look** 541
Sibnath Deb

Author Bios

Krisann M. Alvarez, Ph.D. is a clinical supervisor with Early Childhood Mental Health Services, a program of the State of Nevada's Division of Child and Family Services. She oversees family therapy and case management services provided to underserved families of young children, many of whom have involvement with the child welfare system. Her major area of research is in child maltreatment reporting. She is also interested in developmentally appropriate diagnosis and intervention with young children as well as the impact of attachment concerns on mental health and early development.

Dr. Leah Bromfield is Associate Professor and Deputy Director of the Australian Centre for Child Protection at the University of South Australia and Professorial Fellow to the Royal Commission into Institutional Responses to Child Sexual Abuse. Previously she was a Senior Research Fellow at the Australian Institute of Family Studies and managed the National Child Protection Clearinghouse. She is a well-regarded research expert in issues affecting child protection systems, chronic maltreatment and cumulative harm, and research to practice. She has worked closely with government on establishing and implementing child welfare reforms.

Donald C. Bross is Professor of Pediatrics and Associate Director for Pediatric Law, Policy and Ethics at the Kempe Center for the Prevention and Treatment of Child Abuse and Neglect, Department of Pediatrics, University of Colorado School of Medicine. A graduate of Dartmouth College he received an NIMH Traineeship in Medical Sociology at the University of Wisconsin, Madison, earning M.S. and Ph.D. degrees in Sociology. A graduate of the University of Colorado School of Law, having clerked for the Office of the University Counsel, he was appointed to the faculty of the University of Colorado School of Medicine in 1976. As part of his work, Bross incorporated and served as lawyer for the International Society for the Prevention of Child Abuse and Neglect (ISPCAN) for 8 years, and incorporated the National Association of Counsel for Children (NACC), for which he served as its first President and later as its pro bono Executive Director until 1990. He currently

serves on the Kempe Child Protection Team and COMIRB (reviewing human subject research involving children). He teaches medical students, pediatric residents and fellows, child psychiatry residents, and law interns. In 2013, he became Co-Editor in Chief of *Child Abuse & Neglect: The International Journal*.

Dr. Helen Buckley is an Associate Professor in the School of Social Work and Social Policy, Trinity College Dublin. Her research interests are in child protection policy and practice. She is chair of the National Review Panel, an independent body that examines serious incidents including the deaths of children in care and known to the child protection system. She has published a number of books and papers on child protection and recently completed a research study on the development of effective recommendations from child abuse inquiries.

Dr. Roni Buckley is currently working as a researcher in the Office of the Attorney General, based in Dublin. She completed her Ph.D. in Child Protection Mandatory Reporting in 2013 in the School of Social Work and Social Policy, Trinity College Dublin. She undertook her undergraduate degree in Law and European Studies in the University of Limerick and a Master's degree in Criminal Justice at University College Cork. Roni also worked as a legal researcher for the Dublin Commission of Investigation on both the Dublin and Cloyne reports from 2007 to 2010.

Katherine Casillas has been involved for over 15 years in applied clinical and programmatic research on the assessment, etiology and treatment of dysfunctional family interactions. Since February 2009, she has been a research project manager for the Child Protection Research Center at the American Humane Association, which has included organizational assessment of a state child welfare system and leading the analyses of a UNICEF report on child discipline in low- and middle-income countries. Dr. Casillas previously worked at the Family Translational Research Group at SUNY at Stony Brook University. While there, she secured a National Institutes of Health (NIH) Diversity Supplement Grant, which extended her new work on parental behavioral styles.

Theodore P. Cross is Research Full Professor in the Children and Family Research Center at the School of Social of the University of Illinois at Urbana-Champaign. He has conducted research on the investigative and service response to child maltreatment for 25 years. He has published over 100 articles, monographs and reports on such topics as the investigation and prosecution of child abuse, children's advocacy centers, delivery of children's mental health services, and well-being of child maltreatment victims. He taught advanced statistics for 15 years.

Jonathan Davidov, Ph.D. is a researcher at The Center for the Study of Society (located in the University of Haifa), having just completed an appointment as a Haruv post-doctoral research fellow at the Kempe Center for the Prevention and Treatment of Child Abuse and Neglect, University of Colorado. His research interests include child abuse and neglect, children at risk, and the impact of extreme situations on identity and self-perception.

Professor Sibnath Deb, (Ph.D., D.Sc.) is Head of the Department of Applied Psychology, Pondicherry University and Adjunct Professor, School of Public Health and Social Work, Faculty of Health, Queensland University of Technology, Brisbane, Australia. He has 25 years of teaching and research experience. His current areas of research interest include child safety/protection, students' mental health, adolescent reproductive health, HIV/AIDS and applied social psychology. Professor Deb has completed more than 50 large-scale qualitative and quantitative studies (funded by national and international funding agencies), and has published more than 120 research papers in addition to writing 8 books and editing 4. He has received three international and three national awards for his contributions in the field of child safety and applied psychology. Professor Deb is a member of the editorial board of the *Journal of Interpersonal Violence* and from 2004 to 2008 was a Council Member of the International Society for Prevention of Child Abuse and Neglect (ISPCAN).

Bridget V. Dever, Ph.D is an Assistant Professor of School Psychology at Lehigh University, where she specializes in statistics and research methodology in the Department of Education and Human Services. Dr Dever graduated from the University of Michigan in 2009 from the Combined Program in Education and Psychology (CPEP). After receiving her Ph.D., she was an Institute of Educational Sciences (IES) Postdoctoral Fellow as part of the Georgia Measurement and Assessment Training (GMAT) program. Prior to joining the faculty at Lehigh, Dr Dever was an Assistant Professor of Research, Measurement, and Statistics at Georgia State University. Her research interests include motivation among at-risk students, the assessment of behavioral and emotional risk, and promoting educational resilience.

Jaap E. Doek is an Emeritus Law Professor (family and juvenile law) of the VU University of Amsterdam. He was one of the founding members of the International Society for the Prevention of Child Abuse and Neglect (ISPCAN). He was a member of the UN Committee on the Rights of the Child (1999–2007) and the chairperson of that Committee (2001–2007). He is a member of the Board of Trustees of the African Child Policy Forum (ACPF), the legal senior advisor of the international NGO End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), and a consultant for different country offices of UNICEF.

Brad Donohue Professor, Department of Psychology, is Director of Family Research and Services, University of Nevada, Las Vegas, which is chiefly focused on the development, evaluation and dissemination of family-supported interventions to assist in goal achievement. He is one of the developers of family behavior therapy (FBT), an evidence-based treatment listed in various national clearinghouses. His specific interests include the development and adoption of evidence-based treatments (primarily FBT), psychometric development of clinical measures to assist in understanding and measuring treatment outcomes, and improving the functioning of mental health clinics through effective supervision and quality assurance. He enjoys treatment development in severely troubled populations

(e.g., substance abuse, child maltreatment, family violence, conduct disorders), and concurrent improvement of mental health and sport performance in athletes.

Heather Douglas is a Professor and Director of Research at the Law School, The University of Queensland. Heather's research focuses on the way the law impacts on and constructs women. She has written on domestic violence, child protection and criminal justice issues. Her most recent book, with Mark Finnane, was *Indigenous Crime and Settler Law: White Sovereignty After Empire* (Palgrave Macmillan, 2012). She is currently the lead researcher on the Australian Feminist Judgments Project.

Dr. Brett Drake has been a professor at the George Warren Brown School of Social Work at Washington University in St. Louis since 1991, having received his Ph.D. in Social Welfare from the University of California at Los Angeles. He has been interested in early child welfare system response. His work spans epidemiology, practice and policy. In particular, Dr Drake has focused on issues of racial disproportionality, substantiation and mandated reporting. He has authored over 50 peer-reviewed publications, books and book chapters. He has taught at the Master's and Doctoral levels, mainly in the area of research methodology. Prior to his academic career, Dr Drake worked as a child protective services investigator in San Diego, California.

Zvi Eisikovits, Ph.D. is a Professor of Social Welfare and Criminology at the University of Haifa. He is former Dean of the faculty of Welfare and Health at the University of Haifa and presently Head of School of Criminology and Director of the Center for the Study of Society. Professor Eisikovits is co-PI with Professor Rachel Lev of a nationwide study of child abuse and neglect funded by Traiana High Tech CO. Professor Eisikovits is a nationally and internationally known expert in interpersonal violence and in the use of qualitative methods in studying woman abuse. He serves as a member of editorial boards in several journals on woman abuse and qualitative research and recipient of large grants from prestigious sources such as the HF Guggenheim Foundation, Minerva Foundation, DIP and Israel Science Foundation.

Emalee Flaherty, M.D. is the Head of the Division of Child Abuse Pediatrics at Ann and Robert H Lurie Children's Hospital of Chicago and Professor of Pediatrics at Northwestern University Feinberg School of Medicine. Dr Flaherty received her medical degree from the Indiana University School of Medicine and completed her residency at the University of Illinois Hospital in Chicago. Dr Flaherty is serving her second term on the American Academy of Pediatrics Committee on Child Abuse and Neglect (COCAN). Formerly, she was elected to the Executive Committee of the AAP Section on Child Abuse and Neglect (SOCAN). She serves as Member-at-Large for the Ray E Helfer Society. She was named *Outstanding Professional, 2009* by the American Professional Society on the Abuse of Children (APSAC).

John D. Fluke is an Associate Director at the Kempe Center for the Prevention of Treatment of Child Abuse and Neglect in the Department of Pediatrics, University of Colorado School of Medicine. He has over 32 years of experience in social service delivery system research in the area of Child Welfare and Mental Health Services for children. John is an internationally renowned researcher specializing in assessing and analyzing decision making in human services delivery systems. He is also active in the area of national child maltreatment data collection systems and analysis. He is also known for his work in the areas of child maltreatment prevalence, child welfare administrative data analysis, workload and costing, and performance and outcome measurement for children and family services. John is also co-chair of the Working Group on Child Maltreatment Data Collection for ISPCAN.

Jennifer Fraser is an Associate Professor of Nursing at Sydney Nursing School, The University of Sydney. She has experience and research interest in the area of recognizing and responding to child abuse and neglect and has experience with evaluating staff training programs. Her work builds on the combined research efforts of identification, assessment, and reporting child abuse and neglect, and analysis of the application of staff training programs for health professional staff with mandatory reporting obligations. She uses a combination of experimental, cross-sectional and longitudinal studies to develop research instruments and to measure knowledge, beliefs and attitudes towards reporting. Her efforts have impacted clinical, research and social practice.

Tamara Fuller, Ph.D. is Director of the Children and Family Research Center and Research Associate Professor at the School of Social Work at the University of Illinois at Urbana-Champaign. A clinical psychologist by training, Dr Fuller is the Principal Investigator of the statewide experimental evaluation of Differential Response in Illinois and the Title IV-E Waiver Demonstration Evaluation in Wisconsin. Over the past 15 years, she has evaluated the effectiveness of numerous child welfare programs, including Differential Response, the Child Endangerment Risk Assessment Protocol, Child Death Review Teams, and post-reunification and adoption services. Within this program of research, there has been emphasis on examining predictors of maltreatment and maltreatment recurrence, and more recently family engagement in child welfare services.

Jacqueline J. Glover is a Professor in the Departments of Pediatrics and Preventive Medicine and Biometrics at the University of Colorado. She is also a Professor in the Center for Bioethics and Humanities, where she directs the Center's Clinical Ethics Program and the Interdisciplinary Education Program. Professor Glover is a member of the Colorado Multiple Institutional Review Board, Panel C, which reviews proposed human subject research involving children. She is a widely published researcher, with current research emphases on pediatric ethics, clinical ethics, professionalism education and evaluation, interdisciplinary ethics education, and rural bioethics.

Edward Goldson is a Professor of Pediatrics at the University of Colorado. He has specialties in development and behaviour, psychiatry and behavioral sciences, and Down syndrome. His clinical focus at the Children's Hospital, Colorado, is general pediatrics and child development, with an emphasis on care of the high risk infant and the chronically ill child, follow-up of premature and sick infants, behavior and medical management of children with the fragile X syndrome, clinical aspects of autism, and child abuse.

Betsy Goulet, M.A. has been an adjunct instructor for UIS since 1992, and has been working in the field of child sexual abuse since 1986. She was the founding director of the Sangamon County Child Advocacy Center from 1989 to 1995 and organized the Illinois Chapter of Children's Advocacy Centers, serving as that organization's first president. From 1995 until June of 2002, Betsy was the Children's Policy Advisor to the Illinois Attorney General. She was also a Membership Consultant for the National Children's Alliance in Washington D.C., conducting national accreditation site reviews and providing training for multidisciplinary team members and children's advocacy center staff. She continues to train nationally and recently developed a new advanced victim advocacy curriculum for the National Children's Advocacy Center. Betsy is a doctoral candidate in the DPA program at UIS.

Jesse J. Helton is an Assistant Research Professor at the University of Illinois at Urbana-Champaign School of Social Work and a research specialist at the Children and Family Research Center. His research focus is on the well-being of children who have been maltreated.

Melissa Jonson-Reid, Ph.D. is Professor of Social Work at the Brown School at Washington University and Director of the Brown Center for Violence and Injury Prevention funded by the Centers for Disease Control and Prevention. Prior to entering academia, Dr Jonson-Reid administered school-based programming for youth in foster care and other high risk populations as well as worked as a counselor with a domestic violence agency. Dr Jonson-Reid's research includes cross-sector children's services epidemiology, understanding the longer term impact of child maltreatment, and prevention of child maltreatment through innovations to existing agency programs. She teaches in the public health and social work master's programs and social work PhD program. She is the author and co-author of over 75 peer-reviewed publications and book chapters/books.

Lisa M. Justis is Social Work Coordinator and Instructor in Pediatrics in the Kempe Child Protection Team Faculty at The Kempe Foundation for the Prevention and Treatment of Child Abuse and Neglect in Denver, Colorado. The Child Protection Team provides comprehensive medical evaluations in a weekly outpatient clinic and through inpatient and emergency department consultations at Children's Hospital Colorado.

Maureen C. Kenny, Ph.D. is a Professor in Counselor Education program in the College of Education at Florida International University, in Miami, Florida. Dr Kenny has published extensively in the area of child abuse, particularly sexual abuse prevention and education as well as professionals' compliance with child abuse reporting. She was the director of an externally funded project, *Kids Learning about Safety*, a primary prevention program geared toward Latino families in Miami Dade. Dr Kenny is a licensed psychologist in Florida, a National Board Certified Counselor and a Fellow of the American Psychological Association.

John E. Kesner is an Associate Professor in the Department of Early Childhood Education in the College of Education at Georgia State University. He earned his doctorate in Family Relations and Human Development from The Ohio State. Dr Kesner has researched and conducted family violence research throughout his career. After receiving his Ph.D., he joined the faculty at Georgia State University as an Assistant Professor of Early Childhood Education. After his promotion to Associate Professor in 2002, Dr Kesner continued his research and publishing in the areas of family issues. Most notably, his research includes child maltreatment and mandated reporting of maltreatment.

Rachel Lev-Wiesel, Ph.D. is a Professor and Head of the Graduate School of Creative Art Therapies and the Emili Sagol Research Center for CAT at the University of Haifa. Her main research domains are child abuse, trauma and post-traumatic growth, and analysis of drawings for diagnostic and therapeutic purposes.

Bob Lonne is the Head of the Social Work and Human Services disciplinary group at QUT. Bob has a distinguished career in direct practice and has held managerial positions in the mental health, statutory child protection and juvenile justice fields in both Queensland and Western Australia. Bob is particularly active in the issues that affect social work and the human services sector at the international, national and local levels, with a particular focus on workforce issues and planning and reforming child protection. In 2010 he published a report, funded by the Australian Learning and Teaching Council, focusing on the social work and human services workforce and curriculum, which highlighted a range of issues including ageing, rapid growth and diversification, and the relevance of general social and behavioural science courses for direct practice roles in this sector. Bob was the National President of the Australian Association of Social Workers from 2005 to 2011.

Emily Lux is a third year doctoral student at the University of Illinois at Urbana-Champaign. She received her BA and MSW at the University of Illinois at Urbana-Champaign. Emily has experience providing clinical services to child welfare-involved youth in residential treatment and alternative education settings, therapeutic activity to the elderly, and case management and direct support to developmentally delayed adults. Her research interests concern the effects of trauma on child testimony in child-welfare involved youth.

Ben Mathews is an Associate Professor in the School of Law at Queensland University of Technology in Brisbane, Australia and Co-Director of the Children's Health Program in QUT's *Australian Centre for Health Law Research*. He conducts research in law and child maltreatment, mandatory reporting, civil claims for child abuse, medico-legal issues, children's rights, and female genital mutilation. He has conducted large multidisciplinary studies of mandatory reporting law, theory and practice and has over 60 publications. He has conducted the two largest empirical studies of mandatory reporting in Australia. The *Teachers Reporting Child Sexual Abuse* Study (2010) led to reform of legislation, policy, and professional training. In 2014, he completed a project for Australia's Royal Commission into Institutional Responses to Child Sexual Abuse: *A history of mandatory reporting of child sexual abuse in Australia: A legislative history*. Currently, he is leading a national study for Australia's Commonwealth Government exploring State and Territory mandatory reporting systems, analysing 10 year datasets of child protection reports.

Patrick Parkinson is a Professor of Law at the University of Sydney, Australia, and President of the International Society of Family Law. He served from 2004 to 2007 as Chairperson of the Family Law Council, an advisory body to the federal Attorney-General, and also chaired a review of the Child Support Scheme in 2004–2005 which led to the enactment of major changes to the child support system. Professor Parkinson has been a member of the NSW Child Protection Council, and was Chairperson of a major review of the NSW state law concerning child protection which led to the enactment of the Children and Young Persons (Care and Protection) Act 1998. He also works with churches on child protection issues. His books include *Tradition and Change in Australian Law* (5th ed, 2013), *Australian Family Law in Context* (5th ed, 2012), *Family Law and the Indissolubility of Parenthood* (2011), *The Voice of a Child in Family Law Disputes* (with Judy Cashmore, 2008), *Child Sexual Abuse and the Churches* (2nd ed, 2003) and *Principles of Equity* (editor, 2nd ed., 2003).

Edward P. Richards is Clarence W. Edwards Professor of Law, and the Director, Program in Law, Science and Public Health, at the LSU Law Center at Louisiana State University. He has researched and published for over 30 years in various aspects of medical law, public health law, and a range of issues at the intersection of law, health and public policy. In recent years, he has conducted extensive research in national security law. He has been a consultant to the Centers for Disease Control and Prevention and other federal agencies, and has authored over 140 articles and five books.

Desmond K. Runyan is the Jack and Viki Thompson Professor of Pediatrics at the University of Colorado, and Executive Director of the Kempe Center for the Prevention and Treatment of Child Abuse and Neglect. He has researched child abuse for over 32 years while maintaining a clinical practice evaluating possible child abuse victims and as a general pediatrics attending. He co-founded a comprehensive child abuse center and has been appointed to the initial new sub-board of child abuse pediatrics at the American Board of Pediatrics. In 1989 he designed and secured funding for LONGSCAN: the longest multi-site prospective study of the

consequences of child abuse. LONGSCAN, now over 20 years old, is a prospective study of 1,354 children in five states who either were reported for maltreatment or who were judged to be at very high risk of maltreatment. He has worked with International Clinical Epidemiology Network medical school faculty in Egypt, India, the Philippines, Brazil, and Chile to increase child abuse knowledge among medical schools internationally. He has also worked with WHO and UNICEF to study child abuse epidemiology.

Kimberly N. Schubert is a Clinical Doctoral Student at the University of Nevada Las Vegas. She is also a performance coach and the Quality Assurance Coordinator for The Optimum Performance Program in Sports, which is a subprogram within Family Research and Services. Her major area of research is in substance abuse and juvenile delinquency. She is also interested in creating, evolving, implementing, and examining the effectiveness of various evidence-based treatments, specifically those with a behavioral focus. Her long term goals are to work in academia as a university professor while also obtaining clinical licensure and working with adolescent clients. She plans to continue to conduct research on substance use, and abuse, using evidence-based treatments.

Debbie Scott is a Research Fellow at the Australian Institute of Family Studies (AIFS). She has a nursing background, a Master of Public Health and a Doctor of Health Science. Debbie has a history of work in the injury prevention field, particularly as it applies to childhood injury. Her experience in injury surveillance has led to an interest in child maltreatment. Debbie's research interests include the use of data to inform child maltreatment prevention and early intervention programs and policy development, child and family wellbeing and the impact of child maltreatment on the wellbeing of children and young people.

Leonie Segal is Professor of Health Economics and Foundation Chair of the Health Economics and Social Policy Group at the University of South Australia. Professor Segal conducts high quality rigorous research and builds research capacity in health economics and social policy to achieve evidence-informed public policy and practice. Her research interests are broadly concerned with allocative efficiency, ensuring the community's resources are spent wisely to maximise societal health and well-being. The broad focus is to determine the optimal mix of health and human services, and to analyse the drivers or incentives that can facilitate evidenced-based resource shifts, to achieve changes that improve health and well-being. She leads a highly innovative program of research around the role of the family in health, the nature, causes and consequences of child maltreatment, and evaluation of options for disrupting intergenerational cycles of disadvantage.

Laura Sigad, Ph.D. is a researcher at the Center for the Study of Society and Lecturer at the School of Criminology, University of Haifa. Her research interests include insider's perspectives on child abuse and neglect, cultural contexts and child abuse, and transnational migration and the family.

Dr. Tamara Walsh is an Associate Professor in the School of Law at the University of Queensland in Brisbane, Australia. She has degrees in both law and social work. She lectures in human rights law and constitutional law. Tamara's research interests lie in the broad field of social welfare law. Her work, to date, has included examinations of homelessness, child protection interventions, social security fraud and social exclusion. She draws on empirical research, as well as citizenship theory and human rights discourse in her work. Her research has been widely published, both in Australia and internationally.

Donald Woodhouse, JD, MPA is research administrator at Antioch University New England. He has worked with the Colorado Department of Health and the El Paso County Department of Health in the Sexually Transmitted Disease and HIV control programs, and was research coordinator and a lead investigator for CDC AIDS Project 90, a prospective 5-year multi-city study of the role of social networks in HIV transmission. He also served as legal advisor to the El Paso County Department of Health STD and HIV control programs and Confidential HIV Test Site, focusing on legal and ethical issues associated with testing and partner notification, and helping formulate and apply "health hold" regulations. A founding member of the Lock Haven (PA) Hospital Ethics Committee, he has studied and written about the ethical issues associated with research among vulnerable populations.

Introduction

Mandatory reporting of child abuse and neglect is the law in a large number of nations, but not in the majority of all nations worldwide. Nations with the most experience of mandatory reporting of child abuse and neglect have the capacity to describe relatively detailed trends in its epidemiology and progress in various kinds of responses and prevention efforts. At the same time, countries that do not require reporting tend to have less information on the extent of child maltreatment within their borders, and less information on how well child abuse and neglect are addressed, treated and prevented through a variety of social and legal responses.

Mandatory reporting laws have existed across the USA since the 1960s and are a well-known phenomenon in that country, although even there they remain contested theoretically, and continue to present multiple legal, clinical and practical questions. Even more significantly for the purpose of this book, which has been designed for an international audience, issues surrounding mandatory reporting laws continue to be highly relevant worldwide. Countries continue to enact the laws, in jurisdictions as diverse as Saudi Arabia and India, and with legislation forthcoming in Ireland in 2015. Other nations such as the United Kingdom are currently in heated debates about whether the laws are a good strategy, with law reform efforts underway. Other jurisdictions continue to amend and refine their longstanding mandatory reporting laws, including many US states, and states and territories in Australia. Nations that have not adopted mandatory reporting laws often cite criticisms of them as a justification for not doing so, but those jurisdictions that have adopted the laws as part of their strategy to identify and respond to serious child maltreatment have concluded that the advantages outweigh any anticipated costs. Debates will no doubt continue in many jurisdictions around the world about the benefits and disadvantages of enacting the laws, the various forms in which they may be judiciously employed, and if adopted how to optimize their benefits while minimizing any disadvantages.

Many perspectives can be used to understand mandatory reporting of child maltreatment: philosophical, human rights, empirical research, and disciplinary frameworks for theoretical evaluation and clinical practice (pediatrics, public health, social work, psychology/psychiatry, child development, and law) are among the vantage points available. All of these are represented in this book. Given the

continuing debates and developments worldwide regarding mandatory reporting laws and related aspects of child protection generally, we hope to provide in one reference work for the international field a substantial and up-to-date coverage of some of the best current work on important features of mandatory reporting law, theory, policy and practice.

The chapters contained in this book provide many views and illustrate a wide variety of opinions, experiences and insights. The authors include clinicians, academics, researchers, and individuals having more than one of these backgrounds. Contributors were chosen for their intellectual honesty, credibility, and ability to contribute in a meaningful way to analyzing the theoretical, policy and practical issues of mandatory child abuse reporting. The Editors believe that one can argue about the laws from any or all of these frameworks referred to above, but to the extent possible we should develop better empirical studies for determining when and under what circumstances mandatory reporting achieves the goals of keeping the problem of child maltreatment visible in an effective manner and permits and encourages effective responses. Wekerle's recent article illustrates the importance of this approach with her review of research relating to how the effects on children of a report can depend on the way in which the information is gathered from the child before the report is made.¹

Chapters 1, 2, 3, 4, 5, and 6 focus on historical and legal developments, and empirical data on reporting. In Chap. 1 Ben Mathews outlines the origins and provenance of the first mandatory reporting laws, discusses the nature and parameters of the laws, describes major developments in the laws over time, and identifies some of their major effects on reporting and case identification. In Chap. 2, Desmond K. Runyan treats the epidemiology of child maltreatment as a scientific and public health issue, and reviews and compares various methods employed to date to enumerate the incidence and prevalence of child physical abuse, corporal punishment and parental behaviors that have been shown to create substantial risks for harm. In Chap. 3, Brett Drake and Melissa Jonson-Reid provide a "case statement" to the effect that, notwithstanding "conventional wisdom," many of the criticisms of the working and results of child protection systems in parts of Europe, North America and Australia either disregard or defy data, making the criticisms questionable at best. They argue that only through research at least equivalent to the various empirical studies which they offer – to challenge what they describe as many prevalent "myths" of contemporary child protection services – can real improvements be made. They add that elements of the system that are only claimed to be detrimental

¹Wekerle, C. (2013) Resilience in the context of child maltreatment: Connections to the practice of mandatory reporting. *Child Abuse & Neglect* 37, 93–101: "Reporting is an intervention that requires substantial inter-professional investment in research to guide best practices, with methodological expectations of any clinical intervention. Child abuse reporting is consistent with a clinician's other duties to report (i.e., suicidality, homicidality), practice-based skills (e.g. delivering 'bad' news, giving assessment feedback), and the pervasive professional principle of best interests of the child. Resilience requires the presence of resources and, mandated reporting, is one such resource to the maltreated child." (93). See also Chap. 18 in this book which also promotes training as a means of improving reporting practices.

should not be abandoned absent good research data to support alternatives. Drake and Jonson-Reid report data that empirically refutes claims of a detrimental cost-benefit result from mandatory child abuse reporting. One of their interesting findings is that the percentage of the child protection budget expended on investigations “is most likely below 10 % and possibly below 5 %”.

In Chap. 4, John E. Kesner and Bridget V. Dever analyze NCANDS data, revealing in the process the extent to which mandatory reporting provides important markers for the overall problem. In Chap. 5, Donald C. Bross examines the existence of mandatory reporting of child abuse and neglect during a period of worldwide debate over the degree to which privacy is being eroded. His analysis of privacy protections provides recognition that the value of privacy normally means restrictions on the availability of information, which can, at the same time, deny information that is necessary to hold responsible those individuals and institutions behaving in ways that are harmful and also unjust, unethical or even illegal. Complete privacy would create a world in which it would be very difficult to hold individuals or corporate bodies accountable for behaviors that can cause injury of every kind, no matter how devastating the harm that results. In Chap. 6, Edward P. Richards examines the history of mandatory reporting laws in public health. This framework is important if the original context of mandatory reporting of child abuse that began in 1963 is to be accurately appreciated.² Given that Richard D. Krugman, Chairman of the first US Advisory Board on Child Abuse, has proposed for many years that child abuse should be characterized as a health and public health issue, which does not justify a primarily accusatory approach to child abuse or neglect, this early chapter on public health separates reporting of health conditions from the canard that child abuse reporting is inherently accusatory in nature.

Chapters 7, 8, 9, and 10 explore mandatory reporting from a variety of theoretical approaches. Chapter 7, by Ben Mathews, presents human rights, human justice, and Western philosophical traditions as powerful sources of theoretical support for the right of children who are severely abused or neglected to be made known to society at large. Jacqueline J. Glover and Lisa M. Justis present, in Chap. 8, a balanced, nuanced, and yet practical exploration of the ethical considerations informing hospital practitioners in a society which mandates child abuse reporting. Donald Woodhouse presents a practical law and public health ethics view of child abuse

²The first mandatory child abuse reporting laws were enacted in the USA beginning in 1963, largely through the efforts of C. Henry Kempe, M.D. and his colleagues. As a virologist as well as a pediatrician, Dr. Kempe was familiar with communicable dangers in the form of bacteria and viruses. Reporting of these dangerous and reportable conditions was essential before there were antibiotics and reporting of these conditions remains important today for knowing the extent, trends, and needed investments for responding to infections inducing illness and death. Child abuse reporting was a natural response, as part of a scientific management model, once the Battered-Child Syndrome had been identified. The original article touched on a possible mechanism for a disorder of empathy that was behaviorally transmitted physical abuse of children reappearing in their own behavior as parents. Now we know that child abuse also is associated with the transmission of many risks for poor physical health, poor behavioral health, and criminal involvement, both as victim and perpetrator.

reporting in Chap. 9, as an activity completely consistent with classic public health law tradition. In Chap. 10, Leonie Segal addresses economic issues related to the community response to child maltreatment, providing, for most child protection professionals of every background, a unique, important, yet rarely employed set of concepts and tools for analyzing child protection systems. The view offered by Segal is complex in detail and implication, with mandatory reporting treated as only one of a great many factors that must be considered in designing and maintaining an “economical” approach to reducing child maltreatment.

Chapters 11, 12, 13, and 14 continue to combine theoretical and practical perspectives. Pediatrician Edward Goldson agrees that the current approach to child neglect needs work, but he suggests in Chap. 11 that the effort will be better invested in improving the response through funding services, improving interventions, and investing in better understanding than simply doing away with a measure, reporting, that he finds helpful in his daily practice of advocating for children and parents. Bob Lonne’s argument in Chap. 12 against the reporting of child neglect provides much to consider regarding the scope and merits of mandatory reporting for this type of maltreatment. In Chap. 13, Helen Buckley and Roni Buckley consider the context of Ireland, and the forthcoming introduction of mandatory reporting laws in the wake of revelations of institutional child sexual abuse. They present an argument from the perspective of those who will become mandated reporters, express reservations about whether mandatory reporting will produce better outcomes for children, and argue that professional capacity to comply with the duty must be enhanced and response systems must be equipped to respond to reports in an appropriate and prompt manner. Patrick Parkinson explores issues and different options for the mandatory reporting of child sexual abuse in religious institutional settings in Chap. 14, an interesting contribution which has much relevance internationally.

Chapters 15, 16, 17, 18, and 19 expand on the theme noted by some previous chapters relating to the experience of reporters of child maltreatment. These chapters examine some of the obstacles and solutions for making the reporting of child maltreatment a refined and helpful professional activity. In Chap. 15, Emalee Flaherty reports on the research she and others have conducted on reporting of child abuse and neglect by physicians, revealing factors that encourage or discourage reporting. Maureen C. Kenny discusses the critical issue of training for reporters in Chap. 16, including the current state of play and proposing a case for necessary progress. In another very extensive exploration of the importance of training for reporters, in Chap. 17 Brad Donohue, Krisann M. Alvarez, and Kimberly N. Schubert describe the results of committing substantial efforts and resources into helping reporters know when to report as well as how to report possible child abuse and neglect. Their chapter provides results of evaluations to the effect that training will increase the chances that child maltreatment reports will be made accurately and justifiably, as well as specific examples of the type of training that can be provided. Chapter 18 sees Debbie Scott and Jennifer Fraser combine the perspectives of understanding the role of health professionals as reporters and the types of support that can help them fulfill their duties more appropriately. In Chap. 19, Zvi Eisikovits, Jonathan Davidov, Laura Sigad and Rachel Lev-Wiesel delve deeply into the

psychological environment and processes in which reporters can be immersed, with implications for whether reporting should be a legal duty.

The next to last section includes chapters which ask: What occurs after a report? Theodore P. Cross, Betsy Goulet, Jesse J. Helton, Emily Lux, and Tamara Fuller report research on the outcomes of reporting child maltreatment in Chap. 20, and in Chap. 21 John D. Fluke and Katherine Casillas present the case for better research and understanding of the way in which caseworkers and their employing systems arrive at decisions based on a report. In Chap. 22, Leah Bromfield analyzes efforts in different states and territories of Australia to reduce mandatory referrals of child maltreatment by increasing preventive services. This form of a public health approach depends in part on a “differential response” (DR) to notifications regarding children’s well being, so that needed and available services need not be delayed until child abuse or neglect is confirmed. Heather Douglas and Tamara Walsh present in Chap. 23 a discussion of mandatory reporting of child abuse using the analogy of domestic violence reporting. They present available reports of perceptions of domestic violence victims and conclude that if mandatory reporting is not to discourage mothers from self-identifying domestic violence and abuse of their children there must be services available that will help the mothers and children as a result of the report.

The final two chapters, Chap. 24 by Jaap E. Doek and Chap. 25 by Sibnath Deb, broaden the discussion of child abuse reporting to problems of children’s well being and protection that have received increasing international attention in recent years. Doek’s chapter considers the range of problems that include child labor, sex trafficking and child pornography, including pornography communicated over the internet, that in general are not addressed by child abuse reporting despite international condemnation. Sibnath Deb focuses expressly on sexual abuse and child trafficking for sexual purposes. Using his parent society of India as an example, Deb describes the current state of a problem that occurs in every country to a greater or lesser extent. His concluding position is clear: “Introducing mandatory reporting of child sexual abuse and trafficking will not cost much especially compared with the benefits which can flow. This should be introduced in the existing system and with other strategies it will help to bring positive changes in society.”

As Editors, we might owe a statement of our position to our readers, even if our position might be self-evident. If not, perhaps we can be permitted to say what it is or at least to take an Editorial privilege to do so. In this way it will be easier to recognize that there are chapters where we agree, do not agree, or agree partially with our fellow authors. Between the two of us there remains continuing discussion of several issues, including, for example, which kinds of severe neglect should be reportable. In reality, we agree to some extent with all of our colleagues. Above all, however, we believe that without careful research and a robust evidence base, assumptions can be made about the consequences of mandatory reporting that are not or might not be supportable. We should move past simplistic arguments about the possible faults with reporting. For sound changes to occur in mandatory reporting there must be careful research. In other words, various arguments about mandatory reporting should be given more or less credence depending on the extent to which they are supported by valid research.

There has been a tendency of critics of modern child protection to ascribe many of the problems of contemporary child welfare, especially in a handful of primarily English speaking societies, to the inherent wrongfulness of reporting. The argument might be unconsciously linked to the historical association of any “investigation” being a bad model in general. However infectious disease prevention and management, environmental regulation, and zoning compliance investigations are viewed generally as non-criminal in nature. Each of these forms of notification can involve private aspects of personal lives, and in the example of contact tracing for sexually transmissible infections, the information involves activities as private or “intimate” as child abuse in families. All of these activities have a primarily ameliorative purpose. To write or speak as if the training and other cultural aspects of ameliorative investigations do not matter makes it more difficult to separate the response to severe abuse and neglect between criminal, versus unacceptable but not criminal conditions and behaviors that must be addressed, from conditions for which only voluntary interventions are justified. Reporting alone is reporting. What is done with reports can be data collection for epidemiological purposes, evaluation for clinical needs, “investigation” by a child protection agency, or criminal proceedings if a wrong great enough is done. To make reporting a “false dichotomy” of good and bad disserves a more nuanced and thorough consideration of all of the factors that will have to be addressed for a humane and effective approach to child protection. Moving away from false dichotomies encourages examination of variations in mandatory reporting, so that, for example, the Dutch system of confidential notifications to physicians of possible child maltreatment might satisfy at least some of the needs for child protection in that culture without broader duties of reporting for a greater range of professions, although this would still need to be supported by a sound evidence base. What is necessary for a large, extremely diverse nation such as the USA might not be necessary for more homogenous or smaller nations with greater cohesion, consistency and social agreement on how to address health or social issues.

Do costs of an “investigatory system” divert resources to an intolerable degree from other programs? Without research to support it, the claim may assume legitimacy; but to explore the claim properly requires a rigorous evidence base and analysis. Too often in child protection, great swings in policy have occurred based on laudable goals that can become slogans, such as child protection, family preservation, and permanency planning, unless the new policies are implemented through research supported initiatives. As noted above, analysis in the USA concludes that under 10 % of current child protection service budgets are used to support investigations. Abolishing human services of any kind based only on their negative attributes, or the assumption that resources will remain available or fund better services if the particular service is abolished, has proven not to be true in every instance. It can be argued that persons with mental illness who were freed from institutions during the latter part of the twentieth century are better off than before, but reform has not relieved the considerable number of individuals who only shifted their “institutionalized address” to prisons and jails. Others have lived short and sometime mean lives on the streets. Autonomy is a cherished value in liberal societies but there are always policy tradeoffs.

Many reports of child maltreatment are not founded. This statistic has been used by some as an argument that the reporting policy is inherently flawed. However, others have rejected this. The reality that many children reported but not “founded” as maltreated are reported again suggests that reporting per se might not be the real problem. Repeated reports might be at least as much an indication of inadequate methods for diagnosis, prognosis and triage, and a confirmation that at least something is quite wrong in the life of the child reported, rather than a defect of reporting itself. In fact, the later occurrence of additional reports suggests that the “case finding” of the reporting system, even though generating many more reports than are founded, is actually identifying a large problem that continues to be underfunded and will continue to prevail, waiting for more effective demonstrations of the potential for community development and other alternative approaches to child safety to be proven. The attention brought to the problem of maltreatment through mandatory reporting has resulted in only some 3–5 % of the children born in any given year ever entering the records of child protection agencies.³

It is not clear why complementary reforms and approaches cannot take place with the mandatory reporting system still in place. This is the approach taken by Differential Response pilots. Mandatory reporting has not blocked the most scientifically established primary prevention program in the USA: The Nurse Family Partnership⁴ is now found in about 15 % of America’s roughly 3,400 counties, and was and is implemented on an entirely voluntary basis. However, the research that first established its power as a child abuse preventive was conducted in the State of New York using official records of child abuse reports. The results of the program extend at least 15 years, a rather exceptional result for a program based in part on behavioral interventions.

Making reporting of severe child abuse mandatory does not mean that child maltreatment will always be reported, and certainly does not mean that child abuse and neglect will always be founded, managed or treated appropriately. However, there is evidence that mandatory reporting produces substantial positive effects for children and communities. Identification of child abuse as a formal societal and legal obligation serves as an essential means of asserting that a society is willing to be informed of child abuse and to take steps to respond to it. In countries in which mandatory reporting is implemented, it is harder to ignore not only the reality of child maltreatment but also the success or lack of success in responding to it. In the most successful “democratic societies of law,” legal duties, voluntary services, public and private engagement, and change supported from below, above and across society, are mixed together to achieve maximal results. Maltreated children deserve laws which create direct, enforceable responsibilities for addressing severe abuse and neglect.

³Merkonnen, R., Noonan, K., & Rubin, D. (2009). Achieving better health care outcomes for children in foster care. *Pediatric Clinics of North America*, 56(2), 405–415, 406.

⁴Donelan-McCall, N., Eckenrode, J., & Olds, D. L. (2009) Home visiting for the prevention of child maltreatment: Lessons learned during the past twenty years. *Pediatric Clinics of North America*, 56(2), 389–404.

Part I
Historical and Current Context
of Mandatory Reporting Laws

Chapter 1

Mandatory Reporting Laws: Their Origin, Nature, and Development over Time

Ben Mathews

Introduction

Most children have relatively happy childhoods in loving and capable families, but some do not. Throughout human history, a significant proportion of children have endured severe maltreatment from their parents and caregivers. Due to the innate vulnerability of infants and children, the extreme power asymmetry of the parent/child relationship, and the private setting of severe maltreatment, these infants and children are uniquely marginalised and oppressed. Their experience of severe maltreatment is hidden in the family sphere, where parents' activities are guarded by a heavy ideological curtain. Broken bones and beatings, rape and sexual assaults, severe emotional deprivation, and profound and even life-threatening neglect: all have traditionally remained silenced and protected from view. Even when another person became aware of such a situation, they would usually avert their gaze, such as children's lack of status relative to their parents'; and given the severity of the conduct, the person might reasonably wonder what they could possibly do anyway.

Until relatively recently, there have been no systematic sociolegal measures or systems anywhere in the world to enable intervention by protective agencies to stop the continuance of maltreatment and enable provision to the child of health rehabilitation and safe environment. In what has been described as a 'tectonic shift' (Runyan 2014), the social response to child suffering changed in the early 1960s in the USA, moving beyond earlier measures such as those in English Poor Laws and societies for the protection of children. The key advance was to create a measure to open the curtain shading the private family sphere and shed light on instances of serious child

B. Mathews (✉)

Australian Centre for Health Law Research, Faculty of Law,
Queensland University of Technology, GPO Box 2434, 4001 Brisbane, QLD, Australia
e-mail: b.mathews@qut.edu.au

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maltreatment. Laws were enacted across the USA which required designated persons to report serious child physical abuse to authorities; those authorities would receive the reports and determine the appropriate course of action.

As other forms of serious maltreatment became recognised and understood, these ‘mandatory reporting laws’ were extended to encompass those types of maltreatment as well. The laws have since been adopted by many countries, in different forms (Mathews and Kenny 2008; Daro 2006). They are a heterogeneous, organic, flexible mechanism enabling social intervention where otherwise such intervention is severely compromised or impossible. Their primary function is to comprise but one aspect of a multifaceted child welfare apparatus by identifying cases of serious maltreatment which would not otherwise come to light; their essential role is therefore primarily tertiary and is not a purely preventative one. As noted later in this chapter, the evidence indicates that on this basis they have greatly assisted in case identification and remain superior to alternative approaches. As well as the laws imposing a direct obligation on selected individuals to act, as a strategy endorsed by parliament as representatives of the community, they embody a declaration about what is and is not acceptable conduct and about what interests it values society must and will protect. In this sense they are also an instrument to influence positive development in attitudes, behaviours, and societal culture (Mathews and Bross 2014).

Dozens of countries have now enacted mandatory reporting laws in various forms. However, in many countries, such measures still do not exist. Others like England are currently considering them; others like Saudi Arabia have recently introduced them (Al Eissa and Almuneef 2010); and others like Ireland are introducing them. Even where they exist, debates continue about their use and effects, both for general and for specific types and extents of maltreatment (Besharov 1985; Drake and Jonson-Reid 2007; Mathews and Bross 2008; Melton 2005; Wald 2014a, b). This chapter outlines the origins and provenance of the first mandatory reporting laws, discusses their nature, describes major developments over time, and identifies some major effects and their consequences.

Origins and Provenance: The First Mandatory Reporting Laws

The impetus behind the first mandatory reporting law about any kind of child abuse or neglect was the work of the Colorado paediatrician C. Henry Kempe and his medical colleagues (1962) in identifying cases of severe child physical abuse and conceptualising this as ‘the battered-child syndrome’. Kempe et al. were seeing numerous cases of severe intentional physical injury to children in their hospitals; an example was given of 1 day’s intake including four infants suffering parent-inflicted battering, two of whom died, another of whom died 4 weeks later, and with the fourth recovering. Kempe et al. acknowledged that this battering of children by their caregivers occurred on a spectrum of less severe cases to extremely severe cases. However, their emphasis was on severe injury, especially cases involving bone fractures (whether of the skull, arms, or legs) and/or subdural hematoma.

Because of their understanding and empathy toward the child's situation – notably, it is the child who is the primary subject of concern, not the parents – they had been disturbed by doctors encountering these cases and not taking appropriate action to prevent avoidable harm to the child. Children who were known or should have been known to have been victims of severe physical injury were being ignored and returned to the offending parents and would continue to suffer and in some cases would die.

Kempe et al. (1962, p. 17) defined the battered-child syndrome as

A term used by us to characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent...It is a significant cause of childhood disability and death. Unfortunately, it is frequently not recognized or, if diagnosed, is inadequately handled by the physician because of hesitation to bring the case to the attention of the proper authorities...The battered-child syndrome may occur at any age, but, in general, the affected children are younger than 3 years.

Their conclusion was that appropriate management by doctors involved making (1962, p. 23)

the correct diagnosis so that he can institute proper therapy and make certain that a similar event will not occur again. He should report possible wilful trauma to the police department or any special children's protective services that operate in his community. The report that he makes should be restricted to the objective findings which can be verified and, where possible, should be supported by photographs and roentgenograms.

Kempe had identified and publicised not only the situation of severe intentional injury being inflicted on parents but also the widespread reluctance and/or seeming inability of many doctors to recognise it and deal with it appropriately by reporting it to authorities (Bross and Mathews 2014). Their position was that such serious instances of maltreatment must no longer be tolerated, and a mechanism had to be devised to circumvent individuals' reluctance and/or inability to act and to enable outside intervention to assist the child. Doctors' repeated failure to act on clear cases of violent assault to infants embodied the phenomenon of 'gaze aversion'; they looked away when they encountered a situation which caused them discomfort or psychological confusion. This gaze aversion was not limited to doctors, and it continues today, although in cultures where people are more informed about and sensitised to child abuse and its consequences and more supportive of children's rights, it is arguably less likely to persist.

Kempe et al.'s research was accompanied by intensive lobbying for legislative reform. As a result, the first mandatory reporting laws were enacted in every state of the USA (except Hawaii) between 1963 and 1967 (Besharov 1985; Kalichman 1999; Nelson 1984; Paulsen et al. 1966; Paulsen 1967). In accordance with the scope of Kempe's work at this time, these laws were initially limited to requiring medical professionals to report suspected serious *physical* injury inflicted by a child's parent or caregiver. The fundamental premise was that doctors regularly encounter children by virtue of their profession, and because of this are well placed to identify cases of severe maltreatment, and by reporting it enable intervention by welfare agencies to interrupt the abuse and facilitate health rehabilitation and other services for the child and family.