



of information about child well-being, a far greater volume than in many other professions also charged with reporting.

### **Statutory Language**

The current statute that establishes the requirements for reporting suspected child abuse and neglect in Vermont is contained in Title 33. More specifically, **33V.S.A. §4913** is currently written as:

*...Any [list of professionals] who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours...*

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The current statute contains substantial ambiguity rooted in the use of the undefined term *reasonable cause to believe*. What is *reasonable* to one professional may not be so for another. This undefined language leads to a lack of clarity and lack of confidence amongst many mandated reporters working in various fields. Additionally, the statute clearly intends for some amount of discretionary judgment on the part of the reporter to evaluate facts and circumstances prior to making a report. The ambiguity of this statute has been recognized by numerous professionals, attorneys, prosecutors, and courts in Vermont. Media reports of court cases here in Vermont provide strong evidence in support of the notion that ambiguity exists in the statute as currently written. Two examples below quote Vermont prosecutors regarding this matter:

Case of *State of Vermont vs. Roger Gagne*, Richford Elementary School Principal, 2010

*“After four hours of deliberations, and several questions, the judge declared a mistrial. He said the jury seemed unclear about the law and felt they would not be able to decide if Roger Gagne, the principal at Richford Elementary, violated Vermont's mandatory reporting law. It's not a statute that has been looked at by the Supreme Court, it's not a statute that has a great deal of definition from the legislature,” said Franklin County Deputy Prosecutor Diane Wheeler.*

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Case of *State of Vermont vs. Martha Tucker*, Caledonia Central Supervisory Union Superintendent, 2014

*“Byford, who inherited the case when former Caledonia County Deputy State’s Attorney Ben Luna left the prosecutor’s office to take another job, said the statute was not clear on exactly what “reasonable cause” was.*

*Because the legislature hasn't defined it, we're all grappling with it," said Byford.*

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While it is difficult to provide a concrete or absolute definition of the legal standard of *reasonable cause to believe*, several other states and entities have provided further language and clarification to assist reporters in fully understanding their duty.

For example, in **12 U.S.C. §4003(c)(1)(1998)** the United States Congress specifies that *reasonable cause*:

*"requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. It is clear that the quantum of evidence needed to show reasonable cause is more than mere suspicion."*

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Several other states have adopted the same *reasonable cause to believe* standard in their reporting statutes and have also included additional clarifying language. **110 Massachusetts Code Regs. § 4.32 (2009)** defines *reasonable cause to believe* as:

*"a collection of facts, knowledge, or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected."*

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Additionally, the Nevada legislature, through **Nev. Rev. Stat. § 200.5093(1) (2011)**, defines *reasonable cause to believe* as:

*"in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances that an act...has occurred."*

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The Vermont Department for Children and Families, Family Services Division, Policy #56 outlines the process and requirements for substantiating or unsubstantiating a report of possible child abuse and/or neglect. The policy reads as follows:

*“In order to substantiate an allegation of child abuse or neglect, the division must determine that a reasonable person would conclude that...the child is an abused or neglected child as defined in 33 V. S. A. 4912(2).”*

*“The decision to substantiate a report of child maltreatment shall be based on accurate and reliable information. The decision shall be based on pertinent information gathered during an investigation. Hearsay information from a reliable source may be considered. All information shall be weighed with other supporting or conflicting data”*

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I strongly urge the Committee on Child Protection to recommend more extensive and clear statutory language, such as the above examples, to the Vermont legislature for consideration. This additional clarity would be very helpful for Vermont’s thousands of mandated reporters and various state agencies. This situation is well summarized in the 2011 publication “Finding a Common Language” by Levi & Portwood<sup>(1)</sup>.

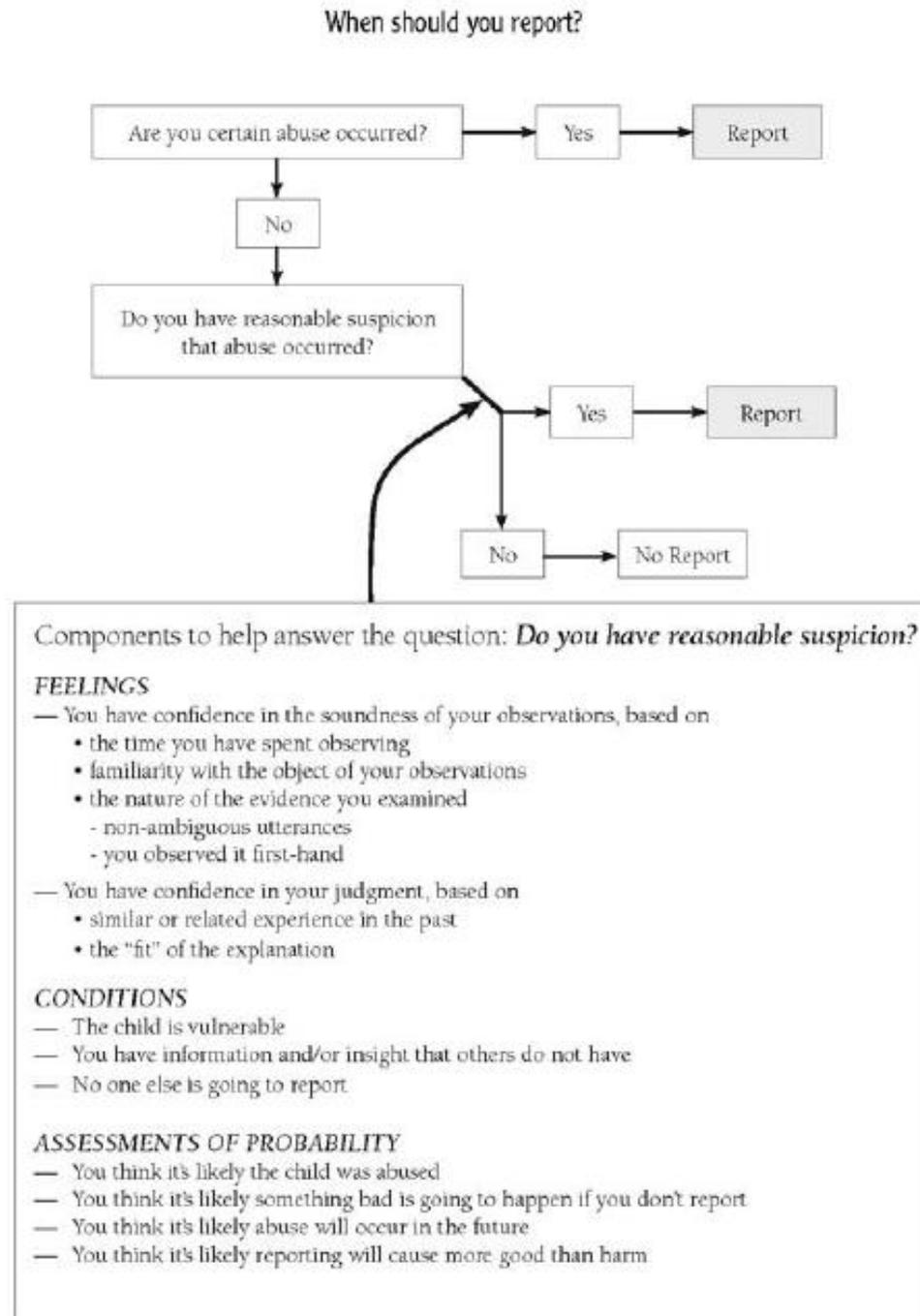
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Levi and Portwood also included a proposed framework for guiding mandated reporting decisions:

Figure 1

### Proposed Framework for Whether to Report Possible Abuse

(Note that at present there is no legal threshold that defines *reasonable suspicion* in terms of numerical probability.)



### **Field Training of Mandated Reporters**

The current extent of regular, formal, and systematic training programs for mandated reporters provided by the Department for Children and Families consists of a 2-page pamphlet that can be viewed on the state website. The result of lacking a regular, formal, and systematic training program is that knowledge of mandated reporting requirements varies drastically geographically and across various professional fields in Vermont. If the state intends for mandated reporting to be a critical component of child protection, it seems as though a regular, formal and systematic training program should be implemented and monitored. The following is an excerpt from the pamphlet provided for mandated reporters:

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#### **What if I'm not sure it's abuse?**

Please call us for advice, if you:

- Are not sure a report is warranted; or
  - Are considering telling the parents about your report. In some cases, this could endanger the child and hinder the response.
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In testimony to this committee on 7/29/14, Attorney General Sorrell shared anecdotes from similar cases in which the Department for Children and Families seemingly responded differently. My personal experiences have indicated a similar response when following the above direction to call for advice. I have, on multiple occasions, conferred with Department for Children and Families staff on nearly identical situations and received differing advice regarding reporting. In a most extreme example, I conferred with a Department for Children and Families supervisor about specific circumstances, was advised that I did not need to report, and was later charged criminally for failing to report the exact same allegation. This type of experience does incredible damage to trust and confidence that other professionals have in the Department for Children and Families. Additionally, I have had multiple personal experiences in which reports were either accepted or not accepted in a manner that is seemingly inconsistent with DCF Policy #51, which governs screening reports of child mistreatment.

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This inconsistency in response leads to additional confusion and frustration amongst mandated reports about their duties and their perception of action or inaction from the Department for Children and Families.

### **Criminal Penalty**

Under current Vermont Statute **33V.S.A. §4913(f)(1)**, mandated reporters who fail to meet their obligation to report are subject to a criminal penalty (\$500.00 fine). In my opinion, the penalty attached to **33V.S.A. §4913** is fundamentally misguided given that there is ambiguity in the statute, no universal formalized training program provided to mandated reports, and the process is currently designed to include some degree of discretionary judgement on the part of the reporter. These circumstances have created, and perpetuated, a culture in which many professionals file reports that are motivated by fear of consequence and not by genuine concern for the welfare of children. In testimony to this committee on 7/29/14 Commissioner Yacovone expressed the significant current lack of capacity in the Department for Children and Families, particularly in the Centralized Intake Unit. That unit is currently receiving hundreds, if not thousands, of unnecessary reports annually because of the above referenced fear of prosecution. Not only does this type of reporting not help protect children in any discernible way, a strong argument can be made that it may actually harm children by placing unnecessary burden on already over-taxed units within the Department for Children and Families.

This situation can be clearly demonstrated by the following transcript from a report that was called in to the Centralized Intake Unit in July of 2013:

***“Reporter does not think that this needs to be a report or that any abuse or neglect has occurred. Reporter states that reporter is only making this report because reporter is afraid due to recent media reports of school officials being arrested for not reporting.”***

I am confident that there are many other reports of a similar nature, particularly in the last 13 months. This is demonstrative of a reporting system this is clearly not functioning as intended, at times is not serving to protect children in any meaningful way, and further still is utilizing valuable and limited resources in unproductive ways. In my opinion, it is a direct result of the criminal penalty currently stipulated in **33V.S.A. §4913(f)(1)** and the manner in which this statute has been administered by law enforcement. Lastly, case history would indicate that this criminal charge has been brought very rarely in Vermont, and has been brought in cases with no documented abuse or neglect. I strongly urge the Committee on Child Protection to evaluate the necessity and effectiveness of the criminal penalty stipulated in **33V.S.A. §4913(f)(1)**, and to examine other methods for ensuring compliance and emphasizing the importance of mandated reporting.

### **Conclusion**

Reports and investigations into potential child abuse and neglect are of greatest importance. However, recent events have uncovered several systemic flaws with current practices. It is critical that we address these flaws in order to keep kids safe to the best of our ability and ensure consistent response. I raise these issues in hopes that it will lead to more clarity for mandated reporters, better use of our precious limited resources, and improved coordination between agencies of education, child protection, and law enforcement. It is time to give mandated

reporters better tools to do this important work with clarity, confidence, and recognition of good faith.

Respectfully submitted,

*Noah J. Hayes*

## **Summary of Recommendations**

1. The Committee on Child Protection considers recommending revisions to 33V.S.A. §4913 which include more extensive and clear statutory language. Additionally, that the Committee on Child Protection consider recommending the development of a framework or other means to assist mandated reporters.
2. The Committee on Child Protection considers recommending that the Commissioner implement a regular, formal, and systemic training program for mandated reporters in all fields.
3. The Committee on Child Protection considers recommending a comprehensive review of policy #51 and recommend a rigorous system for ongoing monitoring of policy compliance within the Department for Children and Families.
4. The Committee on Child Protection considers recommending that the Commissioner design and implement revised systems for following up with reporters that are more acceptable to reporters in the field and that develop trust and confidence in the Department for Children and Families and reinforce understanding of mandated reporting duties.
5. The Committee on Child Protection considers evaluating the necessity and effectiveness of the criminal penalty stipulated in 33V.S.A. §4913(f)(1), and potentially examine other methods for ensuring compliance and emphasizing the importance of mandated reporting that do not result in fear, confusion, and the inadvertent squandering of resources.

- (1) Levi, Benjamin H., and Sharon G. Portwood. "Reasonable Suspicion of Child Abuse: Finding a Common Language." *The Journal of Law, Medicine & Ethics* 39.1 (2011): 62-69. Web.