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Abolish Anonymous Reporting to Child Abuse Hotlines

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ABOLISH ANONYMOUS REPORTING TO CHILD ABUSE HOTLINES

Dale Margolin Cecka⁺

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All states allow the public to anonymously report suspicions of child abuse or neglect to a toll-free, central phone number.¹ Callers may choose to remain anonymous—and are not assigned numerical identification—without providing a reason for the need to be anonymous.² If the report creates a suspicion of activity that meets the broad legal definition of “abuse” or “neglect,” the state must investigate the family reported upon and visit the family’s home.³ However, an extensive examination of the policy and practices behind anonymous reporting indicates that it is widely unregulated and susceptible to abuse. Furthermore, there are no feasible penalties for false reporting.

The possible repercussions of an anonymous phone call create costs to both families and society that outweigh the potential benefits of allowing anonymous reports. Under the guise of protecting children, the law infringes on the fundamental rights of parents and children.⁴ Simultaneously, anonymous reporting overburdens the system, causing some child maltreatment that can (and otherwise would) be addressed through confidential and mandatory reporting to go unnoticed.⁵ Given the severity of the rights and the lives at stake, it is time to abolish anonymous public reporting of suspected child maltreatment.

Part I of this Article traces the history of child abuse reporting hotlines. Part II describes the current law and practice behind child abuse reporting hotlines. Part III examines why anonymous reporting by the public is unnecessary and highly susceptible to abuse. Part IV analyzes the constitutional rights at stake in anonymous reporting, citing federal case law that contradicts current practice. Part V concludes with a proposal to abolish anonymous reporting and require all public reporting hotlines to adhere to published, written policies.

I. THE HISTORY OF CHILD ABUSE REPORTING HOTLINES

Mandatory reporting systems, which require certain professionals who come in contact with children to report suspected child maltreatment, predated the establishment of hotlines for the public.⁶ The idea that medical professionals

1. See *infra* Part II (noting that all fifty states and the District of Columbia have laws in place that address anonymous reporting).

2. See *infra* Part II (addressing the ability to remain anonymous).

3. See *infra* Part II.A.1 (discussing mandated investigations).

4. See *generally infra* Part IV (analyzing the various constitutional rights implicated by child abuse investigations).

5. See *infra* Part III.B (identifying the overwhelmed Child Protective Services (CPS) system).

6. See John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 456 (2008) [hereinafter Myers, *A Short History*] (describing the genesis of the first child abuse reporting laws).

should look for and detect symptoms of potential child abuse can be traced back to 1946, when a pediatric radiologist first noticed a correlation between infants suffering subdural hematomas—bleeding in the brain caused by a blow to the head—and infants with long-bone fractures.⁷ However, it was not until Dr. C. Henry Kempe’s 1962 publication of *The Battered Child Syndrome* in the *Journal of the American Medical Association* that doctors started to suspect that injuries of that sort were intentionally inflicted, most likely by the children’s caregivers.⁸

In response to Kempe’s paper, the U.S. Children’s Bureau held a conference to discuss child abuse and the appropriate professional and governmental response.⁹ The Children’s Bureau solicited models for child abuse reporting laws.¹⁰ From 1963 to 1965, the Children’s Bureau, the American Humane Association, the American Medical Association (AMA), and the Council of State Government each proposed a set of model reporting laws.¹¹ The groups were supportive of new laws but differed in their approaches.¹² Some proposals favored mandatory reporting by doctors, and some, like the AMA’s, did not.¹³ Within four years, from 1963 to 1967, all fifty states adopted some form of a child abuse reporting statute.¹⁴ This very quick and broad state response was unusual and indicated a consensus that child abuse by caregivers was a hidden epidemic.¹⁵

By 1966, Illinois had established the first statewide, publicized telephone number for the public to report suspected child abuse.¹⁶ It is unclear how quickly public hotlines caught on in other states. However, the 1974 Child Abuse Prevention and Treatment Act (CAPTA) provided a way for the public to report suspected child abuse, which became a prerequisite to receiving federal funding

7. See generally John Caffey, *Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma*, 56 AM. J. ROENTGENOLOGY 163 (1946) (“In one of these cases the infant was clearly unwanted by both parents and this raised the question of intentional ill-treatment of the infant . . .”).

8. See generally C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 JAMA 17 (1962) (providing an overview of incidence, clinical manifestations, evaluation, and treatment of abused children, and calling for increased intervention by treating physicians).

9. See Myers, *A Short History*, *supra* note 6, at 445–56.

10. JOHN E.B. MYERS, LEGAL ISSUES IN CHILD ABUSE AND NEGLECT PRACTICE 82 (C. Terry Hendrix ed., 2d ed. 1998) [hereinafter MYERS, LEGAL ISSUES]. See also Myers, *A Short History*, *supra* note 6, at 456 (noting meeting attendees made legislative recommendations).

11. MYERS, LEGAL ISSUES, *supra* note 10, at 82.

12. See *id.* at 82–83 (acknowledging that “[t]he majority of early reporting laws were limited to physicians” and nurses, while others “permitted but did not require professionals to report”).

13. See *id.*

14. *Id.* at 82.

15. See Monrad G. Paulsen, *Legal Protections Against Child Abuse*, 13 CHILD. 42, 46 (1966) (“Few legislative proposals in the history of the United States have been so widely adopted in so little time.”). See also DAVID G. GIL, VIOLENCE AGAINST CHILDREN: PHYSICAL CHILD ABUSE IN THE UNITED STATES 21 (1970) (noting that all states had adopted laws addressing child abuse reporting by 1967).

16. Paulsen, *supra* note 15, at 47.

for child abuse prevention programs.¹⁷ CAPTA itself did not address whether states could allow anonymous reports, but it paved the way for states to create hotlines that allowed callers to remain anonymous.

Although at its outset CAPTA did not specify the method of reporting it required, by the early 1980s, federal regulations were significantly more detailed.¹⁸ In 1983, federal regulations specifically allowed states to satisfy the eligibility requirement for funding with “the use of reporting hotlines.”¹⁹ Furthermore, to qualify under the regulations provision, and thus, receive federal money, states had to “provide by statute that specified persons must report and . . . that all other persons are permitted to report known and suspected instances of child abuse and neglect” to those hotlines.²⁰ *Confidential* reporting by the public, in contrast to anonymous reporting, means that a caller must provide his or her name, but Child Protective Services (CPS) must keep the name completely confidential; the name can only be released under very specific circumstances.²¹ All states have explicitly allowed *confidential* reporting since the enactment of CAPTA.²²

II. TODAY’S LAWS AND PRACTICE

Allowing *anonymous* reporting, in which the caller is not required to identify herself or the reasons for the report aside from the allegation, is now the norm. The laws of forty states and the District of Columbia allow the public to report anonymously.²³ Only ten states have laws that specifically prohibit it.²⁴

17. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, § 4(b)(2), 88 Stat. 4, 6 (1974). CAPTA was intended “[t]o provide financial assistance for a demonstration program for the prevention, identification, and treatment of child abuse and neglect” *Id.* at 4. CAPTA specifically requires that any state seeking assistance shall:

have in effect a State child abuse and neglect law which shall include provisions for immunity for persons reporting instances of child abuse and neglect from prosecution, under any State or local law, arising out of such reporting; . . . provide for the reporting of known and suspected instances of child abuse and neglect . . . provide for methods to preserve the confidentiality of all records . . . [and] . . . provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available

Id. at 6–7.

18. *See, e.g.*, 45 C.F.R. § 1340.14 (1983) (describing eligibility requirements for states’ receipt of CAPTA funding).

19. *Id.* at § 1340.14(d).

20. *Id.* at § 1340.14(c). *See* text accompanying *infra* note 34 (defining “mandated reporter”).

21. *See also* CHILD WELFARE INFO. GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVS., DISCLOSURE OF CONFIDENTIAL ABUSE AND NEGLECT RECORDS 2 (2013) [hereinafter CHILD WELFARE-INFO.-GATEWAY.-DISCLOSURE-OF-ABUSE-AND-RECORDS], -available-at https://www.childwelfare.gov/systemwide/laws_policies/statutes/confide.pdf.

22. *See id.* (“All jurisdictions have confidentiality provisions to protect abuse and neglect records from public scrutiny.”).

23. *See infra* App. A.

24. *See infra* App. A.

However, according to the websites and conversations with hotline staff members of those ten states, the states will often actually permit anonymous calls in violation of their own state statutes.²⁵ Appendix A contains a chart of all laws and available statistics.

Notably, most states explicitly prohibit mandated reporters from reporting anonymously.²⁶ In most states, mandated reporters must provide their names, professional positions, and the capacity in which they interacted with the child or other party.²⁷ However, in the eighteen states that consider everyone a mandated reporter,²⁸ members of the public may be allowed to report anonymously,²⁹ although professionals may not.³⁰ Code sections conflict with websites and responses to hotline inquiries; generally, the public is allowed to remain anonymous in states that regard everyone as mandated reporters.³¹

25. See *infra* App. A. This information is also based on conversations the author's research assistant had with various state hotlines throughout the country. During these calls, the research assistant asked hotline workers if she would be allowed to leave a report anonymously. She then compared the operator's answer with the applicable state's statutory requirements and found that several states (as noted in Appendix A) would allow callers to remain anonymous despite the fact that the state's laws required the caller to leave his or her contact information. Compare NEB. REV. STAT. § 28-711 (2012) (requiring that telephone reporters of abuse provide a name, address, and phone number), with *What Can I Expect If I Report Someone for Abuse?*, NEB. DEP'T HEALTH-& HUM.-SERVICES, http://www.dhhs.ne.gov/children_family_services/Pages/cha_report-.aspx (last updated Oct. 23, 2011) ("You are not required to give your name."). Compare N.M. STAT. ANN. § 32A-4-3 (West 2005) (providing that "[a] law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department . . ."), with *Reporting Abuse or Neglect*, ST. N.M. CHILD., YOUTH & FAMILIES DEP'T, <http://cyfd.org/child-abuse-neglect/reporting-abuse-or-neglect> (last visited Oct. 30, 2014) ("When making a report of abuse or neglect, you may choose to remain anonymous as the reporter . . .").

26. See, e.g., *Report of Actual or Suspected Child Abuse or Neglect*, MICH. DEP'T HUM. SERVICES, http://www.michigan.gov/documents/dhs/DHS-3200_224934_7.pdf (last visited Oct. 30, 2014) [hereinafter *Report of Child Abuse or Neglect*] (requiring reporters to include their names on official abuse report form in Michigan). See also *What is Child Abuse?*, THE CHILD ABUSE PREVENTION CENTER, 25 (last visited Oct. 30, 2014) [hereinafter *What is Child Abuse?*], <http://www.thecapcenter.org/admin/upload/Mandated%20Child%20Abuse%20Reporting%20Information.pdf> (instructing that "[b]asic information such as . . . name and address are required" for mandated reporters in California).

27. See, e.g., *What is Child Abuse?*, *supra* note 26, at 25 (listing an extensive variety of information to be provided by mandated reporters when possible, including the reporter's name and employer, details of suspected abuse, information about parents or caretakers, family language and ethnicity, suspected drug use, and vulnerability of the child based on age or disability).

28. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., MANDATORY REPORTERS OF CHILD ABUSE & NEGLECT 1, 4 (2013) [hereinafter CHILD WELFARE-INFO.-GATEWAY.-MANDATORY-REPORTERS], *available at* https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf.

29. See *infra* App. A.

30. See, e.g., FLA. STAT. ANN. § 39.201(1)(d) (West 2014) (requiring any person who has knowledge of child neglect or maltreatment to report it, but also requiring individuals in certain professions to provide their names when calling in the report).

31. See *infra* App. A.

A. Analyzing Anonymous Reporting Data

1. Reports

Child abuse reporting hotlines are centrally administered in most states.³² In all jurisdictions, callers use a central number, but most states require mandated reporters to identify themselves as such when they call.³³ In nearly every state, mandated reporters include teachers, healthcare professionals, law enforcement personnel, and others who work directly with children.³⁴ Mandated reporters must respond to a more specific set of questions than members of the general public.³⁵ After a call is placed, it can be “screened in” or “screened out.”³⁶ Calls are screened in when the allegations, if true, would meet the legal definition of abuse or neglect according to state law.³⁷ If a call is screened in, states require CPS to visit the reported family’s home, usually within seventy-two hours,³⁸ and may conduct whatever interviews and bodily searches investigators or reporters believe to be necessary.³⁹ In exigent circumstances, CPS may immediately remove a child from the home.⁴⁰ On the other hand, CPS may completely close

32. See *infra* App. A. If a state is designated “Varies by County” in Appendix A, that state does not maintain a central number but may direct callers to report abuse to county offices, police, or other local organizations. The majority of states, however, maintain a central number for callers from across the state. Throughout this Article, “CPS” will refer to the branch of each state’s social services department, which investigates child maltreatment and decides if, or how, to proceed. Once a family is deemed eligible or is found to require services, its case is usually transferred to another department of social services. This Article will not examine the procedures or policies of departments after cases are transferred.

33. See, e.g., *Report of Child Abuse or Neglect*, *supra* note 26; *What Is Child Abuse?*, *supra* note 26, at 24.

34. See CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS, *supra* note 28, at 1–2. See also ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT: 2011 7 (2012) [hereinafter ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011], available at <http://www.acf.hhs.gov/sites/default/files/cb/cm11.pdf>. Some states also include university professors, priests, mental health counselors, and attorneys (including attorneys for children and families). CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS, *supra* note 28, at 2, 3. In eighteen states, everyone is a mandated reporter. *Id.* at 2. On the forms mandated reporters are required to complete in some states, mandated reporters are required to list their profession. *Report of Child Abuse or Neglect*, *supra* note 26.

35. See, e.g., *Report of Child Abuse or Neglect*, *supra* note 26 (providing examples of specific questions mandated reporters must answer). See also *What Is Child Abuse?*, *supra* note 26, at 25 (listing questions to which mandated reporters must be prepared to respond).

36. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at viii. In 2011, approximately sixty percent of hotline calls were screened in, and forty percent were screened out. *Id.*

37. See *id.* at 124.

38. See *id.* at 8.

39. See e.g., VA. CODE ANN. § 63.2-1518 (West 2012) (permitting any mandated reporter to speak with the child and his or her siblings without the consent of the child’s parents).

40. See, e.g., *Tenenbaum v. Williams*, 193 F.3d 581, 604–05 (2d Cir. 1999) (explaining that removing a child under exigent circumstances is constitutional).

a case after a home visit.⁴¹ CPS also has the discretion to visit a child's school unannounced and make contact with other parties.⁴² If a case is not closed following CPS' initial investigation, the family receives intervention, ranging from the least intrusive—such as referrals to a non-government service—to emergency or subsequent removal of the child.⁴³ A public reporter does not hear from either the hotline or CPS after making her report.⁴⁴ It is neither practice nor law to correspond with reporters following the initial call.⁴⁵ Florida is the only state that requires hotlines to record all calls and hotline websites to trace all incoming Internet reports.⁴⁶

The majority of all hotline calls, whether they are investigated or subsequently substantiated, are made by mandated reporters.⁴⁷ Professionals required to report account for approximately fifty-eight percent of all hotline calls.⁴⁸ CPS initiates some investigations itself following another government agency's contact with a family.⁴⁹ The police may also call CPS directly following a

41. See, e.g., WIS. DEP'T OF CHILDREN & FAMILIES, WISCONSIN CHILD ABUSE AND NEGLECT REPORT 13, 16 (2012) [hereinafter WISCONSIN ABUSE AND NEGLECT REPORT].

42. See, e.g., *Understanding the Child Protective Services Response and Follow-Up*, VA. DEPARTMENT-OF-SOC.-SERVICES, http://www.dss.virginia.gov/family/cps/mandated_reporters/-cws5691/topic3_1.html (last modified Aug. 23, 2012) [hereinafter *Understanding-CPS Response*].

43. See U.S. DEP'T OF HEALTH & HUMAN SERVS., NATIONAL STUDY OF CHILD PROTECTIVE SERVICES SYSTEMS AND REFORM EFFORTS 16 (2003) [hereinafter REFORM EFFECTS] (discussing the collaboration between CPS and other public and private agencies to provide services).

44. See *infra* App. A. State laws do not require states to follow-up with the caller. See *id.* In practice, according to inquiries made by the author's research assistant, hotline operators do not communicate with callers about the outcome of hotline calls. Furthermore, if a caller is anonymous, he or she (by definition) cannot be contacted again. States refer to post-report cases differently. See REFORM EFFECTS, *supra* note 43, at 6. The cases may be characterized as "substantiated," "founded," "unfounded," "unsubstantiated," or "inconclusive." See, e.g., ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 227. For the purposes of this Article, all cases that lead to any kind of follow-up by CPS after the initial visit are categorized as "substantiated." States' terms have different meanings, but for this paper, "substantiated" refers to any call that leads to any CPS action after the initial home visit, including a *voluntary referral to services*. The inclusion is purposely more broad than what qualifies as substantiated in most states. Families with unsubstantiated reports often get referrals. This Article does its best to include those who are unsubstantiated but receive referrals.

45. *Cf. Understanding CPS Response*, *supra* note 42 (indicating that mandated reporters may not hear from CPS, but are "required by policy to notify reporters that the report was unfounded or that necessary action was taken").

46. FLA. STAT. ANN. § 39.201(2)(i) (West 2014).

47. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 7–8.

48. *Id.*

49. See Candra Bullock, Comment, *Low-Income Parents Victimized by Child Protective Services*, 11 AM. U. J. GENDER SOC. POL'Y & L. 1023, 1041 (2003). For example, when applying for childcare or other public benefits, a government worker may refer a family to CPS for services or alert CPS to a potential abuse problem. John D. Fluke et al., *Longitudinal Analysis of Repeated*

domestic dispute.⁵⁰ Other families become involved with CPS as a result of contact with another arm of the child welfare system.⁵¹ For example, a family reunified from foster care may be receiving aftercare services when its caseworker informs CPS of a new problem.⁵² Foster parents may also come into contact with CPS when a mandatory home visit is conducted and a caseworker finds cause to alert CPS of suspected maltreatment.⁵³

Approximately eighteen percent of hotline calls derive from non-professional sources, including alleged perpetrators, alleged victims, friends, neighbors, parents, and other relatives.⁵⁴ Most notably, according to the federal government's official data, sixteen percent of calls are made by anonymous or "unknown" sources.⁵⁵ This means that states field almost one-fifth of their calls from sources they cannot even identify.⁵⁶ Of all reports, only five to twenty-five percent are substantiated as defined by this Article,⁵⁷ and the majority of those substantiated reports are made by mandated reporters.⁵⁸

A study that specifically analyzed data regarding anonymous public reports found that, nationally, 1.5% of all reports are both anonymous and substantiated.⁵⁹ Moreover, during a two-year study period in the Bronx, "no

Child Abuse Reporting and Victimization: Multistate Analysis of Associated Factors, 13 CHILD MALTREATMENT 76, 78 (2008).

50. See H. LIEN BRAGG, U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD PROTECTION IN FAMILIES EXPERIENCING DOMESTIC VIOLENCE 5, 7–13 (2003), available at <https://www.childwelfare.gov/pubs/usermanuals/domesticviolence/domesticviolence.pdf> (discussing the overlap between child maltreatment and domestic violence, as well as documenting the involvement of police in CPS investigations, and vice versa). Law enforcement personnel accounted for 16.7% of reports in 2011. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 7.

51. See Fluke et al., *supra* note 49, at 81.

52. See *id.* (noting the greatest frequency of re-reports was submitted by daycare professionals).

53. See, e.g., *In re Tex. Dep't of Family & Protective Servs.*, 245 S.W.3d 42, 44 (Tex. App. 2007) (discussing the removal of a child from a foster home after the foster parent struck him).

54. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 7.

55. *Id.* "Unknown sources" include "religious leader[s], . . . landlord[s], tribal official[s] or member[s], camp counselor[s], and private agency staff." *Id.*

56. See *id.*

57. See generally MO. DEP'T OF SOC. SERVS., CHILD ABUSE AND NEGLECT: CALENDAR YEAR 2011 ANNUAL REPORT 5 (2012) (finding 7.3% of cases substantiated), available at <http://www.dss.mo.gov/re/pdf/can/cancy10.pdf>; OKLA. DEP'T OF HUMAN SERVS., CHILD ABUSE AND NEGLECT STATISTICS 24 (2013) (finding twenty-two percent of cases substantiated statewide), available at http://www.okdhs.org/NR/rdonlyres/3961E199-D87F-446E-9B95-123442A69EE5/0/S12091_ChildAbuseandNeglectStatistics_cwsoprs_01012013.pdf; OR. DEP'T OF HUMAN SERVS., CHILDREN, ADULTS & FAMILIES DIV., 2011 CHILD WELFARE DATA BOOK 4 (2012), available at <http://www.oregon.gov/dhs/abuse/publications/children/2011-cw-data-book.pdf> (finding 23.2% of reports referred for investigation in 2011 were founded).

58. See, e.g., WISCONSIN ABUSE AND NEGLECT REPORT, *supra* note 41, at 28 fig. 11.

59. William Adams et al., *The Dilemma of Anonymous Reporting in Child Protective Services*, 61 CHILD WELFARE 3, 11 (1982).

anonymous reports resulted in the removal of a child for imminent danger.”⁶⁰ Of those cases, just

[o]ne case was referred to court *seeking* removal, but this occurred only after the anonymous reporter agreed to come forward and testify in court. . . . A small number of children in the substantiated cases[, which were all based on findings of “neglect,”] were placed voluntarily or relocated with relatives because of parents’ difficulties in coping.⁶¹

Approximately eight percent of substantiated reports nationwide involve physical injury to a child;⁶² more than three-quarters are substantiated on allegations of “neglect.”⁶³ Neglect is generally “defined as the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child’s health, safety, and well-being are threatened with harm.”⁶⁴ Typical neglect cases involve “dirty houses,”⁶⁵ a parent’s possession or abuse of substances,⁶⁶ children who do not regularly attend school (educational neglect), or failure of parents to provide medical appointments (medical neglect).⁶⁷

2. Demographics

The disparate treatment of minorities in the child welfare system is the subject of many studies and articles.⁶⁸ Fifty-six of every one thousand black children

60. *Id.*

61. *Id.* (emphasis added).

62. Michelle Healy, *Child Neglect Accounts for 75% of Reported Abuse Cases*, USATODAY (Sept. 12, 2013, 4:16 PM), <http://www.usatoday.com/story/news/nation/2013/09/12/child-abuse-neglect/2803099/>.

63. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 21.

64. CHILD WELFARE INFO. GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVS., DEFINITIONS-OF-CHILD-ABUSE-AND-NEGLECT-3-(2011), *available at* https://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf.

65. *See generally* Margaret A. Burt, *Dirty House/Dirty Child—When Is It Neglect?*, NYCOURTS.GOV-(July-2011), <http://www.nycourts.gov/ip/cwqip/Trainings/article10/dirtyhouse.-pdf> (providing a compiled list of New York “Dirty House” cases). Three major studies found that at least thirty percent of foster children could live at home if their parents had decent housing. *See* NAT’L COAL. FOR CHILD PROT. REFORM, WHO IS IN “THE SYSTEM”—AND WHY 1 (2011), *available at* <http://www.nccpr.org/reports/05SYSTEM.pdf>.

66. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 21.

67. DIANE DEPANFILIS, U.S. OF DEP’T HEALTH & HUMAN SERVS., CHILD NEGLECT: A GUIDE FOR PREVENTION, ASSESSMENT, AND INTERVENTION 11–12, 14 (2006), *available at* <https://www.childwelfare.gov/pubs/usermanuals/neglect/neglect.pdf>.

68. *See, e.g.*, Yolanda Anyon, *Reducing Racial Disparities and Disproportionalities in the Child Welfare System: Policy Perspectives about How to Serve the Best Interests of African American Youth*, 33 CHILD. & YOUTH SERVICES REV. 242, 242 (2011); Brett Drake et al., *Race and Child Maltreatment Reporting: Are Blacks Overrepresented?*, 31 CHILD. & YOUTH SERVICES REV. 309, 309 (2009).

are reported, twice the rate of white children.⁶⁹ Minority families are also more likely to receive higher levels of intervention following a report.⁷⁰ Black children remain in foster care fifty percent longer than children of other ethnicities.⁷¹ Scholars have also examined the link between poverty and the child welfare system.⁷² Poor families are enormously overrepresented, both because of the criminalization of poverty⁷³ and because of the extent and nature of their contact with government agencies.⁷⁴ Women are also disproportionately involved with CPS.⁷⁵ Seventy-five percent of abuse and neglect reports are against mothers,⁷⁶ as are eighty-six percent of reports of solely neglect.⁷⁷ The rate of substantiated neglect is close to seven times higher in one-parent households than in other households.⁷⁸

3. Trends in the Frequency of Child Abuse and Neglect

Despite continuing alarm over child abuse and neglect, there is consensus among scholars, child welfare professionals, and the federal government that the nation has experienced drastic declines in both sexual and physical abuse over the past twenty years.⁷⁹ Since 1992, sexual abuse has decreased by sixty-one percent and physical abuse is down fifty-five percent.⁸⁰ Anonymous reporting has played no role in the steep declines. In fact, the percentage of anonymous reports are also *down* slightly since the 1990s.⁸¹ Furthermore, there is no

69. Drake et al., *supra* note 68, at 311 tbl. 1.

70. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 18 (“More than one-half (53.2%) of the children who received an alternative response were White. However, White children comprised less than one-half of victims (45.7%) . . .”).

71. *Studies: Disproportionate Number of Black Children Wind Up in L.A. Foster Care*, FOSTER KIDS OWN STORY, <http://fosterkidsownstory.blogspot.com/2013/03/studies-disproportionate-number-of.html?m=1> (last visited Oct. 31, 2014).

72. See Bullock, *supra* note 49, at 1025 (examining “the due process issues faced by low-income and minority parents who have been unjustly accused of child abuse and neglect due to their financial situations”).

73. See *id.* at 1024 (noting that children from poor families are disproportionately reported to CPS).

74. See Ana Teresa Ortiz & Laura Briggs, *The Culture of Poverty, Crack Babies, and Welfare Cheats: The Making of the “Healthy White Baby Crisis”*, 76 SOC. TEXT 39, 47 (2003).

75. A.J. SEDLAK ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4) 14 (2010), available at http://www.acf.hhs.gov/sites/default/files/opre/nis4_report_congress_full_pdf_jan2010.pdf.

76. *Id.*

77. *Id.* at 14, 6-9 tbl. 6-3.

78. See *id.* at 5–21 (comparing the Harm Standard neglect rate of children living with just one parent and those living with both parents).

79. See Mark Chaffin & Lisa Jones, *Declining Rates of Child Sexual Abuse and What This Really Means*, NAT’L CHILD. ADVOC. CENTER 1–2 (Jan. 13, 2011), <http://www.nationalcac.org/images/pdfs/TrainingandConferences/Online/Webinars/ppt-handouts-and-documents/ppt-chaffin-declining-rates-of-child-sexual-abuse-and-what-this-really-means.pdf>.

80. *Id.* at 1.

81. *Id.* at 1, 9.

evidence that willingness to report by any professional or lay sources has decreased, and self-reports by youth have increased substantially.⁸² According to the U.S. Department of Justice, authorities are now aware of the majority of serious victimizations and instances of abuse of youth.⁸³

Researchers point to “[b]etter violence and maltreatment prevention[, i]ncreased incarceration and prosecution of offenders[, b]etter mental health and trauma treatment[, e]conomic fluctuations[, and] cultural changes” as reasons for the decline in sexual and physical abuse.⁸⁴ It is important to note that abuse numbers are likely *not* decreasing because caseworkers are overburdened and simply overlooking abuse. Although the child welfare system is overburdened,⁸⁵ there is no evidence that physical and sexual abuse numbers have declined so steeply because there are actually vast numbers of children being abused under the radar.⁸⁶

Along with the decrease in physical and sexual abuse, child maltreatment has decreased over the past ten years, down from eleven in 1,000 children in 2000 to approximately nine in 1,000 children in 2009.⁸⁷ According to the federal government’s 2011 Fourth National Incidence Study of Abuse and Neglect (NIS-4), the number of children experiencing maltreatment in the United States, when accounting for population increase, was down twenty-six percent from 1993 levels.⁸⁸ The NIS-4 notes that this mirrors the findings of all major studies conducted in recent years.⁸⁹

III. THE FLAWS OF ANONYMOUS REPORTING

A. *Inconsistency in Public Hotline Practices*

Public hotline practices vary wildly and states do not have rules promulgating their code sections.⁹⁰ Indeed, in practice, many states break their codified laws by allowing public callers to be anonymous.⁹¹ Some hotlines are staffed by call

82. *See id.* at 9 (noting the rate of youth reporting sexual assaults increased from fourteen to twenty-nine percent between 1995 and 2005). *Id.* Additionally, a 2008 study showed that fifty percent of youth victimizations were reported to a professional, representing an increase from twenty-five percent in a 1992 survey. *Id.*

83. David Finkelhor et al., *Child and Youth Victimization Known to Police, School, and Medical Authorities*, JUV. JUST. BULL. (U.S. Dep’t of Justice), Apr. 2012, at 1, available at <http://www.ojjdp.gov/pubs/235394.pdf>.

84. Chaffin & Jones, *supra* note 79, at 10.

85. *See infra* Part III.B.

86. Chaffin & Jones, *supra* note 79, at 8–9.

87. *Child Maltreatment Data Snapshot*, DATA SNAPSHOT (Child Trends, Washington, D.C.), 2011, at 1, available at <http://childtrends.org/wp-content/uploads/2013/01/Child-Maltreatment-Snapshot.pdf>.

88. A.J. SEDLAK ET AL., *supra* note 75, at 5.

89. *Id.* at 3–8.

90. *See generally infra* App. A. States have code sections but not rules. *See infra* App. A.

91. *See infra* App. A.

screeners with extensive training and/or master's degrees; others have virtually no qualifications or preparation.⁹² States also have widely disparate standards for how much information they must receive before deciding which calls to screen in and which to then investigate.⁹³ In many states, the decision to have CPS workers appear at a family's home is made by only one person.⁹⁴ It is also well-documented—but beyond the scope of this Article—that the judgments made by CPS workers are error-prone and tend to involve “estimates of frequency, probability, and causality.”⁹⁵

In addition to the lack of uniformity in hotline practices, there is great variation in how states and their counties promote, target, and educate the public about hotlines. One locality may receive a yearlong grant to initiate a vigorous campaign to place advertisements on modes of public transportation; another state's department of social services might have a policy of distributing pamphlets to churches and community centers in “high risk,” impoverished neighborhoods.⁹⁶ Thus, the number of annual hotline calls per state does not correspond proportionally to each state's population. For example, in 2011, Oregon fielded approximately 50,000 more calls than Pennsylvania did.⁹⁷ There are also enormous upsurges in public calls to CPS following highly publicized, tragic stories, such as that of Nixmary Brown in New York.⁹⁸

An inherent flaw, no matter how well-regulated the hotline practice, is that the public is not trained in what to report. Lay people have a higher probability of making baseless reports simply because they do not understand the signs and definitions of child maltreatment.⁹⁹ In contrast, mandated reporters receive

92. See Karen C. Tumlin & Rob Geen, *The Decision to Investigate: Understanding State Child Welfare Screening Policies and Practices*, URBAN INST., May 2000, at 3, available at http://www.urban.org/UploadedPDF/anf_a38.pdf (noting varying educational and training requirements).

93. *Id.* at 2–3.

94. See *id.* at 2–3 (stating twenty-six states have a single reviewer system).

95. THEODORE J. STEIN & TINA L. RZEPNICKI, *DECISION MAKING IN CHILD WELFARE SERVICES: INTAKE AND PLANNING* 20–21 (William J. Reid et al. eds., 1984).

96. See JILL GOLDMAN ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., *A COORDINATED RESPONSE TO CHILD ABUSE AND NEGLECT: THE FOUNDATION FOR PRACTICE* 1, 42 (2003), available at <https://www.childwelfare.gov/pubs/usermanuals/foundation/foundation.pdf>. The U.S. Department of Health and Human Services (HHS)'s Administration for Children and Families (ACF), describes the use of “Secondary or Selective Prevention” as “activities [that] focus efforts and resources on children and families known to be at higher risk for maltreatment. . . . Programs may direct services to communities or neighborhoods that have a high incidence of one or several risk factors.” *Id.*

97. See *infra* App. A.

98. Joe Mahoney, *After Death of Nixmary Brown, Reports Up at Abuse Hotline*, NY DAILY NEWS, Nov. 7, 2007, <http://www.nydailynews.com/news/crime/death-nixmary-brown-reports-abuse-hotline-article-1.259602> (describing the response to the “cruel beating death” of an abused seven-year-old girl).

99. Natalie K. Worley & Gary B. Melton, *Mandated Reporting Laws and Child Maltreatment: The Evolution of a Flawed Policy Response*, in C. HENRY KEMPE: A 50 YEAR

extensive instruction at both professional schools and the workplace,¹⁰⁰ and they are required to provide their names and employment information so they can be held accountable for proper reporting and evidence gathering.¹⁰¹

Lay people may not be permitted to make completely anonymous reports with respect to criminal matters. Even programs such as Crime Stoppers assign callers ID numbers.¹⁰² Also, *before* arresting or detaining anyone on the basis of any anonymous tip, police *must* corroborate aspects of the allegation made by the anonymous caller.¹⁰³ CPS has an opposite mandate: it is required to visit a home *after* an anonymous call *if* the allegations meet the legal definition of “abuse” or “neglect.”¹⁰⁴ Hotline staff may encourage anonymous callers to identify themselves and have the discretion to decide whether the anonymous caller is credible.¹⁰⁵ However, staff competency is, at best, inconsistent within and across states. The only universal practice is that both workers and callers are advised to report everything.¹⁰⁶ The mantra “err on the side of over-reporting” is included almost verbatim on every state government website.¹⁰⁷ Private institutions also encourage their employees to report, report, report.¹⁰⁸ For example, Villanova University’s employee handbook states: “It must be emphasized that the safety and welfare of the child is paramount. Any

LEGACY TO THE FIELD OF CHILD ABUSE AND NEGLECT 103, 107 (Richard D. Krugman & Jill E. Korbin eds., 2013).

100. See CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS, *supra* note 28, at 1–4.

101. See *infra* App. A (referencing state statutes that govern mandatory reporters and the information they must give when reporting suspected abuse).

102. Telephone Interview by Laura Maughan with Crime Stoppers (Oct. 10, 2012).

103. See *Florida v. J.L.*, 529 U.S. 266, 271–73 (2000) (discussing corroboration in the context of *Terry* stops).

104. See, e.g., *Understanding CPS Response*, *supra* note 42 (stating CPS responds if the report conforms to Virginia statutory definitions of “abuse” or “neglect”). See also *A Guide to Investigative Procedures*, CHILD PROTECTIVE SERVICES (Va. Dep’t of Soc. Servs., Richmond, Va.), Jan. 2007, at 1, available at <http://www.loudoun.gov/DocumentCenter/Home/View/4804> (last visited Dec. 3, 2013) (explaining the legal definitions of “abuse” and “neglect” in Virginia).

105. The author’s research assistant called numerous state reporting hotlines to observe the variance in discretion afforded to hotline operators by state. The research assistant spoke to a hotline operator in Oregon who stated that when the hotline receives calls from some repeat callers (such as an institutionalized person who often calls the Oregon hotline to make outrageous claims regarding obviously nonexistent child abuse), the operators are allowed to ignore such calls. Interview by Laura Maughan with an Oregon Child Abuse Hotline Operator (June 25, 2012).

106. State hotline operators invariably encouraged the author’s research assistant to report abuse, even if she was not sure abuse had occurred. In fact, hotline workers advised her to report even after she disclosed that she only called to ask questions about the reporting process and whether or not callers could remain anonymous. See, e.g., Interview by Laura Maughan with a Texas Child Abuse Hotline Operator (June 24, 2012).

107. See, e.g., *What Should You Do When You Suspect Abuse or Neglect?*, MO. DEP’T SOC. SERVICES, <http://www.dss.mo.gov/cd/rptcan.htm> (last visited Nov. 2, 2014).

108. See, e.g., *Duty to Report Suspected Child Abuse in the State of Texas*, TEX. TECH U. HUM. RESOURCES, <http://www.depts.ttu.edu/hr/legal/childAbuse.php> (last visited Nov. 2, 2014) (stating that “if there is a question whether conduct constitutes abuse or neglect, always err on the side of the child’s safety and report the incident”).

uncertainty . . . should always be resolved in favor of making a report.”¹⁰⁹ Certain media outlets echo this sentiment: “YOUR FEARS—OR whatever you may be thinking that keeps you from calling law enforcement if you . . . suspect that a child is being mistreated—is . . . cowardice. If you fail to report, you are helping protect perpetrators of abuse and enabling more child victims to be tortured.”¹¹⁰

To add to the confusion, the hotlines themselves are anything but transparent about their practices or their statistics (as evidenced by Appendix A). Over one year, the author’s research assistant placed at least one call to all fifty-one state hotlines. Several hotline workers hung up on her mid-sentence when she began the call, “I am doing some research,” or “I have a general question about how the public makes reports.” These actions indicate that if the hotline staff thought the research assistant was an academic or journalist, they were not open to conversation.

B. Over-Reporting Brought on by Governmental Direction to Always Report

Over-reporting is a drain on the system. According to the NIS-4, approximately 3.4 million referrals were made in 2011, and almost sixty-one percent of those cases were screened in.¹¹¹ However, only 27.4 per 1,000 children nationally received a disposition.¹¹² Moreover, the term “disposition” in the NIS-4 includes families that are only *at risk* of maltreatment but have not actually been substantiated for maltreatment.¹¹³ In Massachusetts in 2011, approximately 55,000 children, out of approximately 75,000 who were reported, were investigated without further intervention.¹¹⁴ Additionally, in New Jersey, more than 80,000 children of approximately 90,000 children reported were investigated fruitlessly.¹¹⁵ In Missouri, sixty-nine percent of the families investigated did not require any services,¹¹⁶ and only fourteen percent of Pennsylvania’s 2011 reports were later substantiated.¹¹⁷ These numbers reflect the fact that hotline use by the public is encouraged. For example, the Illinois

109. *Child Abuse Reporting Policy*, VILL. U. 1 (Dec. 2012), http://www1.villanova.edu/content/dam/villanova/hr/documents/childabuse_reporting_dec2012.pdf.

110. Dan Hillman, Op-Ed., *Always Report Suspected Child Abuse*, AUGUSTA CHRON., Nov. 13, 2011, <http://chronicle.augusta.com/opinion/opinion-columns/2011-11-12/always-report-suspected-child-abuse>.

111. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at viii.

112. *Id.*

113. *Id.* at 6.

114. *See infra* App. A.

115. *See infra* App. A.

116. *See infra* App. A.

117. PA. DEP’T OF PUB. WELFARE, 2011 PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE: ANNUAL CHILD ABUSE REPORT 7 (2011), *available at* http://www.dpw.state.pa.us/cs/groups/webcontent/documents/report/p_012532.pdf.

child abuse hotline website states that it receives an average of 1,000 calls every twenty-four hours.¹¹⁸

Unnecessary investigation of families diverts resources from an already overburdened system.¹¹⁹ Although abuse has decreased, there were nearly 400,000 children in the foster care system in 2012,¹²⁰ and approximately 6.2 million children were the subjects of CPS reports in fiscal year 2011.¹²¹ Although some children do suffer grave tragedies, they are often the very children already involved with CPS.¹²² One report found that, in Illinois, twenty percent of substantiated reports are repeat reports, meaning CPS has investigated the family at least once before.¹²³ Notably, multiple state studies have shown that thirty to fifty-five percent of child abuse fatalities were committed against children currently or previously known to CPS.¹²⁴

Some argue that CPS has outlived its usefulness.¹²⁵ Over a four-year period, researchers found no increase in the well-being of children in families receiving CPS intervention nationwide when compared to children with the same risk factors who did not receive CPS services.¹²⁶ Another study compared the well-being of children placed in foster care with other children who were investigated but not placed “in terms of long-term outcomes, including juvenile delinquency, teen motherhood, employment, and earnings.”¹²⁷ The results “point[ed] to better outcomes when children on the margin of placement *remain at home*.”¹²⁸ A study of 160,000 children in California similarly found average lower

118. See *infra* App. A. However, that figure greatly exceeds the number of total calls Illinois reported receiving in 2011. See *infra* App. A.

119. Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL’Y & L. 165, 191 (2000) (“The current flood of unfounded reports is overwhelming the limited resources of child protective agencies.”).

120. ADMIN. OF CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., TRENDS IN FOSTER CARE AND ADOPTION (FFY 2002-FFY2012) 1 (2013), available at http://www.acf.hhs.gov/sites/default/files/cb/trends_fostercare_adoption2012.pdf.

121. See ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at viii.

122. See Besharov, *supra* note 119, at 192 (citing statistics that show a large number of child abuse fatalities involve children already involved with a child protective agency).

123. *Id.* at 180.

124. *Id.* at 192.

125. See, e.g., Abraham B. Bergman, *Child Protective Services Has Outlived Its Usefulness*, 164 ARCHIVES PEDIATRICS & ADOLESCENT MED. 978, 978 (2010), available at <http://archpedi.jamanetwork.com/article.aspx?articleid=383773> (discussing CPS’ failures and suggestions for reassigning its responsibilities to other agencies).

126. Kristine A. Campbell et al., *Household, Family, and Child Risk Factors after an Investigation for Suspected Child Maltreatment: A Missed Opportunity for Prevention*, 164 ARCHIVES PEDIATRICS & ADOLESCENT MED. 943, 943, 944, 948 (2010), available at <http://archpedi.jamanetwork.com/article.aspx?articleid=383798>.

127. Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1584 (2007), available at http://www.mit.edu/~jjdoyle/fostercare_aer.pdf.

128. *Id.*

delinquency rates for children who were investigated but remained at home as opposed to being placed into foster care.¹²⁹

There is also concern that the time CPS devotes to fielding reports, investigating, and, when necessary, proving its case in family or juvenile court deprives families and children themselves precious money and resources.¹³⁰ Many argue those services are better left to law enforcement and criminal courts.¹³¹ While a government agency may have a role in protecting children and providing services to underserved families, it is debatable whether the same agency, drawing from the same pool of resources, should investigate and “prosecute” those families in civil court. This structure causes conflicts of interest between agencies and parents. At the very least, some children and families are not receiving adequate treatment while others are being investigated unnecessarily.

The crux of the matter is that CAPTA funds the hotlines and investigations stemming from them, while each state simultaneously relies upon CAPTA funding to support efforts to prevent child abuse.¹³² Evidence-based programs that prevent child abuse, rather than encouragement of reporting by lay people, are the most effective use of this money. Programs that have shown real results include: parent programs that develop positive parenting skills and decrease behaviors associated with child abuse and neglect; parent support groups wherein parents work together to strengthen their families and build social networks; home visitation, which focuses on enhancing child safety by teaching pregnant mothers and families with new babies or young children about positive parenting and child development; respite and crisis care programs, which offer temporary relief to caregivers in stressful situations by providing short-term care for their children; and family resource centers.¹³³ The one universal element of these programs, regardless of the type of service or its intended recipients, is that they involve families from the targeted community in all aspects of program planning, implementation, and evaluation. Families are more likely to make lasting changes when they are empowered to identify solutions that make sense for them. Hotlines for public reporting, as they currently function, were not

129. *Id.* at n.2.

130. *See, e.g.,* Bergman, *supra* note 125, at 978–79 (noting CPS is ill prepared to carry out its assigned duties).

131. *Id.* at 978. Although some abuse cases are also prosecuted criminally, the vast majority only proceed through the civil system. *See, e.g., In re Nicholas R.*, 884 A.2d 1059, 1061 (Conn. App. Ct. 2005) (“Child neglect proceedings are civil proceedings, which are not quasi-criminal in nature.”).

132. *See supra* note 17 and accompanying text.

133. FRIENDS NAT’L RES. CTR. FOR CBCAP, EVIDENCE-BASED AND EVIDENCE-INFORMED PROGRAMS: PREVENTION PROGRAM DESCRIPTIONS CLASSIFIED BY CBCAP EVIDENCE-BASED AND EVIDENCE-INFORMED CATEGORIES 2–6 (2009), available at http://friendsnrc.org/joomdocs/eb_prog_direct.pdf.

created with input from *any families* in the community.¹³⁴ In fact, families are not universally educated about the hotlines, and callers from the community are never provided feedback after they make hotline calls.¹³⁵ As a result, and perhaps in part because they do not foresee any negative consequences for calling a hotline multiple times, public reporters may call the hotlines repeatedly out of fear or confusion. Because the media, public campaigns, and websites expose the public to limited information about how hotlines function, it is no surprise that there is so much reporting. People are encouraged to report suspected child abuse or neglect no matter what, and failure to report can result in misdemeanor or felony charges.¹³⁶

However, the consequences of over-reporting extend beyond diverting resources from effective prevention programs and making CPS incapable of easily identifying and responding appropriately to serious instances of abuse and neglect. Over-reporting also places various legal rights of parents at risk.¹³⁷ The psychological and social effects of CPS investigations are beyond the scope of this paper. However, there is a growing consensus among advocates, psychologists, social scientists, and the courts that inherent harm attends any removal or disruption to a child's home life, which is a factor that must be considered when deciding how to proceed with and carry out an investigation.¹³⁸ There are certainly cases in which the threat of imminent or long-term danger is more significant than the inherent harm concern, but it is a balancing act. As to

134. See *supra* notes 10–12 and accompanying text (discussing the development of public reporting hotlines). See also *supra* note 99 (explaining that lay people have little understanding of how reporting works).

135. See *supra* note 44.

136. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., PENALTIES FOR FAILURE TO REPORT AND FALSE REPORTING OF CHILD ABUSE AND NEGLECT 2 (2013), https://www.childwelfare.gov/systemwide/laws_policies/statutes/report.pdf (noting that thirty-nine states may impose criminal misdemeanor charges when mandatory reporters fail to report suspected abuse; in Florida, mandatory reporters can be charged with a felony if they fail to report).

137. See *infra* notes 168–70 and accompanying text.

138. See *Nicholson v. Williams*, 203 F. Supp. 2d 153, 198–99 (E.D.N.Y. 2002) (discussing expert testimony about the psychological harm to children who are removed from their homes; an expert testified that removing a child from a home after witnessing domestic violence was “tantamount to pouring salt on an open wound”). For empirical literature on the trauma of removal and harm caused by placement instability, see generally Sigrid James et al., *Placement Movement in Out-of-Home Care: Patterns and Predictors*, 26 CHILD. & YOUTH SERVICES REV. 185 (2004), available at <http://www.sciencedirect.com/science/article/pii/S019074090400009X>; Rae R. Newton et al., *Children and Youth in Foster Care: Disentangling the Relationship Between Problem Behaviors and Number of Placements*, 24 CHILD ABUSE & NEGLECT 1363 (2000), available at http://uwf.edu/ejordan/web/DEP31030516/Entries/2011/8/12_CIP_Essentials_files/Newtown%202000.pdf; Dana K. Smith et al., *Placement Disruption in Treatment Foster Care*, 9 J. EMOTIONAL & BEHAV. DISORDERS 200 (2001), available at http://www.mtfc.com/2001_Smith_Stormshak_Chamberlain_Bridges%20Whaley.pdf; Andrew Zinn et al., *A Study of Placement Stability in Illinois* (Univ. of Chi. Chapin Hall Ctr. for Children, 2006), available at http://www.chapinhall.org/sites/default/files/old_reports/280.pdf.

the harm an entirely baseless report can cause to a family, scholars Natalie K. Worley and Gary B. Melton have found that:

Unfounded cases can lead to families being stigmatized by the community, parents losing employment because of the demands of formally refuting abuse allegations, or unnecessary removal of children from their homes to be placed in foster care, itself a risk factor for psychological harm. The investigation itself, even if it fails to end in substantiation, also can fractionate the family and destroy relationships with people outside the family. Indeed it inevitably results in a substantial invasion of privacy and almost certainly increases anxiety and helplessness.¹³⁹

Lastly, on a practical level, almost all states retain records of people reported to CPS for possible maltreatment, including those reported to hotlines.¹⁴⁰ States vary in the length of time they retain reports;¹⁴¹ in some states, even unfounded reports are maintained indefinitely.¹⁴² At least ten states also retain their unfounded reports in a central registry.¹⁴³ The public can typically access these retained reports by making a Freedom of Information Act request.¹⁴⁴ Reports have real consequences and may bar a person from employment opportunities, such as driving a bus or acting as a secretary in a private childcare facility.¹⁴⁵

139. Worley & Melton, *supra* note 99, at 107.

140. See U.S. DEP'T OF HEALTH & HUMAN SERVS., INTERIM REPORT TO THE CONGRESS ON THE FEASIBILITY OF A NATIONAL CHILD ABUSE REGISTRY 4 (2009) [hereinafter U.S. DEP'T OF HEALTH & HUMAN SERVS., INTERIM REPORT ON CHILD ABUSE REGISTRY], available at <http://aspe.hhs.gov/hsp/09/ChildAbuseRegistryInterimReport/report.pdf>.

141. *Id.* at 48–61 (listing individual states and characteristics of their registries).

142. *Id.* at 50, 53–54 (mentioning several states that maintain records of unfounded complaints).

143. *Id.* at 48–61.

144. See 5 U.S.C. § 552(a)(3)(A) (2012).

145. See CHILD WELFARE INFO. GATEWAY, DISCLOSURE OF ABUSE AND RECORDS, *supra* note 21, at 4. In most states, anyone with a substantiated CPS report on his or her record may face difficulty in finding a job because employers are allowed, and may be required, to access CPS records prior to hiring. See *id.* See also CMTY. LEGAL SERVS., INC., LEGAL REMEDIES AND LIMITATIONS ON THE EMPLOYMENT OF PEOPLE WITH CRIMINAL RECORDS IN PENNSYLVANIA App. A., available at http://realcostofprisons.org/materials/PA_employment_of_people_with_criminal_records.pdf. Furthermore, any potential employer, training program organizer, or service provider may ask an applicant for permission to authorize a CPS record search and may make any decision it chooses based on the findings. See, e.g., *Central Registry Release of Information Form*, VA. DEP'T SOC. SERVICES 2 (Dec. 2013), http://www.dss.virginia.gov/files/division/licensing/background_index_childrens_facilities/founded_cps_complaints/032-02-0151-09-eng.pdf. For example, before the author could become a board member of a non-profit organization, the non-profit asked her to consent to a Central Registry Release search. Notably, the board membership did not involve any contact with children.

C. False Reporting and Penalties

Prosecutors and law enforcement agencies claim that intentional false reporting is rampant, but that they are unable to prevent or prosecute offenders.¹⁴⁶ Each state grants civil and criminal immunity to members of the public for any good faith report.¹⁴⁷ Although many states have laws that both prohibit intentional false reports¹⁴⁸ and require CPS to inform the District Attorney of suspicious reports,¹⁴⁹ they are nearly impossible to enforce. For instance, CPS may be reluctant to notify law enforcement for a variety of reasons. CPS may be “afraid that it will frighten people into keeping silen[t] about real abuse.”¹⁵⁰ Additionally, when CPS does report to a local prosecutor, steps must be taken before the confidential CPS report can be released. In some states, the reports are released when the prosecutor or the aggrieved party files a petition,¹⁵¹ and it is not always easy to convince a judge to obtain records in a timely manner.¹⁵² It also may be difficult to convince a prosecutor that there is

146. Interview with Chesterfield County Commonwealth’s Attorney’s Office (July 2012); Interview with Office of Henrico Commonwealth’s Attorney’s Office (July 2012); Interview with Richmond County Commonwealth’s Attorney’s Office (July 2012). *See also* Casey Seiler, Commentary, *New York’s Child Abuse Hotline Can Shield False Complaints*, TIMES UNION, July 31, 2009, <http://www.timesunion.com/local/article/New-York-s-child-abuse-hot-line-can-shield-false-553382.php> (discussing why false reports are infrequently prosecuted).

147. *See, e.g.*, WASH. REV. CODE ANN. § 26.44.060(1)(a) (West 2007) (stating that any individual making a good faith report “or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions”).

148. *See, e.g.*, VA. CODE ANN. § 63.2-1513 (West 2014) (mandating that a false report is a misdemeanor for the first offense and a felony for subsequent offenses).

149. *See, e.g.*, N.Y. SOC. SERV. LAW § 424(8) (McKinney 2013) (stating that CPS is to “refer suspected cases of falsely reporting child abuse and maltreatment in violation of [New York law] to the appropriate law enforcement agency or district attorney”).

150. Dan Weaver, *Why Few People Are Arrested for Filing False Child Abuse Reports*, LEGAL SOURCE 360 (Mar. 7, 2008), <http://www.legalsource360.com/index.php/why-few-people-are-arrested-for-filing-false-child-abuse-reports-3-5602/>.

151. *See, e.g.*, CHILD WELFARE INFO. GATEWAY, DISCLOSURE OF ABUSE AND RECORDS, *supra* note 21, at 8. In Arizona, a person making a claim of malicious reporting must petition a court for review of the CPS records. *Id.* If a court finds that there is a “reasonable question of fact as to whether the report or complaint was . . . malicious[,]” it will release the information to the petitioner. *Id.* Virginia uses a similar procedure with respect to persons making a claim of malicious reporting. *See* Gloucester Cnty. Dep’t of Soc. Servs. v. Kennedy, 507 S.E.2d 81, 81 (Va. 1998).

152. *See, e.g., Kennedy*, 507 S.E.2d at 82–83 (upholding a trial court’s grant of petitioner’s request for the CPS report he claimed was malicious; the release was granted over the objections of CPS). *See also* *People v. Trester*, 190 Misc. 2d 46, 47–48 (N.Y. Just. Ct. 2002) (upholding the release of CPS reports to a prosecutor in a false reporting case after the person accused of falsely reporting contested the release). The parties in both *Kennedy* and *Trester* waited months while their cases went through an appellate process, solely to determine whether the records could be released; the appellate process had to occur before they could even start the process of investigating whether or not the report was actually malicious.

enough evidence to go forward with a case.¹⁵³ Finally, at trial, the state must prove malicious intent of the false reporter, a high standard that is rarely met.¹⁵⁴ Of course, if CPS never knows the reporter's identity, the reporter cannot be held accountable in any way for a report, no matter how baseless and malicious it is.

Although it is impossible to identify precisely the total number of intentionally false reports, the U.S. Department of Health and Human Services was able to count a fraction of them—2,052—in 2011.¹⁵⁵ In Illinois in 2002, there were 3,772 intentionally false reports.¹⁵⁶ Approximately four to ten percent of sexual abuse reports are also intentionally false.¹⁵⁷ As with false allegations of child abuse and neglect, research has demonstrated the tumultuous effects of false reports of sexual abuse on families.¹⁵⁸

Thirty-six to fifty-five percent of sexual reports made during divorce and high conflict disputes are intentionally false.¹⁵⁹ False abuse and neglect reports also frequently occur during custody battles.¹⁶⁰ In Florida in 2011, a mother and her sister were convicted for colluding to submit a false report against the father of an allegedly abused child;¹⁶¹ another woman was charged with making at least three separate false reports to CPS about her ex-husband, who had sole custody of their son.¹⁶² The reports were made anonymously but later traced by the police after a tip-off from CPS.¹⁶³

153. See Weaver, *supra* note 150 (noting that although false reporting of child abuse may be a misdemeanor, a prosecutor with a heavy case load may decide not to prosecute the case).

154. See, e.g., *Credit Serv. Co., Inc. v. Dauwe*, 134 P.3d 444, 448 (Colo. App. 2005) (noting that proving malicious intent for filing a false report of child abuse required a showing that the caller made the report “both with an evil motive” and “without an objective basis for believing [the defendant] was engaging in child abuse”).

155. ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT: 2011, *supra* note 34, at 29.

156. Weaver, *supra* note 150.

157. Frank D. Fincham et al., *The Professional Response to Child Sexual Abuse: Whose Interests Are Served?*, 43 FAM. REL. 244, 248 (1994), available at <http://www.jstor.org/stable/585410>.

158. See generally Darrell W. Richardson, *The Effects of a False Allegation of Child Sexual Abuse on an Intact Middle Class Family*, 2 IPT J. (1990), http://www.ipt-forensics.com/journal/volume2/j2_4_7.htm (discussing the wide range of negative impacts false reports cause).

159. Fincham et al., *supra* note 157, at 249.

160. See *id.* at 248, 249 (noting false reports are prevalent in divorce cases, and, in some instances, a parent will have to accept a plea to retain custody of his or her child).

161. Mark Christopher, *False Child Abuse Report Leads To Jail Time For Sisters*, CARING FOR OUR CHILD. FOUND. (Mar. 30, 2012), <http://www.sunshineslate.com/tag/lisa-ann-schinnow/>.

162. *Id.* These allegations included leaving the eleven year-old son alone. *Id.*

163. Press Release, State of Fla. Dep't of Children & Families, *False Reporting to DCF Abuse Hotline Carries Severe Penalties* (Mar. 26, 2012), available at http://www.dcf.state.fl.us/newsroom/pressreleases/20120326_FalseReporting.shtml (“[O]ur agency reported this possible false allegation to the state attorney’s office and the police department.”).

Florida criminally prosecuted those anonymous public reporters because the state systematically responds to and tracks false reporting.¹⁶⁴ In fact, the Florida Department of Children and Families is required by law to provide the legislature with a yearly accounting of prosecutors' responses to allegations of false reports.¹⁶⁵ Comparatively, a New York victim of false reporting is left to recover through the civil system if the state chooses not to prosecute a false reporter.¹⁶⁶ However, civil suits are rarely successful.¹⁶⁷

IV. CONSTITUTIONAL RIGHTS OF PARENTS AND CHILDREN

A. Parenting as a Fundamental Right

The Supreme Court has long held that parenting is a fundamental right,¹⁶⁸ although the state may intervene under the doctrine of *parens patriae* to protect the interest of a child.¹⁶⁹ This parenting right encompasses a broad range of activities, including making fundamental decisions about the education of one's child.¹⁷⁰ The *Meyer v. Nebraska*¹⁷¹ Court framed the issue as a liberty right under the Due Process Clause of the Fourteenth Amendment.¹⁷² While refraining from defining the limits of the liberty right, the Court held that it, at the very least, includes the right to "establish a home and bring up children."¹⁷³ The Court concluded that a state statute impacting the liberty right cannot be "arbitrary and without reasonable relation" to the state's powers.¹⁷⁴

The Court affirmed the liberty right in *Pierce v. Society of Sisters*,¹⁷⁵ finding that an Oregon law mandating that parents send their young children to public schools "unreasonably interfere[d] with the liberty of parents and guardians to

164. See FLA. STAT. ANN. § 39.205(7) (West 2014) (establishing the procedure for handling false reports).

165. *Id.*

166. Weaver, *supra* note 150.

167. See *id.* For examples of dismissal of civil cases in this context, see Smith v. Tex. Dep't of Family & Protective Servs. Child Protective Servs., No. SA-08-CA-940-XR, 2009 WL 2998202, at *1 (W.D. Tex. Sept. 15, 2009); Begier v. Strom, 54 Cal. Rptr. 2d 158, 165 (Cal. Ct. App. 1996); Malenko v. Campbell, No. CV-10-143, 2010 Me. Super. LEXIS 100, at *1-3, *18 (Me. Super. Ct. Aug. 4, 2010).

168. See Santosky v. Kramer, 455 U.S. 745, 753 (1982) (noting "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents"); Stanley v. Illinois, 405 U.S. 645, 651 (1972) ("The rights to conceive and to raise one's children have been deemed 'essential' . . .").

169. MYERS, LEGAL ISSUES, *supra* note 10, at 45. See also BLACK'S LAW DICTIONARY 1221 (9th ed. 2009) (explaining that *parens patriae* is the idea of "the state [acting] as provider of protection to those unable to care for themselves").

170. Meyer v. Nebraska, 262 U.S. 390, 399-400 (1923).

171. 262 U.S. 390 (1923).

172. See *id.* at 399.

173. *Id.*

174. *Id.* at 403.

175. 268 U.S. 510 (1925).

direct the upbringing and education of children under their control.”¹⁷⁶ The Court instructed that “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”¹⁷⁷ The Court found that the Oregon law had “no reasonable relation to some purpose within the competency of the State.”¹⁷⁸

In summary, the Court’s early decisions carved out rights, such as establishing a home, bringing up children, and controlling their education.¹⁷⁹ Those rights were afforded protection from government interference unless the state could demonstrate interference was justified by the state’s exercise of its police powers.¹⁸⁰ Further, the *Prince v. Massachusetts*¹⁸¹ Court affirmed both the substantive right of parents and the state’s power to properly intervene to protect youths from the dangers of “emotional excitement and psychological or physical injury.”¹⁸²

The early cases left open the issue of whether the liberty right is akin to a property right or something even more substantial. In *May v. Anderson*,¹⁸³ decided in 1953, the liberty right was declared more than a property right in that a state must obtain personal jurisdiction before depriving one of his or her parental rights.¹⁸⁴ Additionally, in *Armstrong v. Manzo*,¹⁸⁵ the Court held that due process requires notice to a biological parent before an adoption can take place.¹⁸⁶

Having established that limiting parental rights implicates procedural due process concerns, the Court finally wrestled with the question of substantive due process. In 1972, in *Stanley v. Illinois*,¹⁸⁷ the Court restated that the right to create and raise a family is “essential” and should be free from technical restraints.¹⁸⁸ The Court held that Peter Stanley, as a matter of both due process and equal protection, was entitled to a hearing on his parental fitness before his

176. *Id.* at 534–35.

177. *Id.* at 535.

178. *Id.*

179. *Id.* at 534–35 (discussing the right to manage the upbringing and education of a child). *See also Meyer*, 262 U.S. at 399 (addressing the liberty interest in establishing a home).

180. *See Pierce*, 268 U.S. at 535; *Meyer*, 262 U.S. at 403.

181. 321 U.S. 158 (1944).

182. *Id.* at 170.

183. 345 U.S. 528 (1953), *superseded by statute*, Parental Kidnapping Prevention Act, Pub. L. No. 96-611, 94 Stat. 3569 (1980) (codified at 28 U.S.C. 1738(A) (2000)), *as recognized in Brown v. Brown*, 847 S.W.2d 496 (Tenn. 1993).

184. *See id.* at 534 (noting “that a mother’s right to custody of her children is a personal right”). Notably, the Parental Kidnapping Prevention Act superseded *May*. *See supra* note 183.

185. 380 U.S. 545 (1965).

186. *Id.* at 550.

187. 405 U.S. 645 (1972).

188. *See id.* at 651–52 (citing *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923)).

children could be taken from him.¹⁸⁹ Stanley's interests were "cognizable and substantial," and without a finding that Stanley was unfit, the state's interest in the children was only "de minimis."¹⁹⁰ The Court reiterated its position in *Quilloin v. Walcott*,¹⁹¹ in which it held that the Due Process Clause "would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.'"¹⁹²

It is not always clear when and how the state is allowed to pass judgment on a parent, but when a state acts within its police power, it is required to adhere to a "best interest" standard.¹⁹³ That standard is often applied to both adjudications of private custody matters and the state's interference with parental rights.¹⁹⁴ Depending upon who the parties are and the nature of the hearing or government intervention, more deference and a higher standard of proof may be required. The Supreme Court recently embraced the presumption that fit parents act in the best interests of their children.¹⁹⁵ However, the Court has left undefined the proper level of scrutiny to be applied at *each possible moment* when the state may interfere with a parent's rights. For example, what is the proper standard at the time when a *private person* may interfere with parent's rights, or when the state may interfere *vis-à-vis a private person*?

B. CPS Investigation: Legal Obligation

At the outset, it is imperative to understand that if CPS does not have a warrant or court order to enter a home, the family, with limited exceptions, is not legally obligated to speak to the CPS agents or allow them onto the premises.¹⁹⁶ However, CPS does not Mirandize parents, even when CPS arrives with law enforcement, and parents are routinely told they do not need to, or cannot, consult an attorney.¹⁹⁷ In fact, when CPS visits a family's home, a parent's

189. *Id.* at 658.

190. *Id.* at 652, 657.

191. 434 U.S. 246 (1978).

192. *Id.* at 255 (quoting *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 862–63 (1977) (Stewart, J., concurring in judgment)).

193. *See e.g.*, VA. CODE ANN. § 20-124.3 (West 2012) (providing factors by which to measure the "best interests" of a child with respect to visitation).

194. *See, e.g., id.* *See also id.* at § 16.1-281(A) (considering the "best interests" of a child when custody is revoked from the child's parents).

195. *See Troxel v. Granville*, 530 U.S. 57, 58 (2000) (citing *Parham v. J.R.*, 442 U.S. 584, 602 (1979)).

196. *Gates v. Tex. Dep't of Protective & Regulatory Servs.*, 537 F.3d 404, 419–20 (5th Cir. 2008) (stating that the Fourth Amendment applies to investigations by CPS, and, absent a warrant, CPS agents may not enter a house without "consent, exigent circumstances, or a special need").

197. *See infra* App. B. for examples of families who faced negative consequences for not cooperating with CPS. The four examples referenced in Appendix B have varying outcomes and are referred to frequently throughout the rest of this Article for the purpose of analyzing the rights

attempt to assert Fourth or Fifth Amendment rights may come back to haunt him or her.¹⁹⁸

Indeed, as illustrated by the cases in Appendix B, if a family refuses CPS, family members may suffer one or more of the following consequences: (1) they will appear antagonistic, which may encourage CPS to gather further evidence outside of the home and/or possibly obtain a court order to return; (2) their actions may encourage CPS to visit the child's school to interview and search the child without parental consent; (3) CPS may call police to the scene and make criminal allegations that could lead to probable cause for an arrest; (4) in some states, CPS may call a judge or magistrate to obtain authorization to search the house;¹⁹⁹ or (5) CPS may mistrust the parent, resulting in a hostile relationship that affects all future contact with respect to the case.²⁰⁰ Initial interaction between a family and CPS is important because studies show that the primary determination about whether to remove a child will enormously impact the outcome of the case.²⁰¹

C. CPS investigation: Child's Rights

1. Fourth Amendment

a. At Home

Federal courts have held that a child is protected by the Fourth Amendment when he or she is interviewed by CPS at home.²⁰² Therefore, home interviews and bodily examinations are "seizures" and, absent exigent circumstances, cannot be done without the consent of the parents, a court order, or a warrant to

of a child and a family that attach at the moment of an anonymous hotline phone call: Phillips v. Cnty. of Orange, 894 F. Supp. 2d 345 (S.D.N.Y. 2012); Loudermilk v. Arpaio, No. CV 06-0636-PHX-EHC, 2007 WL 2892951, at *1 (D. Ariz. Sept. 28, 2007); O'Donnell v. Brown, 335 F. Supp. 2d 787 (W.D. Mich. 2004); and the story of the Leonard Family, see Anita Hassan, *Mixed Reviews After CPS Takes Kids From Family Shed*, HOUS. CHRON., July 8, 2011, <http://www.chron.com/news/houston-texas/article/Mixed-reviews-after-CPS-takes-kids-from-family-2080318.php>; Alan Farnham, *Answer to Recession: Houston Family of Eight Living in Self-Storage*, ABCNEWS (July 6, 2011), <http://abcnews.go.com/Business/houston-texas-family-living-storage-shed/story?id=14009261>.

198. If CPS officers arrive with the police, a charge could also be brought against the parent for obstruction of justice for refusing to open the door. See, e.g., Walsh v. Erie Cnty. Dep't of Job & Family Servs., 240 F. Supp. 2d 731, 741-42 (N.D. Ohio 2003) (discussing a situation in which a family invoked its Fourth Amendment rights and the father, after being told he was being arrested for obstruction of justice and was placed against a police car, allowed CPS workers to conduct their search).

199. See O'Donnell, 335 F. Supp. 2d at 802.

200. It is beyond the scope of this Article to document and describe the numerous cases in which a hostile relationship is formed between CPS and parent at the outset of the interaction. A case could subsequently remain open for years, even until the child is eighteen or twenty-one.

201. See Doyle, *supra* note 127, at 1599-1602 (describing the impact of removal decisions, which are usually preceded by the initial interaction between parents and CPS).

202. See, e.g., Calabretta v. Floyd, 189 F.3d 808, 813-14 (9th Cir. 1999).

enter the home.²⁰³ For example, the social worker in *Roe v. Texas Department of Protective and Regulatory Services*²⁰⁴ violated the child's Fourth Amendment rights in conducting a visual body cavity search,²⁰⁵ a special need exception to the warrant and probable cause requirement did not apply given the child's strong interest in bodily privacy.²⁰⁶

b. At School

Federal courts consider an interview or bodily examination of a child at school in response to an abuse allegation a Fourth Amendment seizure if law enforcement is present.²⁰⁷ Under those circumstances, the special needs doctrine that allows schools to conduct their own searches does not apply; the law enforcement interest in investigating abuse reports is too intertwined and the search is unrelated to a school matter.²⁰⁸

A trickier matter is whether an interview at school is a seizure when conducted by CPS alone. Courts that have considered the issue have performed a comprehensive analysis; these are not open and shut cases. While it is clear that the "special needs" doctrine does not apply, some CPS searches of children will be equivalent to *Terry* stops. In *Gates v. Texas Department of Protective and Regulatory Services*,²⁰⁹ an interview of a child at a YMCA was held constitutional because the interview was of reasonable duration and was not

203. *Roe v. Tex. Dep't. of Protective & Regulatory Servs.*, 299 F.3d 395, 399, 407–08 (5th Cir. 2002).

204. 299 F.3d 395 (5th Cir. 2002).

205. *Id.* at 402–03.

206. *Id.* at 406–07.

207. *See Phillips v. Cnty. of Orange*, 894 F. Supp. 2d 345, 363 (S.D.N.Y. 2012) (finding the interview of a child at school without an offer for the student to call her parents was a plausible cause for finding the student was seized); *Lane v. Milwaukee Cnty. Dep't of Soc. Servs. Children & Family Servs. Div.*, No. 10-CV-297-JPS, 2011 WL 5122615, at *4–5 (E.D. Wis. Oct. 28, 2011) (finding that an officer's questioning of a student at an elementary school "constitute[d] both a search and a seizure under the Fourth Amendment"). *See also Greene v. Camreta*, 588 F.3d 1011, 1022 (9th Cir. 2009) (determining that a two-hour interview of a student at her school was a seizure), *vacated* 661 F.3d 1201 (9th Cir. 2011); *Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (explaining that an in-school interview of a fourteen-year-old suspected of committing child abuse was a seizure); *Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003) (holding that when a child is escorted by school officials to a separate room and interviewed by a uniformed police officer and a case worker, the child is "seized" for Fourth Amendment purposes, because no reasonable child would have felt free to leave).

208. *Greene*, 588 F.3d at 1027. *See also Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653, 664–65 (1995) (holding that the special needs doctrine did apply in the context of a school athlete who refused to participate in mandatory drug testing because the search involved strictly a school matter); *New Jersey v. T.L.O.*, 469 U.S. 325, 340–41 (1985) (allowing school searches of student athletes for drug violations when the testing is for the purpose of school discipline and management, and not for law enforcement purposes).

209. 537 F.3d 404 (5th Cir. 2008).

more intrusive than necessary.²¹⁰ However, the *Gates* court indicated that more intrusive interviews may be unreasonable seizures.²¹¹

CPS investigations at school that stem *entirely* from anonymous tips are extremely problematic. According to some circuits, CPS needs independent corroboration before an anonymous tip provides enough probable cause to search or seize a child.²¹² However, what if a search at school is the only way to corroborate an anonymous tip? In *Gates*, the court held that children were “seized” under the Fourth Amendment when they were removed from their school by CPS on an anonymous tip that was not independently corroborated beforehand.²¹³ The court evaluated whether exigent circumstances justified the children’s seizure and determined the “exigent circumstances” standard set too high of a burden for CPS investigations.²¹⁴ *Gates* implies that anonymous tips, without corroboration, rarely provide grounds to interview a child at school without the consent of parents, even one that is similar to a *Terry* stop.²¹⁵ Although, “anonymous tips that have been *corroborated* may provide reasonable suspicion for an *investigatory stop*[].”²¹⁶ When an anonymous tip is uncorroborated, even a “stop” is impermissible.²¹⁷ The *Gates* court determined that:

[B]efore a social worker can remove a child from a public school for the purpose of interviewing him in a central location without a court order, the social worker must have a reasonable belief that the child has been abused and probably will suffer further abuse upon his return home at the end of the school day. This reasonable belief must be based on first-hand observations of . . . employees[of a child protective agency.]²¹⁸

The *Phillips v. County of Orange*²¹⁹ court similarly determined that there was a plausible Fourth Amendment violation when a young child was “seized” and removed from class for questioning based on a wholly uncorroborated hotline tip.²²⁰ Per these holdings, CPS should never be allowed to visit a school unannounced based solely on an anonymous tip. But this concept conflicts with

210. *Id.* at 434.

211. *See id.* (focusing on the fact that the intrusion was “minor”).

212. *See id.* at 433.

213. *Id.* at 431, 433.

214. *Id.* at 433.

215. *Id.* at 433–34 (noting that “anonymous tips that have been corroborated . . . may provide sufficient grounds” for a brief and minimal seizure).

216. *Id.* (emphasis added) (citing *United States v. Martinez*, 486 F.3d 855, 863 (5th Cir. 2007)).

217. *See Florida v. J.L.*, 529 U.S. 266, 271 (2000) (holding that an anonymous tip that a youth was in illegal possession of a gun, without more, was not enough to justify an officer’s decision to “stop and frisk” the young man).

218. *Gates*, 537 F.3d at 433.

219. 894 F. Supp. 2d 345 (S.D.N.Y. 2012).

220. *Id.* at 351–52, 366–67.

the daily practice of CPS²²¹ and creates a federal circuit split.²²² In any event, it is clear that anonymous tips open the door for children's rights to be ignored and for irreconcilable holdings.

D. CPS Investigation: Parent's Rights

1. Fourth Amendment

As discussed above, federal courts hold that the Fourth Amendment applies to CPS investigations conducted at home. Courts have noted “the Fourth Amendment applies to [social workers], as it does to all other officers and agents of the state whose requests to enter, however benign or well-intentioned, are met by a closed door. There is . . . no social worker exception to the strictures of the Fourth Amendment.”²²³ The Second, Ninth, and Eleventh Circuits have all required the procedures “under the Fourth Amendment for searches and seizures [in] child abuse investigations.”²²⁴

2. Entry Into the Home

The *O'Donnell v. Brown*²²⁵ court found that the family's Fourth Amendment rights were violated by CPS entry into their home.²²⁶ Although Michigan state law allowed CPS to seize children on a referee's orders, that law did not allow entry into a home to effect a removal unless a contemporaneous written warrant was issued.²²⁷ The court wrote:

While the aforementioned court rule and statutory provision may authorize the seizure of a child in the circumstances they describe, they do not give the police or anyone else the authority to enter a home to effect the seizure. State statutes and regulations cannot be construed to displace the protections of the United States Constitution—even when the state acts to protect the welfare of children.²²⁸

221. See William Glaberson, *Family Nightmare: A False Report of Child Abuse*, N.Y. TIMES, Dec. 4, 1990, <http://www.nytimes.com/1990/12/04/nyregion/family-nightmare-a-false-report-of-child-abuse.html?pagewanted=all&src=pm> (detailing an anonymous tip case in which the court found that no one told either of the children involved, both of whom were searched by CPS, that they could decline to be searched).

222. See Mark R. Brown, *Rescuing Children from Abusive Parents: The Constitutional Value of Pre-Deprivation Process*, 65 OHIO ST. L.J. 913, 934 (2004).

223. *Walsh v. Erie Cnty. Dep't of Job & Family Servs.*, 240 F. Supp. 2d 731, 746–47 (N.D. Ohio 2003).

224. *Gates v. Tex. Dep't of Protective & Regulatory Servs.*, 537 F.3d 404, 434–35 (5th Cir. 2008) (citing *Doe v. Kearney*, 329 F.3d 1286, 1299 (11th Cir. 2003); *Wallis v. Spencer*, 202 F.3d 1126, 1137 n.8 (9th Cir. 2000); *Tenenbaum v. William*, 193 F.3d 581, 605 (2d Cir. 1999)).

225. 335 F. Supp. 2d 787 (W.D. Mich. 2004).

226. See *id.* at 804, 806 (holding that the search of a house was a presumptive violation of the Fourth Amendment and no exception to the warrant requirement applied).

227. See *id.* at 803.

228. *Id.* at 801–02.

The court continued: “The entry itself must satisfy the Fourth Amendment, which generally requires a warrant”²²⁹ Michigan did not have a state statute authorizing search warrants to be verbally issued, although judges were permitted to verbally authorize the removal of children.²³⁰ Without a search warrant, the entry into the home was not authorized by the verbal command.²³¹

3. Removal of a Child

The removal of a child from a home has Fourth Amendment implications. When a child is taken from the home, it is a seizure that requires a court order in the absence of exigent circumstances or parental consent.²³² Therefore, removal itself can violate a parent’s Fourth Amendment rights even if a search of the home and the interviews are permissible.²³³ As the *O’Donnell* court observed, the analysis of the search and the seizure are separate, and even if the search is unlawful, the seizure may still be valid if a statute authorizes emergency removal.²³⁴ However, the *O’Donnell* court also held the disputed seizure was unconstitutional and violated the Fourth Amendment’s prohibition on illegal seizures.²³⁵ The court found there was neither an exigent circumstance nor probable cause, writing that “the children’s surroundings did not pose any ‘danger’ to their health, morals, or welfare.”²³⁶

4. CPS Investigations: Fourteenth Amendment

a. Substantive Due Process

The government action in *O’Donnell* “encroached upon the O’Donnell’s right to familial integrity.”²³⁷ In *Loudermilk v. Arpaio*,²³⁸ the Seventh Circuit explained that “the mere threat to remove a child from the custody of his parents without reasonable suspicion of abuse violated the parents’ Fourteenth Amendment [substantive due process] rights to familial relations.”²³⁹ The verbal threats of government agents “exert[ed] coercive pressure on the plaintiff and

229. *Id.* at 802.

230. *Id.* at 801–02.

231. *Id.* at 802.

232. See *Smith v. Tex. Dep’t. of Family & Protective Servs.*, No. SA-08-CA-940-XR, 2009 WL 2998202, at *9 (W.D. Tex. Sept. 15, 2009) (noting that when a warrant or consent are not obtained, removal is only proper if exigent circumstances exist).

233. See *O’Donnell*, 335 F. Supp. 2d at 806 (stating that the removal of a child as a seizure and the search of a home need to be analyzed separately under the Fourth Amendment, and one conducted in violation of the Fourth Amendment does not automatically make the other a violation).

234. *Id.* at 806–07.

235. *Id.* at 806.

236. *Id.* at 808.

237. *Id.* at 820.

238. No. CV 06-0636-PHX-EHC, 2007 WL 2892951, at *1 (D. Ariz. Sept. 28, 2007).

239. *Id.* at *5 (citing *Doe v. Heck*, 327 U.S. 528, 524–25 (1963)).

the plaintiff suffer[ed] the deprivation of a constitutional right.”²⁴⁰ Children also have a liberty interest in family integrity.²⁴¹

An investigation based on a false tip or reckless use of “evidence” can be a Fourteenth Amendment violation because “an intentionally or recklessly inadequate investigation can violate an accused’s liberty interest in obtaining fair criminal proceedings[.]”²⁴² The court in *Besett v. Wadena County*²⁴³ indicated a willingness to extend this principal to a child abuse investigation that relied on a false report from a mandatory reporter.²⁴⁴

Even if the investigation is not based on a false or baseless hotline report, CPS actions that shock the conscience may violate due process.²⁴⁵ The Fifth Circuit has interpreted this as requiring a minimal showing of deliberate indifference.²⁴⁶ Some circuits go further and hold that CPS actions can violate the Fourteenth Amendment if they go against professional judgment.²⁴⁷ To successfully advance a claim against a CPS worker, a parent must show that the caseworker’s act “was an impermissible deviation from professional judgment.”²⁴⁸ This standard requires proving *more* than “mere negligence” but *less* than deliberate indifference.²⁴⁹ Moreover, the Tenth Circuit agrees that a child who is in state custody—meaning the child has been removed, even temporarily—has a “special relationship” with the state and is entitled to protection of his or her constitutional rights.²⁵⁰

b. Procedural Due Process

A number of events during a CPS investigation can violate procedural due process rights. For example, the *O’Donnell* court was unsatisfied with the *ex parte* hearing in which the judge gave verbal authorization for removal, as well

240. *Id.* (quoting *King v. Olmsted Cty.*, 117 F.3d 1065, 1067 (8th Cir. 1997)).

241. *See Parham v. J.R.*, 442 U.S. 584, 627 (1979) (“[M]inors, as well as adults, are protected by the Constitution and possess constitutional rights.”); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) (noting that students are “persons” with constitutional rights). *See also Smith v. Tex. Dep’t. of Family & Protective Servs.*, No. SA-08-CA-940-XR, 2009 WL 2998202, at *13 (W.D. Tex. Sept. 15, 2009) (claiming that identifying the child’s right to familial integrity must be balanced with the state’s interest in protecting the child).

242. *Besett v. Wadena Cnty.*, No. 10-934 (JRT/LIB), 2010 WL 5439720, at *12 (D. Minn. Dec. 7, 2010) (citing *Lawrence v. City of St. Paul*, 740 F. Supp. 2d 1026, 1038 (D. Minn. 2010)).

243. No. 10-934 (JRT/LIB), 2010 WL 5439720, at *1 (D. Minn. Dec. 7, 2010).

244. *Id.* at *12.

245. *Smith*, 2009 WL 2998202, at *14 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

246. *Id.* (quoting *McClendon v. City of Columbia*, 305 F.3d 314, 326 (5th Cir. 2002)).

247. *See, e.g., Johnson ex rel. Estate of Cano v. Holmes*, 455 F.3d 1133, 1143 (10th Cir. 2006) (noting that a failure of professional judgment that results in some inquiry to a child violates the child’s constitutional rights).

248. *Id.* at 1144.

249. *Id.* at 1143.

250. *Id.*

as the parents' later hearing.²⁵¹ In response, the Sixth Circuit established that in the absence of exigent circumstances or a court order, children could not be removed without notice to the parents.²⁵² Removal without notice likely happens daily, which is significant given that, as aforementioned, approximately 3.4 million families were referred to CPS in 2011.²⁵³

5. Other Constitutional Considerations

The Sixth Amendment's Confrontation Clause is relevant to anonymous reporting because of the Supreme Court's rulings in *Crawford v. Washington*²⁵⁴ and *Davis v. Washington*.²⁵⁵ According to these cases, "testimonial" hearsay statements are inadmissible unless the declarant is unavailable and the defendant had prior opportunity to cross-examine the declarant.²⁵⁶ Statements are "testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution."²⁵⁷

Crawford has been applied to a caseworker's interview of a child at the request of a police officer investigating suspected child abuse.²⁵⁸ In *Bobadilla v. Carlson*,²⁵⁹ the statements of a child made during an interview by a caseworker were considered testimonial and, therefore, the child's statements could not be admitted into evidence through the caseworker's testimony.²⁶⁰ *Bobadilla* only differed from *Crawford* in that "instead of a police officer asking questions about a suspected criminal violation, he sat silent while a social worker did the same."²⁶¹ The Court found "this to be a distinction without a difference."²⁶² A caseworker's testimony regarding an anonymous reporter's statements should likewise be excluded because the anonymous statements are not made during an ongoing emergency. CPS hotline reports are typically made about past events or general concerns.²⁶³ If there is an ongoing emergency, the caller is likely told

251. *O'Donnell v. Brown*, 335 F. Supp. 2d 787, 813 (W.D. Mich. 2004).

252. *See Kovacic v. Cuyahoga Cnty. Dep't of Children & Fam. Servs.*, 724 F.3d 687, 695 (6th Cir. 2013) (citing *Doe v. Staples*, 706 F.2d 985, 990 (6th Cir. 1983)).

253. *See* text accompanying *supra* note 111.

254. 541 U.S. 36 (2004).

255. 547 U.S. 813 (2006).

256. *Crawford*, 541 U.S. at 53–54. *See also Davis*, 547 U.S. at 822 (defining "testimonial statements").

257. *Davis*, 547 U.S. at 822.

258. *See, e.g., Bobadilla v. Carlson*, 575 F.3d 785, 791–92 (8th Cir. 2009).

259. 575 F.3d 785 (8th Cir. 2009).

260. *Id.* at 792.

261. *Id.* at 791–92.

262. *Id.* at 792.

263. *See, e.g., Calabretta v. Floyd*, 189 F.3d 808, 813 (9th Cir. 1999) (noting the lack of exigent circumstances to enter the home of a family suspected of child abuse when the social worker and police officer "perceived no immediate danger of serious harm to the children").

to call 911 or is forwarded to 911. Hotline staffers do *not* take emergency calls.²⁶⁴

Crawford has not been applied across the board in civil child neglect and abuse proceedings.²⁶⁵ However, the principles are used by some courts because of the quasi-criminal nature of child neglect proceedings²⁶⁶ and are reflected in privileges defined by state codes and the Federal Rules of Evidence.²⁶⁷ Judge F. Paul Kurmay once noted: “[T]he state . . . with all of its police power, comes to the juvenile court for the purpose of wresting control of an abused or neglected child from the perpetrator of the abuse or neglect. It is less a family matter than a quasi-criminal one.”²⁶⁸

V. CONCLUSION

A. CPS Is a Government Actor Immune from Liability

CPS is a civil body, the actions of which have criminal implications, but no well-established protections exist for the “defendant” under law and practice. CPS workers act as quasi-police. However, the rights of parents, as civil defendants, are not fully established and are likely routinely disrespected. Per *O’Donnell*, it is probably reasonable for officials to be unaware that their actions violate a right.²⁶⁹ There are myriad reasons CPS may be unaware of these possible infringements on rights, such as: faulty training and supervision as demonstrated by *Loudermilk*, wherein the Attorney General told the family that the Fourth Amendment did not apply to CPS workers and that, if they did not allow a search, their children would be removed;²⁷⁰ unclear laws; and conflicting court holdings—demonstrated by previously discussed jurisprudence. However, in *Loudermilk*, the claims against the police officers and CPS workers for coercive behavior did not result in qualified immunity because “no

264. The author’s research assistant confirmed as much during calls she placed to every U.S. state hotline from June 24 to July 7, 2012.

265. See, e.g., *In re Pamela A.G.*, 134 P.3d 746, 750 (N.M. 2006) (noting that child abuse and neglect proceedings are civil matters and are therefore unaffected by *Crawford*).

266. See, e.g., *In re Matter of P.F.*, 118 P.3d 224, 231 n.13 (Okla. Civ. App. 2005) (describing a recent termination of parental rights case that excluded a child’s out of court statement based on *Crawford*). Cf. *In re Nicholas R.*, 884 A.2d 1059, 1061 (Conn. App. Ct. 2005) (finding child neglect cases are not quasi-criminal in nature).

267. See, e.g., 5 ROBERT A. BARKER & VINCENT C. ALEXANDER, EVIDENCE IN NEW YORK STATE AND FEDERAL COURTS § 5:40 (2001 & Supp. 2008) (“The rape counselor privilege is not necessarily confined to criminal proceedings . . . [and] is likely to arise more often in child abuse proceedings, which are quasi-criminal in nature.”).

268. Judge F. Paul Kurmay, *Children in the Probate Courts of Connecticut: Building a Case for Greater Resources*, 14 QUINNIPIAC PROB. L.J. 227, 232 (1999).

269. *O’Donnell v. Brown*, 335 F. Supp. 2d 787, 822 (W.D. Mich. 2004).

270. *Loudermilk v. Arpaio*, No. CV 06-0636-PHX-EHC, 2007 WL 2892951, at *9 (D. Ariz. Sept. 28, 2007).

reasonable official would have believed that his or her conduct was authorized by state or constitutional law.²⁷¹

B. Anonymous Reporting Should Be Abolished

As illustrated in Parts II, III, and IV, anonymous reporting is not needed. It is an impediment to children receiving critical services and a drain on resources. Moreover, it is unconstitutional given the children's rights, parents' rights, and state interests implicated. Anonymous reporting only makes it easier for CPS to encroach on a patchwork of questionable rights, laws, and court holdings. Protecting children while simultaneously respecting parents' rights is a difficult challenge. No one thinks it is easy or black and white. But we should at least close a loophole that leads to mismanagement, mistake, and misuse.

The public should never be allowed to call a hotline, make an allegation, and hang up the phone without giving any context or any information about themselves to the operator. Confidentiality of the reporter should be vigorously enforced, but anonymity abolished. The public should be educated on what constitutes grounds for a report. Furthermore, public callers should be able to find out whether action was taken in response to their reports. Each state hotline should publish and adhere to standards regarding call screening and decisions to investigate. No one who makes a call seeking information about the practices of a child abuse reporting hotline should be unceremoniously disconnected when making such an inquiry.

271. *Id.* The CPS workers allegedly represented that they had a court order to remove the children when they did not, they erroneously claimed they could get an order within five minutes, the police threatened to arrest the parents if they did not cooperate and allow the search, there were two to four armed police officers present, and the encounter lasted for forty minutes. *Id.* at *3-4.

APPENDIX A – STATE REPORTING INFORMATION

Table 1

State	Code Section Begins With	According to the Code, are anonymous reports accepted?	Hotline	Is any data on Hotline available?
Alabama	§ 26-14-1	Yes	Varies by County	No
Alaska	§ 47.17.010	Yes	1-800-478-4444	Yes
Arizona	§ 13-3620	Yes	1-888-767-2445	No
Arkansas	§ 12-18-101	Yes	1-800-482-5964	No
California	§ 11165	Yes	Varies by County	No
Colorado	§ 19-3-301	Yes	Varies by County	No
Connecticut	§ 17a-101	Yes	1-800-842-2288	No
Delaware	16 Del. C.	Yes	1-800-292-9582	Yes
District of Columbia	§ 4-1321.01	Yes	1-202-671-7233	No
Florida	§ 39.201	Yes	1-800-962-2873	Yes
Georgia	§ 19-7-5	Yes	Varies by County	No
Hawaii	§ 350-1	Yes	1-808-832-5300	Yes
Idaho	§ 16-601	Yes	1-855-552-5437	Yes
Illinois	§ 325 ILCS 5/1	Yes	1-800-252-2873	Yes
Indiana	§ 31-33-5-1	No, but Hotline will accept anonymous reports. *Verified by calling Hotline.	1-800-800-5556	Limited Data
Iowa	§ 232.67	No, but Hotline will accept anonymous reports. *Verified by calling Hotline.	1-800-362-2178	Limited Data
Kansas	§ 38-222	Yes	1-800-922-5330	Limited Data
Kentucky	§ 620.030	Yes	1-877-597-2331	Limited Data
Louisiana	Ch. C. art. 609	No, but Hotline will accept anonymous reports. *Verified by calling Hotline.	1-855-452-5437	No

Maine	22 MRS § 4011-A	No, but Hotline will accept anonymous reports. *Verified by calling Hotline.	1-800-452-1999	No
Maryland	Md. Fam. Law Code Ann. § 5-701	Yes	Varies by County	No
Massachusetts	Ch. 19 § 1	No, but Hotline will accept anonymous reports. *Verified by calling Hotline.	1-800-792-5200	Limited Data
Michigan	§ 722.621	Yes	1-855-444-3911	No
Minnesota	§ 626.556	Yes	Varies by County	Yes
Mississippi	§ 43-21-353	Yes	1-800-222-8000	Limited Data
Missouri	§ 210.115	Yes	1-800-392-3738	Yes
Montana	§ 41-3-201	Yes, but Code provides for a different procedure for receipt of anonymous reports. <i>See</i> § 41-3-202.	1-866-820-5437	No
Nebraska	§ 28-711	Yes. Website says report "must" include the reporter's name, but Hotline operators say report can be anonymous.	1-800-652-1999	Yes
Nevada	§ 432B.220	Yes	1-800-992-5757	No
New Hampshire	§ 169-C:30	Yes	1-800-894-5533	No
New Jersey	§ 9:6-8.10	Yes	1-877-652-2873	Limited Data
New Mexico	§ 32A-4-3	No. But website and Hotline operators say: "When making a report of abuse or neglect, you may choose to remain anonymous."	1-855-333-7233	Yes
New York	CLS Soc. Serv. § 415	No, but Hotline will accept	1-800-342-3720	No

		anonymous reports. *Verified by calling Hotline.		
North Carolina	7B-301	Yes. Code says reporters "shall" leave their names but also says, "Refusal does not mean the report will not be investigated."	Varies by County	No
North Dakota	§ 50-25.1-01	Yes	Varies by County	No
Ohio	§ 2151.421	Yes	Varies by County	No
Oklahoma	§ 1-2-101	Yes	1-800-522-3511	Yes
Oregon	§ 419B.015	Yes	Varies by County	Yes
Pennsylvania	§ 6311	Yes	800-932-0313	Yes
Rhode Island	§ 40-11-3	Yes	800-742-4453	No
South Carolina	§ 63-7-10	Yes	Varies by County	Yes
South Dakota	§ 26-8A-1	Yes	Varies by County	No
Tennessee	§ 37-1-605	Yes	877-237-0004	No, although data collection is required in the Code.
Texas	§ 261.101	Yes	800-252-5400	Limited Data
Utah	§ 62A-4a-403	Yes	855-323-3237	Limited Data
Vermont	33 VSA § 4913	Yes	800-649-5285	Yes
Virginia	§ 63.2-1500	Yes	800-552-7096	Yes
Washington	§ 26.44.030	Yes	866-363-4276	No
West Virginia	§ 49-6A-2	Yes	800-352-6513	No, although data collection is required in the Code.
Wisconsin	§ 48.981	Yes	Varies by County	Yes
Wyoming	§ 14-3-206	Yes	Varies by County	No

Table 2

State	Yr(s) Data is Available	If data is available, total number of Hotline reports in most recent year or number of children reported by Public and Mandated reporters	Total number of Substantiated calls or children	Substantiated Children By Race	Notes
Alabama	n/a	n/a	n/a	n/a	State website provides detailed data about reporting of elder abuse, but nothing about reporting child abuse.
Alaska	2005-2012	2012: 16,362 total reports	n/a	n/a	
Arizona	n/a	n/a	n/a	n/a	
Arkansas	n/a	n/a	n/a	n/a	
California	n/a	n/a	n/a	n/a	
Colorado	n/a	n/a	n/a	n/a	Colorado legislature has proposed a massive overhaul to the state's abuse reporting system. See http://www.denverpost.com/news/ci_22991294/child-abuse-hotline-training-

					program-advance-colorado-legislature?_requestid=3350629
Connecticut	n/a	n/a	n/a	n/a	
Delaware	1985-2011	2011: 14,010 total reports	1,651 substantiated reports	n/a	Everyone is a mandated reporter
D.C.	n/a	n/a	n/a	n/a	Code says mandated reporters must give their names.
Florida	July 2011-June 2012	2011: 26,355 total reports	n/a	n/a	Everyone is a mandated reporter.
Georgia	n/a	n/a	n/a	n/a	
Hawaii	1998-2010	n/a	4,199 children substantiated	n/a	

Idaho	1999-2001	2001: 7,076 total reports	2,487 substantiated reports	n/a	
Illinois	2008 & 2001	2011: 101,508 total reports	n/a	n/a	The state hotline website claims that the hotline receives just under an average of 1,000 calls every twenty-four hours. However, if the state received only 101,508 calls for 2011, that averages approximately 278 calls per day.
Indiana	2003	2003: 61,492 children reported	Approximately 21,522 children substantiated	n/a	
Iowa	2003-2011	n/a	7119 substantiated reports	n/a	
Kansas	2010-2012	n/a	1807 substantiated reports	n/a	
Kentucky	2007-2011	n/a	15,510 substantiated reports	n/a	
Louisiana	n/a	n/a	n/a	n/a	
Maine	n/a	n/a	n/a	n/a	“Home-maker” is a mandated reporter.
Maryland	n/a	n/a	n/a	n/a	
Massachusetts	2009	2009: 77,420 total reports	21,716 substantiated reports	Physically abused: 44% white, 22% black, 29% Hispanic. Sexually	

				abused: 48% white, 11% black, 26% Hispanic. Neglected: 52% white, 15% black, 23% Hispanic	
Michigan	n/a	n/a	n/a	n/a	
Minnesota	2000-2011	2011: 17,716 total reports	3,061 substantiated reports	n/a	Code says mandated reporters must give their names.
Mississippi	2009-2010	n/a	8,158 children substantiated	n/a	Everyone is a mandated reporter.
Missouri	2001-2010	2010: 56,897 total reports	4,291 substantiated reports	79.2% white; 17.8% black; 3% Asian, NA, or unknown	Code says mandatory reporters must give their names. Of the 27,557 families who were given an assignment in 2010, 69% did not need any services or referrals from CPS.
Montana	n/a	n/a	n/a	n/a	
Nebraska	2003-2010	2010: 28,664 total reports	3,396 reports substantiated	59.78% white; 16.41% black; 4.04% were NA or AK native, 0.74% were Asian	Everyone is a mandated reporter.
Nevada	n/a	n/a	n/a	n/a	
New Hampshire	n/a	Website says the agency receives "over 15,000"	n/a	n/a	Everyone is a mandated reporter.

		reports every year			
New Jersey	2005-2011	2011: 91,680 children reported	9,414 children substantiated	n/a	Everyone is a mandated reporter.
New Mexico	2006-2010	2010: 31,592 total reports	6,534 substantiated reports	n/a	Everyone is a mandated reporter.
New York	n/a	n/a	n/a	n/a	
North Carolina	n/a	n/a	n/a	n/a	Everyone is a mandated reporter.
North Dakota	n/a	n/a	n/a	n/a	
Ohio	n/a	n/a	n/a	n/a	
Oklahoma	2005-2011	2012: 115,963 children reported	9,842 children substantiated	n/a	Everyone is a mandated reporter.
Oregon	1998-2011	2011: 74,342 total reports	7,492 substantiated reports	60.2% white; 5.1% black; 16.9% Hispanic; 2.2% were NA; 0.8% Asian; 0.3% Pac. Is.; 14.5% unknown	
Pennsylvania	2008-2011	2011: 24,378 total reports	3,408 substantiated reports	n/a	Code says mandatory reporters must give their names.
Rhode Island	n/a	n/a	n/a	n/a	Everyone is a mandated reporter
South Carolina	2007-2011	2011: 28,092 total reports	6,686 children substantiated	n/a	
South Dakota	n/a	n/a	n/a	n/a	
Tennessee	n/a	n/a	n/a	n/a	
Texas	2011	2011: 297,971 children reported	98,435 children substantiated	n/a	Everyone is a mandated reporter.

Utah	2012	2012: 36,562 children reported	11,543 children substantiated	n/a	Everyone is a mandated reporter. Exception for clergy; not for attorneys.
Vermont	2006-2011	2011: 15,526 total reports	n/a	n/a	
Virginia	2000-2011	2011: 49,619 total reports	6,116 children substantiated	66.02% white; 32.97% black; 1.2% Asian	Second only to law enforcement, “unknown” callers accounted for a substantial percentage of total reports to CPS.
Washington	n/a	n/a	n/a	n/a	
West Virginia	n/a	n/a	n/a	n/a	Everyone is a mandated reporter.
Wisconsin	1999-2010	2010: 39,706 total reports	5,327 children substantiated	n/a	
Wyoming	n/a	n/a	n/a	n/a	Everyone is a mandated reporter.

APPENDIX B – CASE SUMMARIES

Phillips v. County of Orange, 894 F. Supp. 2d 345 (S.D.N.Y. 2012)

Theresa Faletta (a former friend of the Phillips family) worked part-time as an office manager for the Hopewell Presbyterian Church. The church ran a preschool, and as a result, had a phone number listed in its office for mandatory reporters of child abuse. Faletta reported to Robin Hogle (a co-worker at the church) that she thought the Phillips (a mother and father) were abusing their child, T.C.P., because they had “provocative” photos of the child on their refrigerator. The photos were of the child in a mermaid costume. Hogle, who had never seen any of the photos, then reported the Phillips to CPS for suspected child abuse, saying they had “nude” photos of their daughter on their refrigerator. Hogle also alleged that Mr. Phillips shared a bed with T.C.P and that she visited the school nurse frequently. Based solely on this report, a police officer and a CPS worker removed T.C.P. from her classroom at school and interviewed her without her parents’ consent. At no time was T.C.P told she was free to leave the interview or that she did not have to answer the officer’s questions. T.C.P was in kindergarten. T.C.P. did not report any abusive behavior, and after interviewing her, the police and CPS worker followed up with the school’s nurse, who confirmed that T.C.P. had not been to see her frequently. The CPS worker and police officer also spoke with T.C.P’s teacher, who reported she had no reason to think T.C.P. was abused. After gathering all of this information, the CPS worker and police officer went to the Phillips’ home to interview them, to inspect the home (including an inspection of all bedrooms in the home) and to observe the couple’s other child, a two year old named R.S.C.P. The Phillips stated that they were afraid to deny entry into their home to the officer (who never identified himself as a police officer and was dressed in plainclothes) and the CPS worker for fear that their older child would be interviewed again at school or that their non-cooperation would result in the children’s removal from their home. Even after interviewing T.C.P., speaking with the parents and school employees, and viewing the allegedly provocative “nude” photo of the child in a mermaid costume (at which point almost all of the original reporter’s story had been contradicted), the police and CPS worker still insisted on searching the home and interviewing and observing the Phillips’ other child. Ultimately, the case was closed.

Loudermilk v. Arpaio, No. CV 06-0636-PHX-EHC, 2007 WL 2892951, at *1 (D. Ariz. Sept. 28, 2007)

In January of 2005, CPS received an anonymous tip that John and Tiffany Loudermilk’s children were neglected. The tipster told CPS that the Loudermilk home was not painted on the outside, did not have doors or flooring, and that it was inhabited with rodents. On January 29, 2005, a CPS agent visited the house and left her card, requesting an appointment to discuss the allegations. The Loudermilks refused to meet with the agent because they were uninformed of the allegations. On February 7, 2005, the Loudermilks were informed of the allegations about their house. They had moved into the unfinished house one year earlier, and had a certificate of habitability from the county that they offered to provide to CPS. On March 9, 2005 two CPS agents, with two armed and uniformed sheriff’s deputies, went to the Loudermilk home. One of the CPS

agents indicated that they had a court order allowing them to remove the children from the home. Mrs. Loudermilk requested to see the order and the CPS agent refused, saying he could show it to her in five minutes. The Loudermilks called an attorney, and allowed him to speak to the CPS agents during this encounter. The attorney advised the Loudermilks that they did not have to let CPS into their home, despite the CPS agents' claims to the contrary. At one point, the CPS agents were in contact with the Arizona Attorney General's office, which told the Loudermilks' attorney that the Fourth Amendment did not apply to CPS workers investigating allegations of child abuse and neglect, and that if the Loudermilks did not allow a search, the children would be removed. This standoff lasted for forty minutes, when the Loudermilks gave in and consented to a search because of the coercion from the deputies and the CPS agents. The search lasted less than five minutes, and CPS found no indication of abuse or neglect. They closed the case against the Loudermilks.

O'Donnell v. Brown, 335 F. Supp. 2d 787 (W.D. Mich. 2004)

On a Friday, the O'Donnells (a mother and father) left their children home alone with plans to return on Sunday night. John and Ruth (ages seventeen and sixteen, respectively) were left in charge of the two younger children. John was old enough to drive, and was trained in CPR, first aid, and life saving. On Saturday, John and Ruth left a twelve-year-old sibling with the younger children for approximately two hours. An aunt called 911 to make an anonymous child neglect report. Police officers responded and spoke to the twelve-year-old. The older child John then called the police to explain. The police came to the home. John refused to let the police into the house because they did not have a warrant. He was threatened with arrest if he did not cooperate. Meanwhile, a neighbor came over and told the police officer that an aunt had been there earlier in the day, gave him her name and phone number, and offered to sleep on the O'Donnells' couch overnight until the parents returned. A second anonymous complaint was made via 911 operators. This caller told police that the children had been left at home alone in the past. CPS and the police responded again to the home, arrested John when he would not cooperate, and entered the house without the consent of the other older child, Ruth. CPS took the children from the home and placed them with relatives. This was authorized by a verbal "OK" from a court Referee via telephone. John's pastor bailed him out of jail at three in the morning on Saturday. The neglect report was eventually found to be unsubstantiated, and the case was closed. The children were removed on Saturday and not returned home until late Monday evening after a hearing that the parents attended.

The Leonard Family

The Leonards, a family of eight (six children, a mother, and a father), moved into a storage shed in 2008 after the father, an unemployed welder, was hired as a maintenance worker. The family had lost their apartment and believed the homeless shelter was not safe enough. A passerby spotted the children outside in June 2011 and reported them to CPS. A caseworker investigated, and the state took immediate custody of the kids, finding that the home was a dangerous living environment. The shed, which lacked running water, was about twelve feet wide and twenty-five feet long. It had an air

conditioner, a refrigerator, and two personal computers. The removal, without a court order, occurred June 17, 2011. A court hearing adjudicating the matter was not set until mid-August. From June 17 until the hearing date in August, the parents were only allowed to visit the children for an average of less than an hour a day. After receiving media attention, a news viewer donated a four-bedroom home to the family and the children were eventually returned.

APPENDIX C – STATE WEBSITE SOURCES

Alabama

http://dhr.alabama.gov/services/Child_Protective_Services/Abuse_Neglect_Reporting.aspx

Alaska

<http://dhss.alaska.gov/ocs/Pages/publications/reportingchildabuse.aspx>

Arizona

<https://www.azdes.gov/dcyf/cps/reporting.asp>

California

<http://www.dss.cahwnet.gov/cdssweb/pg20.htm>

Colorado

<http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251590165629>

Connecticut

<http://www.ct.gov/dcf/site/default.asp>

Delaware

<http://kids.delaware.gov/services/crisis.shtml>

District of Columbia

<http://dc.gov/DC/CFSA/Support+the+Safety+Net/Report+Child+Abuse+and+Neglect>

Florida

<http://www.myflfamilies.com/service-programs/abuse-hotline>

Georgia

<http://dfcs.dhs.georgia.gov/child-abuse-neglect>

Hawaii

<http://humanservices.hawaii.gov/>

Idaho

<http://www.healthandwelfare.idaho.gov/?TabId=74>

Illinois

<http://www.state.il.us/dcf/index.shtml>

Indiana

<http://www.in.gov/dcs/2971.htm>

Iowa

http://www.dhs.state.ia.us/Consumers/Safety_and_Protection/Abuse_Reporting/ChildAbuse.html

Kansas

<http://www.dcf.ks.gov/services/PPS/Pages/ReportChildAbuseandNeglect.aspx>

Kentucky

<http://chfs.ky.gov/dcbs/dpp/childsafety.htm>

Louisiana

<http://www.dcf.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=109>

Maine

<http://www.maine.gov/dhhs/ocfs/abuse.htm>

Maryland

http://www.dhr.state.md.us/blog/?page_id=3973

Massachusetts

<http://www.mass.gov/eohhs/consumer/report-child-abuse.html>

Michigan

<http://www.michigan.gov/dhs/0,4562,7-124-7119---,00.html>

Minnesota

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_000152

Mississippi

http://www.mdhs.state.ms.us/fcs_prot.html

Missouri

<http://www.dss.mo.gov/cd/rptcan.htm>

Montana

<http://www.dphhs.mt.gov/cfsd/>

Nebraska

http://dhhs.ne.gov/children_family_services/Pages/cha_chainindex.aspx

Nevada

http://www.dcf.state.nv.us/dcf_reportsuspectedchildabuse.htm

New Hampshire

<http://www.dhhs.state.nh.us/dcyf/cps/index.htm>

New Jersey

<http://www.nj.gov/dcf/reporting/hotline/>

New Mexico

<http://www.cyfd.org/content/reporting-abuse-or-neglect>

New York

http://www.nyc.gov/html/acs/html/child_safety/prevent_abuse.shtml

North Carolina

<http://www.ncdhhs.gov/dss/cps/about.htm>

North Dakota

<http://www.nd.gov/dhs/services/childfamily/cps/>

Ohio

<http://jfs.ohio.gov/ocf/reportchildabuseandneglect.stm>

Oklahoma

<http://www.okdhs.org/programsandservices/cps/>

Oregon

http://www.oregon.gov/dhs/children/pages/abuse/cps/cw_branches.aspx

Pennsylvania

<http://www.dpw.state.pa.us/forchildren/childwelfareservices/calltoreportchildabuse/>

Rhode Island

http://www.dcyf.ri.gov/child_welfare/reporting.php

South Carolina

<https://dss.sc.gov/content/customers/protection/cps/index.aspx>

South Dakota

<http://dss.sd.gov/cps/protective/reporting.asp>

Tennessee

<http://www.tn.gov/youth/childsafety.htm>

Texas

http://www.dfps.state.tx.us/Contact_Us/report_abuse.asp

Utah

<http://www.hsdcfs.utah.gov/>

Vermont

http://dcf.vermont.gov/fsd/reporting_child_abuse

Virginia

<http://www.dss.virginia.gov/family/cps/index2.cgi>

Washington

<http://www.dshs.wa.gov/endharm.shtml>

West Virginia

http://www.wvdhhr.org/bcf/children_adult/cps/report.asp

Wisconsin

<http://dcf.wisconsin.gov/children/cps/cpswimap.HTM>

Wyoming

<http://dfsweb.wyo.gov/social-services/child-protective-services>