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The Harmful Effects of Expansive Immunity Protections for Child Abuse Reporters and the Lack of Justice for Those Who Are Falsely Accused

Kristina Joslin

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THE HARMFUL EFFECTS OF EXPANSIVE IMMUNITY PROTECTIONS
FOR CHILD ABUSE REPORTERS AND THE LACK OF JUSTICE FOR
THOSE WHO ARE FALSELY ACCUSED

*Kristina Joslin**

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I. INTRODUCTION

When a person is falsely accused of child abuse, there are negligible, if any, legal causes of action that can be brought against the child abuse reporter because of the expansive immunity protections that are afforded to child abuse reporters across the United States.¹ This is especially concerning since a report of child abuse is made every ten seconds in the United States² and studies have demonstrated that many of these reports are unsubstantiated.³ A 1996 study, performed by the National Committee to Prevent Child Abuse, compiled data from thirty-seven states, and concluded that, on average, only thirty-one percent of child abuse claims are substantiated.⁴ Moreover, a 2005 study, performed by child protection authorities in Canada, investigated 7,672 claims of child abuse and found that four percent of the unsubstantiated child abuse claims were the product of, “intentionally fabricated false allegations.”⁵ Accordingly, this data suggests that a multitude of innocent people have been falsely accused of child abuse. This issue is further complicated by the expansive immunity protections which are provided to child abuse reporters.⁶

Immunity protections for child abuse reporters are extremely strong across the United States.⁷ These protections are designed to

¹ See *infra* Part III (discussing The Child Abuse Prevention and Treatment Act); See also *infra* Parts IV.C, V.C (discussing Minnesota’s General Immunity Provisions for Child Abuse Reporters & California’s General Immunity Provisions for Child Abuse Reporters).

² *Child Abuse Statistics*, CHILDHHELP, <https://www.childhelp.org/child-abuse-statistics/> (last visited Aug. 17, 2022).

³ Steven J. Singley, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. Juv. L. 236, 239 (1998) (citing to *Current Trends in Child Abuse Reporting and Reporting and Fatalities: NCPA’s 1996 Annual Fifty State Survey 3*, NAT’L COMM. TO PREVENT CHILD ABUSE (1997)).

⁴ *Id.* at 239.

⁵ Mireille Cyr & Guy Bruneau, *False Allegations of Child Abuse*, INST. NAT’L DE SANTE PUBLIQUE DU QUEBEC (2005), <https://www.in-spq.qc.ca/en/sexual-assault/fact-sheets/false-allegations-child-sexual-abuse> (citing Nico Trocmé & Nicholas Bala, *False Allegations Abuse and Neglect When Parents Separate*, PUB MED (2005), <https://pub-med.ncbi.nlm.nih.gov/16293307/>).

⁶ See *infra* Part III (discussing The Child Abuse Prevention and Treatment Act); See also *infra* Part IV.C, V.C (discussing Minnesota’s General Immunity Provisions for Child Abuse Reporters & California’s General Immunity Provisions for Child Abuse Reporters).

⁷ *Id.*

encourage reports of child abuse and function to shield a reporter from any civil or criminal liability that might be a consequence of making a child abuse report.⁸ Most states offer child abuse reporters either qualified immunity (such as good faith immunity)⁹ or absolute immunity.¹⁰ These immunities often provide undeserved protections to reporters who make unsubstantiated¹¹ or intentionally fabricated reports.¹²

In order to shed light on the issues that expansive immunity protections have created, this article starts by discussing the real story of two innocent parents who were falsely accused of child abuse, the effects of those false accusations, and the legal hurdles the parents had to face. This article then compares legislation from Minnesota—which offers good faith immunity to child abuse reporters—against legislation from California—which offers a combination of absolute immunity and other immunities to child abuse reporters—to demonstrate how some states approach immunity provisions and how these provisions often result in a lack of justice¹³ for those who are falsely accused of child abuse. Finally, this article concludes by proposing potential legislative solutions which can help to protect the rights of those falsely accused of child abuse.

II. THE TRUE STORY OF TWO PARENTS WHO WERE FALSELY ACCUSED OF CHILD ABUSE

A. *Two Parents Fight for Their Right to Keep Their Children*

In 2020, a false accusation of child abuse (reported in a good faith immunity reporting state) turned a mother and father’s world upside

⁸ *Id.*

⁹ *Immunity*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “immunity” as “any exemption from a duty, liability, or service of process.”).

¹⁰ *Absolute Immunity*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “absolute immunity” as a “complete exemption from civil liability ... afforded to officials while performing particularly important functions, such as a representative enacting legislation and a judge presiding over a lawsuit.”).

¹¹ *See generally* Singley, *supra* note 3.

¹² *See generally* Cyr & Bruneau, *supra* note 5.

¹³ *See Justice*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/justice> (last visited Mar. 26, 2023) (defining “justice” as “the ethical, philosophical idea that people are to be treated impartially, fairly, properly, and reasonably by the law.”).

down.¹⁴ It all started when their three-year-old child fell off a bike and suffered a non-displaced¹⁵ fracture of the forearm.¹⁶ The mother took the child to urgent care, without any concern being expressed by the treating physician.¹⁷ The child was then referred to orthopedics to receive a cast.¹⁸ During the orthopedic appointment, the physician exhibited what the mother perceived as inappropriate and intimidating behavior.¹⁹

At the end of the week, the mother received a survey²⁰ from the hospital asking about her experience.²¹ She answered honestly and provided a negative review of the physician's conduct.²² Then, sixteen days after the child was treated, police and child services arrived at the family's home.²³ The family learned that the physician called in a report of child abuse the night before, implicating the family.²⁴

There were issues with the orthopedist's report. First, the orthopedist was not compliant with the statutory requirements for reporting suspected child abuse because, rather than immediately reporting his suspicions per statutory requirements, he waited fifteen days to file a

¹⁴ Interview with Anonymous Mother and Anonymous Father, in Beavercreek, Ohio (Aug. 17, 2022).

¹⁵ See *Non-Displaced Fracture*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/diseases/15241-bone-fractures> (last visited Nov. 17, 2022) (meaning the bone is broken, but the bone is not out of alignment).

¹⁶ Interview, *supra* note 14.

¹⁷ Interview, *supra* note 14 (discussing that the child's urgent care progress note reads, in part, "No swelling of forearm is noted in exam. No deformity of forearm is noted on exam. Range of motion in wrists are normal.").

¹⁸ *Id.*

¹⁹ See Interview, *supra* note 14 (discussing that the provider entered the room with a scowl, stomped around the room, stood directly over the mother, and aggressively and abrasively asked her questions).

²⁰ *Id.*; See generally *Routine Patient Surveys: Patients' Preferences and Information Gained by Healthcare Providers*, NAT'L LIBR. OF MED., <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6675389/> (last visited Aug. 17, 2022) (discussing that routine patient surveys are in widespread use by hospitals to obtain patient feedback).

²¹ Interview, *supra* note 14.

²² *Id.*

²³ *Id.*

²⁴ Interview, *supra* note 14 (discussing that the parents were informed of this detail by the police officer who arrived at their home).

report.²⁵ Second, nothing in the child's personal or medical history suggested evidence of abuse.²⁶ The fracture type and fracture location were not synonymous with child abuse,²⁷ this was the child's first fracture, and the child's sibling had never had a fracture.²⁸ Additionally, the child was healthy, in preschool, in sports, and thriving prior to the fracture.²⁹

Both parents' lives were turned upside down as the State's child protective services investigated the report of abuse.³⁰ Their family, friends, and children's schools were contacted by child services as part of the State's investigation to determine if the child was abused.³¹ Their professional careers were implicated.³² The mother had to report the investigation to a State licensing bureau as a part of the background check associated with her professional license.³³ Additionally, the father, who was an active-duty military officer at the time, had to report the investigation up his chain of command and discuss the incident with the Judge Advocate General.³⁴

After the child had been medically cleared by pediatrics and a separate orthopedic physician, the State then ordered a head-to-toe x-ray bone survey of the child which resulted in the child being subject to approximately thirty bursts of radiation.³⁵ The result of the State-ordered

²⁵ See 23 PA. STAT. AND CONS. STAT. ANN. § 6313(a)(1) (West 2014) (discussing that the state in which this incident occurred requires that a mandated reporter shall immediately make an oral report of suspected child abuse); Interview, *supra* note 14.

²⁶ Interview, *supra* note 14.

²⁷ *Id.*; See *Fractures*, STANFORD MEDICINE, <https://childabuse.stanford.edu/screening/fractures.html> (last visited Apr. 15, 2023) (describing which types of fractures are associated with child abuse).

²⁸ Interview, *supra* note 14.

²⁹ *Id.*

³⁰ *Id.*

³¹ Interview, *supra* note 14 (discussing that when child services visited the home, the child services representative collected a large amount of information regarding the personal lives of the children—including where the children went to school, where the children attended activities, and who the children's medical providers were); See 23 PA. STAT. AND CONS. STAT. ANN. § 6334.1(1) (West 2014).

³² Interview, *supra* note 14.

³³ *Id.*

³⁴ *Id.*

³⁵ Interview, *supra* note 14 (discussing that the order was placed by a physician, who was contracted with child services, who had never met the child, never spoke to the child, and never communicated with the child's family prior to placing the order. This imaging was ordered after the child's initial x-rays and

bone survey showed a healing fracture in the child's forearm, otherwise, the scan was unremarkable.³⁶

After a nearly two month investigation, the State eventually closed its case against the family and deemed the case unfounded.³⁷ The parents reported the events to a couple local news outlets, but no news outlet showed any interest in the story.³⁸ The parents also reported the events to the State Department of Health, the State Medical Board, the local police department, and child services.³⁹ The parents also filed a lawsuit against the orthopedic physician, the hospital, and the State-affiliated physician who ordered the bone survey,⁴⁰ However, all parties claimed that they were not liable because the report had been filed in good faith, which made the parties immune to liability.⁴¹

B. *The Aftermath of False Accusations*

Like many families who have experienced similar events in their lives,⁴² there is no legal record to cite their story against. This is because,

after the child's second set of x-rays which showed that the child had already healed enough to have the cast removed).

³⁶ Interview, *supra* note 14.; *See generally* *How to Read Your Radiology Report*, RADIOLOGYINFO.ORG, <https://www.radiologyinfo.org/en/info/article-read-radiology-report> (last visited Apr. 15, 2023) (discussing that if a radiologist does not see anything concerning in a radiology image, the result may say "normal" or "unremarkable").

³⁷ Interview, *supra* note 14.; *See also* *Unfounded*, LAW INSIDER, <https://www.lawinsider.com/dictionary/unfounded-report> (last visited Apr. 15, 2023) (meaning a report for which there is not a preponderance of evidence to believe that the child is abused or neglected).

³⁸ Interview, *supra* note 14.

³⁹ *Id.*

⁴⁰ Interview, *supra* note 14 (discussing that after nearly a year of active effort, the parents were able to find an attorney to represent them on a contingency fee basis, but most law firms would not even give the parents the opportunity for a consultation once the firms heard that the parents were accused of child abuse).

⁴¹ *Id.*

⁴² *See generally* *Hundreds of Parents Say Kids Wrongly Taken From Them After Doctors Misdiagnose Abuse*, NBC NEWS, <https://www.nbcnews.com/news/us-news/hundreds-parents-say-kids-wrongly-taken-them-after-doctors-misdiagnosed-n1096091> (last visited Mar. 26, 2023) (emphasizing the story of a family who had their baby taken from them after a doctor misdiagnosed the baby as being abused).

traditionally, when a falsely accused person attempts to bring a claim (such as defamation or malicious prosecution) against a child abuse reporter, the court system often dismisses the claim by summary judgment due to the expansive immunity protections afforded to child abuse reporters by the states.⁴³ Additionally, many innocent families are left to use their own funds to fight to keep their children⁴⁴ and to fight to restore their reputations,⁴⁵ which furthers the injustice which has been inflicted against them. The National Center for Reason and Justice states this reality bluntly when it advises falsely accused people to “find a lawyer,” and to know that “innocence does not protect you.”⁴⁶

III. THE CHILD ABUSE PREVENTION AND TREATMENT ACT

State immunity protections for child abuse reporters are traditionally implemented for the purpose of bringing a state into compliance with the federal Child Abuse Prevention and Treatment Act (CAPTA).⁴⁷ The CAPTA provides financial assistance to states which

⁴³ Telephone interview with S.T., Civil Litigation Attorney (2021) (discussing the hurdles that falsely accused families face when trying to seek civil remedy); See Adam J. Sagot & Kenneth J. Weiss, *Preserving Immunity for Reporters of Medical Child Abuse*, 50 J. OF THE AM. ACAD. OF PSYCHIATRY AND THE L. (4th ed. 2022), <https://jaapl.org/content/50/4/618> (last visited Aug. 17, 2022) (discussing that qualified immunity for child abuse reporters can lead to summary judgment for defendants).

⁴⁴ See generally Zoom interview with D.B., Parent’s Rights Attorney (Feb. 28, 2023) (discussing that his clients pay, on average, \$10,000 - \$30,000 per case to defend themselves against abuse accusations. In some criminal cases involving child services, parents are afforded counsel, but the quality of this representation is debatably marginal compared to the private representation market); *Child Abuse Lawyers and Top Rated Child Abuse Attorneys*, LEGAL-MATCH.COM, <https://www.legalmatch.com/child-abuse-lawyers.html> (last visited Aug. 17, 2022) (discussing that the average cost of child abuse attorneys in the United States ranges from \$1,000 to \$15,000).

⁴⁵ See generally *Why Does It Cost So Much To Defend Child Abuse Allegations?*, BLANCHARD LAW (Mar. 8, 2014), <https://blanchard.law/why-does-it-cost-so-much-to-defend-child-abuse-allegations/> (discussing different factors which make child abuse defenses so expensive).

⁴⁶ *If You Are Falsely Accused*, NAT’L CTR. FOR REASON AND JUST., <https://ncrj.org/if-you-are-falsely-accused/> (last visited Aug. 17, 2022).

⁴⁷ Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat 4 (codified as amended at Victims of Child Abuse Act Reauthorization Act of 2018, Pub. L. No. 115-424, 115 Stat 2961).

implement programs directed at the prevention, identification, and treatment of child abuse and neglect.⁴⁸ Under the CAPTA, “child abuse and neglect” means, “the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen, by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.”⁴⁹ As a result of the CAPTA, every state has enacted statutes which mandate certain professionals (mandated reporters) to report suspected child abuse to the appropriate state authority.⁵⁰

IV. MINNESOTA’S CHILD ABUSE PREVENTION PROVISIONS

When compared to other states, Minnesota has enacted child abuse reporting provisions which arguably attempt to balance the welfare of the potentially affected child against the rights of the accused person. Minnesota does this by requiring that all child abuse reports be filed in *good faith*.⁵¹ “Generally speaking, good faith is a matter of subjective intent.”⁵² A report of child abuse made without an ulterior motive or malice, and made for a proper purpose, would likely be considered a report that was made in good faith.⁵³

⁴⁸ See *Nicholson v. Williams*, 205 F.R.D. 92, 96 (E.D.N.Y. 2001) (defining “child abuse or neglect” under the 42 U.S.C. §§ 5101-5106(a)).

⁴⁹ Child Abuse Prevention and Treatment Act of 1974, *supra* note 47 at § 3.

⁵⁰ Singley, *supra* note 3.

⁵¹ See *infra* Part IV.C (discussing Minnesota’s General Immunity Provisions for Child Abuse Reporters) (based on MINN. STAT. § 260E.34(a) (2020)).

⁵² *J.E.B. v. Danks*, 785 N.W.2d 741, 749 (Minn. 2010).

⁵³ *Id.* at 750 (basing this determination, in part, on MINN. STAT. § 260E.34 (2020), which does not discuss any specific intent state—providing legal confusion because *J.E.B.* is a Minnesota Supreme Court case, which has experienced no negative treatment in Minnesota since the decision was made, which implies that the court’s opinion to use a subjective standard still stands).

A. Minnesota's Reporting of Maltreatment of Minors Act (RMMA)

The Minnesota Reporting of Maltreatment of Minors Act⁵⁴ functions to bring Minnesota into compliance with the CAPTA.⁵⁵ Its intent is “to protect the children whose health or welfare may be jeopardized through maltreatment.”⁵⁶ This objective is achieved by implementing intervention and prevention efforts which are designed to immediately address concerns for child safety and the ongoing risk of maltreatment.⁵⁷ Under the RMMA, “maltreatment” means any of the following acts or omissions: ⁵⁸ (1) egregious harm;⁵⁹ (2) neglect;⁶⁰ (3) physical abuse;⁶¹ (4) sexual abuse;⁶² (5) substantial child endangerment;⁶³ (6) threatened injury;⁶⁴ (7) mental injury;⁶⁵ and (8) maltreatment of a child in a facility.⁶⁶

B. The RMMA's Reporting Requirements

Under the RMMA, a person is a mandated reporter if that person is a “professional or professional's delegate”⁶⁷ or “employed as a member of the clergy”⁶⁸ and “knows or has reason to believe a child is being maltreated

⁵⁴ Reporting of Maltreatment of Minors Act, MINN. STAT. § 260E (2020).

⁵⁵ See Child Abuse Prevention and Treatment Act of 1974, *supra* note 47.

⁵⁶ MINN. STAT. § 260E.01(a) (2020).

⁵⁷ *Id.*

⁵⁸ MINN. STAT. § 260E.03(12) (2021).

⁵⁹ MINN. STAT. § 260E.03(5) (2021).

⁶⁰ MINN. STAT. § 260E.03(15) (2021).

⁶¹ MINN. STAT. § 260E.03(18) (2021).

⁶² MINN. STAT. § 260E.03(20) (2021).

⁶³ MINN. STAT. § 260E.03(22) (2021).

⁶⁴ MINN. STAT. § 260E.03(23) (2021).

⁶⁵ MINN. STAT. § 260E.03(13) (2021).

⁶⁶ MINN. STAT. § 260E.03(12) (2021).

⁶⁷ MINN. STAT. § 260E.06(1)(a)(1) (2020) (defining a “professional” as anyone “engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement.”).

⁶⁸ MINN. STAT. § 260E.06(1)(2) (2020) (applying to those who received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under MINN. STAT. § 595.02(1)(c) (2020)).

... or has been maltreated within the preceding three years.”⁶⁹ Qualified mandated reporters are required to “immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, county sheriff, tribal social services agency, or tribal police department.”⁷⁰ “Immediately” means as soon as possible, but in no event longer than 24 hours.⁷¹ Additionally, a person mandated to report, under Minn. Stat. § 260E.06(1)(a), “who knows or has reason to believe that a child is maltreated ... or has been maltreated within the preceding three years, and fails to report is guilty of a misdemeanor.”⁷² Similarly, a person mandated to report, under Minn. Stat. § 260E.06(b), “who knows or has reason to believe that two or more children not related to the offender have been maltreated ... by the same offender within the preceding ten years, and fails to report is guilty of a gross misdemeanor.”⁷³ Outside of the RMMA’s requirements for mandated reporters, the RMMA includes four additional categories of reporting requirements which each have their own expansive protections. These categories cover the following subgroups: (1) a parent, guardian, or caretaker;⁷⁴ (2) welfare agencies;⁷⁵ (3) spiritual healers;⁷⁶ and (4) licensing boards.⁷⁷

C. Minnesota’s General Immunity Provisions for Child Abuse Reporters

In Minnesota, a mandated reporter who makes a “voluntary or mandated report” of child abuse under the RMMA “is immune from any civil or criminal liability” that might result from the reporter’s actions if the reporter acted “in good faith” while making the report.⁷⁸ Some courts have reviewed the CAPTA and determined that:

The immunity statutes do not require a reporter of suspected child abuse to verify every detail of the suspected

⁶⁹ MINN. STAT. § 260E.06(1)(a) (2020).

⁷⁰ *Id.*

⁷¹ MINN. STAT. § 260E.03 (2021).

⁷² MINN. STAT. § 260E.08(a) (2020).

⁷³ MINN. STAT. § 260E.08(b) (2020).

⁷⁴ MINN. STAT. § 260E.08(c) (2020).

⁷⁵ MINN. STAT. § 260E.06(2) (2020).

⁷⁶ MINN. STAT. § 260E.06(3) (2020).

⁷⁷ MINN. STAT. § 260E.06(4) (2020).

⁷⁸ MINN. STAT. § 260E.34(a)–(a)(1) (2020).

conduct or perfectly recount all that he or she is told in order to be found to have acted in good faith when making the report. The statutes simply require that the reporter make a report in good faith.⁷⁹

Outside of the RMMA's good faith immunity provisions for mandated reporters, the RMMA expands immunity protections to five additional categories of reporters.⁸⁰ These categories cover the following subgroups: (1) voluntary reporters;⁸¹ (2) welfare agencies;⁸² (3) schools;⁸³ (4) supervisors of mandated reporters;⁸⁴ and (5) certain medical personnel who administer toxicology tests to pregnant women.⁸⁵

D. Minnesota's Burden of Proof for Falsely Accused Persons

1. Legislative Changes Now Provide a Civil Cause of Action for Bad Faith Reports

Historically, Minnesota caselaw held that there was, "no express or implied civil cause of action under RMMA for bad faith reporting."⁸⁶ In *Kuelbs*, the court discussed that if it implied a cause of action for reports not made in good faith, the court would not be supporting the RMMA's purpose of protecting children from maltreatment since, "the fear of civil liability discouraged persons from candidly reporting findings, conducting necessary investigations, or reaching findings of maltreatment."⁸⁷ However, the *Kuelbs* decision was based, in part, on law which has subsequently been repealed.⁸⁸

More recently, in 2020, Minn. Stat. § 260E.08(d) was enacted and it states, in part, that there is a civil cause of action against a child abuse

⁷⁹ *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 121 (Md. Ct. Spec. App. 2003).

⁸⁰ MINN. STAT. § 260E.34(a) (2020).

⁸¹ MINN. STAT. § 260E.34(a)(1) (2020).

⁸² MINN. STAT. § 260E.34(a)(2) (2020).

⁸³ MINN. STAT. § 260E.34(a)(3) (2020).

⁸⁴ MINN. STAT. § 260E.34(a)(3)(b) (2020).

⁸⁵ MINN. STAT. § 260E.34(a)(3)(c) (2020).

⁸⁶ *Kuelbs v. Williams*, 609 N.W.2d 10, 15 (Minn. Ct. App. 2000).

⁸⁷ *Id.*

⁸⁸ *Id.* (discussing that the legal support for the holding was based largely on MINN. STAT. § 626.556 (2020), which was replaced by MINN. STAT. § 260E (2020)).

reporter if the reporter “knowingly or recklessly makes a false report.”⁸⁹ However, what constitutes “knowingly” or “recklessly” under the RMMA is not statutorily defined, so the burden of proof is not clear for the accused party.⁹⁰ Additionally, what constitutes an “unfounded” claim under the RMMA is also not statutorily defined. As a result, the elements of what a falsely accused person needs to prove to seek justice are unclear.⁹¹

2. Minnesota Courts May Award Legal Fees to Reporters and the Falsely Accused

If a falsely accused person is able to demonstrate that a false report of child abuse was knowingly or recklessly made, then the reporter, “shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.”⁹² Conversely, if a reporter makes a voluntary or mandatory report of child abuse and prevails in a civil action from which the person has been granted immunity, the court may award the reporter attorney fees and costs.⁹³

V. CALIFORNIA’S CHILD ABUSE PREVENTION PROVISIONS

Unlike Minnesota, California has enacted child abuse reporting provisions which arguably maximize the welfare of the potentially affected child while, consequently, minimizing the rights of the accused person. California does this by offering absolute immunity to mandated reporters, and other immunities to other qualified reporters.⁹⁴ California’s absolute immunity provisions extend to reporters even if those reporters make negligent, knowingly false, or malicious reports of child abuse.⁹⁵

⁸⁹ MINN. STAT. § 260E.08(d) (2020).

⁹⁰ MINN. STAT. § 260E.03 (2021).

⁹¹ *Id.*

⁹² MINN. STAT. § 260E.08(d) (2020).

⁹³ MINN. STAT. § 260E.34(e) (2020).

⁹⁴ See *infra* Part V.C (discussing California’s General Immunity Provisions for Child Abuse Reporters based on CAL. PENAL CODE ANN. § 11172(a) (West 1986)).

⁹⁵ *Arce v. Childrens Hosp. Los Angeles*, 150 Cal. Rptr. 3d 735, 759 (2012).

A. *California's Child Abuse and Neglect Reporting Act (CANRA)*

The California Child Abuse and Neglect Reporting Act functions to bring California into compliance with the CAPTA and its intent is to protect children from abuse and neglect.⁹⁶ In California:

The term “child abuse or neglect”⁹⁷ includes: physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse⁹⁸ ... neglect⁹⁹ ... the willful harming or injuring of a child or the endangering of the person or health of a child,¹⁰⁰ and unlawful corporal punishment or injury.¹⁰¹ ... “Child abuse or neglect” does not include a mutual affray that occurs between minors... [or] injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.¹⁰²

Child abuse reports can be investigated even if the report is made after the victim has reached the age of majority.¹⁰³

B. *The CANRA's Reporting Requirements*

California presently has forty-nine different categories of mandated reporters.¹⁰⁴ Some of the more notable categories include teachers, peace officers, social workers, and various medical professionals.¹⁰⁵ Mandated reporters are required to make a report to an approved agency.¹⁰⁶ Reporting is required “whenever the mandated reporter, acting in [their] professional

⁹⁶ See Child Abuse and Negligent Reporting Act, ch. 2, art. 2.5 (2001) (codified as CAL. PENAL CODE ANN. § 11164(b) (West 2021)).

⁹⁷ CAL. PENAL CODE ANN. § 11165.6 (West 2008).

⁹⁸ CAL. PENAL CODE ANN. § 11165.1 (West 2021).

⁹⁹ CAL. PENAL CODE ANN. § 11165.2 (West 2023).

¹⁰⁰ CAL. PENAL CODE ANN. § 11165.3 (West 2005).

¹⁰¹ CAL. PENAL CODE ANN. § 11165.4 (West 2023).

¹⁰² CAL. PENAL CODE ANN. § 11165.6 (West 2008).

¹⁰³ CAL. PENAL CODE ANN. § 11166(d)(3)(B) (West 2023).

¹⁰⁴ CAL. PENAL CODE ANN. § 11165.7 (West 2021).

¹⁰⁵ *Id.*

¹⁰⁶ CAL. PENAL CODE ANN. § 11165.9 (West 2007).

capacity or within the scope of [their] employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.”¹⁰⁷ Statutory language defining “reasonable suspicion” considers whether it is:

Objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person's training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient.¹⁰⁸

Furthermore, mandated reporters are required to make an initial report of child abuse “by telephone ... immediately, or as soon as is practicably possible,” and mandated reporters are required to send “a written followup report within 36 hours of receiving the information concerning the incident.”¹⁰⁹ Additionally, “any mandated reporter who fails to report an incident of reasonably suspected child abuse is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars or by both imprisonment and a fine.”¹¹⁰

Outside of the CANRA’s requirements for mandated reporters, the CANRA includes four additional categories of reporting requirements which each have their own expansive protections. These categories cover the following subgroups: (1) any other person with knowledge;¹¹¹ (2) probation and welfare departments;¹¹² (3) film producers¹¹³ and computer technicians;¹¹⁴ and (4) law enforcement.¹¹⁵ Similar to reporters under the RMMA, child abuse reporters under the CANRA are also provided with

¹⁰⁷ CAL. PENAL CODE ANN. § 11166(a) (West 2023).

¹⁰⁸ CAL. PENAL CODE ANN. § 11166(a)(1) (West 2023).

¹⁰⁹ CAL. PENAL CODE ANN. § 11166(b) (West 2023).

¹¹⁰ CAL. PENAL CODE ANN. § 11166(c) (West 2023).

¹¹¹ CAL. PENAL CODE ANN. § 11166(g) (West 2023).

¹¹² CAL. PENAL CODE ANN. § 11166(j)(2) (West 2023).

¹¹³ CAL. PENAL CODE ANN. § 11166(e)(1) (West 2023).

¹¹⁴ CAL. PENAL CODE ANN. § 11166(e)(2) (West 2023).

¹¹⁵ CAL. PENAL CODE ANN. § 11166(k) (West 2023).

strong legal protections due to the CANRA's expansive immunity protections for most reporters.¹¹⁶

C. *California's General Immunity Provisions for Child Abuse Reporters*

California grants mandatory reporters *absolute* immunity for reporting instances of suspected child abuse.¹¹⁷ Immunity attaches to the reporter once a report is made¹¹⁸ and “no mandated reporter shall be civilly or criminally liable for any required report.”¹¹⁹ Additionally, immunity attaches regardless of whether the mandated reporter had a reasonable suspicion of abuse¹²⁰ and immunity is further extended to mandated reporters who make negligent, knowingly false, or malicious reports of abuse.¹²¹ California has decided to provide absolute immunity to mandated reporters in order “to encourage the reporting of child abuse to the greatest extent possible to prevent further abuse.”¹²²

Furthermore, absolute immunity for mandated reporters applies even if the mandated reporter acquired the knowledge of child abuse outside of the mandated reporter's professional capacity or outside of the scope of the reporter's employment.¹²³ The California court of appeals noted that a mandated reporter will not lose absolute immunity even if the reporter makes an untimely report and, consequently, is not statutorily compliant.¹²⁴ The court stated further that the denial of immunity based on an untimely report would be inconsistent with legislative purpose in encouraging reports.¹²⁵ Outside of the CANRA's absolute immunity provisions for mandated reporters, the CANRA expands immunity protections to four additional categories of reporters.¹²⁶ These categories cover the following

¹¹⁶ See *infra* Part V.C (discussing California's General Immunity Provisions for Child Abuse Reporters).

¹¹⁷ *Storch v. Silverman*, 231 Cal. Rptr. 27, 29 (1986) (citing CAL. PENAL CODE ANN. § 11172(a) (West 1986)).

¹¹⁸ *Stecks v. Young*, 45 Cal. Rptr. 2d 475, 479 (1995).

¹¹⁹ CAL. PENAL CODE ANN. § 11172(a) (West 2022).

¹²⁰ *Stecks*, 45 Cal. Rptr. 2d at 478.

¹²¹ *Arce*, 150 Cal. Rptr. 3d at 759.

¹²² *Storch*, 231 Cal. Rptr. at 78-79.

¹²³ CAL. PENAL CODE ANN. § 11172(a) (West 2020).

¹²⁴ *Stecks*, 45 Cal. Rptr. 2d at 480.

¹²⁵ *Id.* at 479; Compare with Interview with Anonymous Mother and Anonymous Father, *supra* note 14.

¹²⁶ CAL. PENAL CODE ANN. § 11172 (West 2020).

subgroups: (1) photography;¹²⁷ (2) government investigations;¹²⁸ (3) computer technicians;¹²⁹ and (4) general good faith reporters.¹³⁰

D. California's Burden of Proof for Falsely Accused Persons

1. Justice is Lacking for the Falsely Accused Despite Clear Legislative Definitions

The CANRA assists falsely accused persons by explicitly defining what constitutes an “unfounded report” and what constitutes a “substantiated report.” These explicit definitions help people know what elements they need to specifically defend themselves against in case they are investigated. More specifically, under the CANRA, an “unfounded report” is a report that is, “determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect.”¹³¹ Conversely, a “substantiated report” is a report that is, “determined by the investigator who conducted the investigation to constitute child abuse or neglect ... based upon evidence that makes it more likely than not that child abuse or neglect ... occurred.”¹³²

Although the CANRA offers clear definitions, justice is stifled when a mandated reporter is involved, because the CANRA does not allow for a cause of action against a mandated reporter.¹³³ As discussed in Part V.C.1, “no mandated reporter shall be civilly or criminally liable for any

¹²⁷ CAL. PENAL CODE ANN. § 11172(a) (West 2020).

¹²⁸ CAL. PENAL CODE ANN. § 11172(b) (West 2020).

¹²⁹ CAL. PENAL CODE ANN. § 11172(c) (West 2020).

¹³⁰ CAL. PENAL CODE ANN. § 11172(d) (West 2020).

¹³¹ CAL. PENAL CODE ANN. § 11165.12(a) (West 2012) (referring to “child abuse or neglect” as defined in CAL. PENAL CODE ANN. § 11165.6 (West 2008); See also Susan L. Thomas & Mary E. West, “*Unfounded Report*,” “*Substantiated Report*,” and “*Inconclusive Report*” Defined, 17 Cal. Jur. 3d Criminal Law: Core Aspects § 68.

¹³² CAL. PENAL CODE ANN. § 11165.12(b) (West 2012) (referring to “child abuse or neglect” as defined in CAL. PENAL CODE ANN. § 11165.6 (West 2008); See also Susan L. Thomas & Mary E. West, “*Unfounded Report*,” “*Substantiated Report*,” and “*Inconclusive Report*” Defined, 17 Cal. Jur. 3d Criminal Law: Core Aspects § 68.

¹³³ See *supra* Part V.C.1 (discussing absolute immunity for mandated reporters).

report required or authorized by [the CANRA].”¹³⁴ Alternatively, non-mandated reporters, who report “a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report,” unless an exception applies.¹³⁵ The non-mandated reporter exception requires that a falsely accused person prove, “that a false report was made,” and prove that the reporter, “knew that the report was false or was made with reckless disregard of the truth or falsity of the report.”¹³⁶ This cause of action essentially requires a falsely accused person to take on a duplicate role as an investigator in order to satisfy the required elements, which furthers the lack of justice for the falsely accused. Although needing to prove the elements of a case is typically required for any plaintiff in a civil claim—child abuse cases are often harder than most cases to obtain facts for because state agencies do not have to tell the accused who made the report against them or what the circumstances were which led to the report.¹³⁷

2. The State of California May Reimburse Legal Fees to Child Abuse Reporters

California limits the financial hardships of child abuse reporters,¹³⁸ but California does not limit the financial hardships of the people who have been falsely accused of child abuse—except in limited situations which involve custody.¹³⁹ California’s policy is that reporters should, “not be unfairly burdened by legal fees incurred in defending [reporting] actions.”¹⁴⁰ As a result, the State of California may reimburse qualified reporters for the legal costs incurred in defending a report, if a civil action results from that report. Reporter eligibility varies depending on whether the

¹³⁴ CAL. PENAL CODE ANN. § 11172(a) (West 2020).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *See generally Mandatory Reporters of Child Abuse and Neglect*, THE CHILD WELFARE INFORMATION GATEWAY, <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda/> (last visited May. 8, 2023) (discussing that “all jurisdictions have provisions in statute to maintain the confidentiality of abuse and neglect records.”).

¹³⁸ CAL. PENAL CODE ANN. § 11172(e)(1) (West 2020).

¹³⁹ CAL. FAM. CODE ANN. § 3027.1(a) (West 2021) (stating that, depending on the situation, the court may impose reasonable monetary sanctions against the person making the report).

¹⁴⁰ CAL. PENAL CODE ANN. § 11172(e)(1) (West 2020).

reporter is a mandated reporter,¹⁴¹ a public entity,¹⁴² or a person involved in a custody dispute who invokes a child abuse report.¹⁴³

VI. GENERAL PROBLEMS WITH CAPTA-BASED COMPLIANCE

Many states have the following issues with CAPTA-based compliance: (1) that unsubstantiated reports are taking away resources from children who need help;¹⁴⁴ (2) that overbroad statutory language is leading to unnecessary reports;¹⁴⁵ and (3) that non-discretionary legal penalties for failing to report child abuse can possibly allow innocent people to be unjustly penalized.¹⁴⁶

A. *Unsubstantiated Reports are Taking Away Resources from Children Who Need Help*

The aforementioned 1996 National Committee to Prevent Child Abuse statistic, concluding that only thirty-one percent of child abuse claims are substantiated,¹⁴⁷ is concerning. This statistic is concerning because it signifies that a multitude of innocent parents and caretakers have unjustly had their rights impinged upon because of the associated repercussions that come along with unsubstantiated child abuse investigations. Additionally, an implicit consequence of this statistic is that these unsubstantiated child abuse investigations are limiting resources that could otherwise be used to assist other children.

Protecting children from abuse is an important issue that should not be taken lightly. However, at what point in time does legislation, under the guise of protection of children, no longer protect children? In the real

¹⁴¹ CAL. PENAL CODE ANN. § 11172(e)(1) (West 2020) (discussing that a mandated reporter may present a claim to the Department of General Services for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a required report).

¹⁴² CAL. GOV'T CODE ANN. § 995 (West 2023).

¹⁴³ CAL. FAM. CODE ANN. § 3027.1(a) (West 2021).

¹⁴⁴ See *infra* Part VI.A (discussing that Unsubstantiated Reports are Taking Away Resources from Children Who Need Help).

¹⁴⁵ See *infra* Part VI.B (discussing that Overbroad Statutory Definitions are Leading to Unnecessary Reports).

¹⁴⁶ See *infra* Part VI.C (discussing that Problematic Non-Discretionary Legal Penalties for Failing to Report Child Abuse).

¹⁴⁷ See Singley, *supra* note 3.

story,¹⁴⁸ discussed in Section II of this article, a three-year-old child was unnecessarily subjected to multiple bursts of radiation due to a state investigation which was meant to protect the child.¹⁴⁹ The resources that were used for this child’s unnecessary investigation could have been used to assist another child. Implicitly, one way to reduce unnecessary investigations in other similar cases, is to narrowly draft statutory “abuse,” “maltreatment,” and “neglect,” definitions so that less unsubstantiated reports are made.

B. *Overbroad Statutory Definitions Are Leading to Unnecessary Reports*

Broad language in statutory definitions represents a problem that is leading to unnecessary child abuse reports. For example, in California, the term “child abuse or neglect” includes, “physical injury . . . inflicted by other than accidental means...”¹⁵⁰ Consequently, if a toddler runs up to a stove and places a hand on the stove before a parent can stop the toddler, is that reportable? The child’s actions were not accidental, and those actions resulted in the child’s injury. In this case, there is an argument that a child abuse report should be made.

Conversely, in Minnesota, “maltreatment” includes mental injury.¹⁵¹ “‘Mental injury’ means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child’s ability to function within a normal range of performance and behavior with due regard to the child’s culture.”¹⁵² If a parent threatens to spank a child after the child acts out, and that conduct substantially impairs the child behavior, is that action considered to be a mental injury, and therefore worthy of a child abuse report? What if a parent throws away a child’s video game or cell phone, and that action creates an observable impairment to the child’s psychological capacity, is that action considered to be a mental injury, and therefore worthy of a child abuse

¹⁴⁸ Interview with Anonymous Mother and Anonymous Father, *supra* note 14.

¹⁴⁹ See Interview with Anonymous Mother and Anonymous Father, *supra* note 35 (discussing the unnecessary radiation that the child received as a result of the state investigation).

¹⁵⁰ CAL. PENAL CODE ANN. § 11165.6 (West 2008).

¹⁵¹ MINN. STAT. § 260E.03(12)(7) (2021).

¹⁵² MINN. STAT. § 260E.03(13).

report? These uncertainties demonstrate the necessity for narrowed statutory language in child abuse legislation.

C. *Problematic Non-Discretionary Legal Penalties for Failing to Report Child Abuse*

Another problem—albeit debatable—is the criminalization of failing to report child abuse. In California, “a mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect . . . *is* guilty of a misdemeanor” punishable by jail time, a fine, or by both.¹⁵³ It is worth noting that the statute does not state *may* be guilty. The statute says *is* guilty. If an abused adult, who is a mandated reporter, is unable to safely report that a child in a household is also being abused, is the abused adult guilty of a misdemeanor? The abused adult knew of the child abuse and failed to make a report. According to California’s legislation, that person *is* guilty of a misdemeanor.¹⁵⁴

What if that same person is confined or restrained and those factors prevent the person from making a report? According to legislation, the restrained person *is* guilty of a misdemeanor.¹⁵⁵ Similarly, in Minnesota, a person, “who knows or has reason to believe that a child is being maltreated . . . or has been maltreated within the preceding three years, and fails to report *is* guilty of a misdemeanor.”¹⁵⁶ The definiteness of the word *is* in the statutes is problematic because it does not provide the justice system any leeway for special or exigent circumstances. In unique situations like these, there is always prosecutorial discretion¹⁵⁷ which can prevent charges from being pursued. Nevertheless, affected individuals should be able to rely on

¹⁵³ CAL. PENAL CODE ANN. § 11166(c) (West 2023) (emphasis added); *Compare with* *Roe v. Hesperia Unified Sch. Dist.*, 300 Cal. Rptr. 3d 340, 357 (2022) (discussing a court’s determination that a school failed to report child abuse under the law).

¹⁵⁴ *See* CAL. PENAL CODE ANN. § 11166(c) (West 2023).

¹⁵⁵ *Id.*

¹⁵⁶ MINN. STAT. § 260E.08(a) (2020) (emphasis added).

¹⁵⁷ *See generally* *The Prosecutor Problem*, BRENNAN CENTER (Aug. 23, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/prosecutor-problem> (explaining “how prosecutors’ decisions are fueling mass incarceration – and what can be done about it.”).

clear laws opposed to hoping that the deciding prosecutor is clear minded.¹⁵⁸

VII. WHAT CAN BE DONE TO PROTECT FALSELY ACCUSED PERSONS

There is arguably no single legislative solution which will guarantee the perfect balance between protecting children and protecting the rights of those falsely accused of child abuse. However, there are some general remedies which the states can implement to improve the outcomes of existing protections.¹⁵⁹

A. *States Should Implement Good Faith Immunity Over Absolute Immunity*

All states should consider passing laws to minimize the damages which are associated with being falsely accused of child abuse. For starters, states can implement good faith immunity provisions (like the provisions enacted in Minnesota) over the absolute immunity provisions (like those provisions enacted in California) for child abuse reporters. By implementing good faith immunity provisions, innocent parties may have a cause of action against a reporter, depending on the situation. Additionally, by taking away absolute immunity, a reporter may be deterred from making a malicious or intentionally fabricated report of child abuse. Nevertheless, it is important to recognize that some immunity protections should be offered to child abuse reporters to make sure that people still feel comfortable making reports in general.¹⁶⁰ As a result, offering at least good faith immunity to child abuse reporters is a necessary incentive for reporting.¹⁶¹

¹⁵⁸ *Id.* (discussing that “prosecutors have a huge amount of discretion and are subject to little judicial oversight”).

¹⁵⁹ *See infra* Part VII.A-E (discussing general CAPTA-compliant solutions for the states to consider).

¹⁶⁰ *See also* Singley, *supra* note 3.

¹⁶¹ *Id.*

B. *States Should Consider Allowing Good Faith Non-Reporting of Child Abuse*

Additionally, immunity “ought to be extended to reporters who, in good faith, choose not to report.”¹⁶² There are so many different situations where a person may be faced with making a report of child abuse, that it is important to allow people the opportunity to make a reasonable decision regarding whether a report is warranted. When legislators pass child abuse reporting provisions, they should consider adding a “reasonable”¹⁶³ or “objective”¹⁶⁴ component to reporting requirements. These elements would require child abuse reporters to use logical, sound judgement, based on facts when making a report.¹⁶⁵ In addition to adding a reasonable or objective component to provisions, legislators should pass laws which explicitly state the rights of the accused.

C. *States Should Enact Legislation Which Clearly Explains the Rights of the Accused*

Presently, most states have failed to implement any comprehensive provisions, under codified child abuse codes, which discuss the rights of those who have been falsely accused of child abuse. As a result, states should implement legislation which specifically discusses the ramifications for filing a child abuse report in bad faith. This legislation would allow falsely accused persons to have a clear cause of action against child abuse reporters who file reports in bad faith, which in return would increase the level of justice for the falsely accused.

¹⁶² *Id.* at 270.

¹⁶³ *See Reasonable*, THE LAW DICTIONARY, <https://www.dictionary.com/browse/objective> (last visited Mar. 26, 2023) (defining “reasonable” as agreeable to reason or sound judgment; logical).

¹⁶⁴ *See Objective*, THE LAW DICTIONARY, <https://www.dictionary.com/browse/reasonable> (last visited Apr. 19, 2023) (defining “objective” as unbiased opinion which is based on facts).

¹⁶⁵ *See Reasonable*, *supra* note 163; *See also Objective*, *supra* note 164.

D. *States Should Require Objective Good Faith Child Abuse Report Filings*

Another change that states can make is to pass legislation which changes the fact that good faith filings are often allowed to be solely subjective.¹⁶⁶ Presently, many states have laws which assert that when a child abuse reporter makes a report of child abuse, the reason for making the report need only be subjectively reasonable.¹⁶⁷ This means that a report of child abuse does not need to be based on verifiable evidence.¹⁶⁸ The problem with this approach is that justice is not served if a person has a grossly unreasonable mindset (e.g., a person makes repeated fabricated, unsubstantiated, or malicious reports of child abuse because the reports are subjectively reasonable).

“Justice is the ethical, philosophical idea that people are to be treated impartially, fairly, properly, and reasonably by the law.”¹⁶⁹ Individual justice is limited when innocent people are subject to fabricated, unsubstantiated, or malicious reports of abuse because those people are not being treated impartially, fairly, properly, and reasonably under the law. As a result, in the name of justice, states should implement an objective reporting requirement for child abuse reporters.¹⁷⁰

E. *States Should Create Divisions Which Investigate Reports Filed in Bad Faith*

States should consider creating official divisions which are set up to investigate reports of child abuse which are alleged to have been made in bad faith. As it stands now, most people who have been falsely accused of child abuse have little to no legal recourse against their reporters.¹⁷¹ Assuming that a falsely accused person lives in a state which provides for a

¹⁶⁶ See *Subjective*, THE LAW DICTIONARY, <https://thelawdictionary.org/subjective> (last visited Mar. 26, 2023) (defining “subjective” as “related to or based on beliefs, attitudes and opinions instead of verifiable evidence”).

¹⁶⁷ See *J.E.B. v Danks*, 785 N.W.2d 741, 749 (Minn. 2010); *Nelson v. Lindaman*, 867 N.W.2d 1, 8 (Iowa 2015); *O’Heron v. Blaney*, 276 Ga. 871, 873 (Ga. 2003).

¹⁶⁸ See *Subjective*, *supra* note 166.

¹⁶⁹ *Justice*, *supra* note 13.

¹⁷⁰ See *Reasonable*, *supra* note 163; *Objective*, *supra* note 164.

¹⁷¹ See *supra* Part II.B (discussing The Aftermath of False Accusations).

legal cause of action against a reporter, most individuals would still need to hire an attorney to take on such a case.¹⁷² This reality disproportionately affects those of lower income who may not be able to access such a resource. Some states appoint counsel to indigent families in termination of parental rights proceedings, but states are not constitutionally required to do so,¹⁷³ and there is no such provision to assist the falsely accused in a civil action.

Alternatively, even if a falsely accused person can afford an attorney, this person is now being penalized both by the ramifications of the accusation itself and by the ramifications of the financial investment in counsel, which furthers the injustices suffered by this person. However, if a state division was tasked with investigating child abuse reporters allegedly filed in bad faith, this would at least assist with the financial ramifications suffered by those falsely accused of child abuse, and hence, increase justice for those persons.

VIII. SUMMATION

Presently, expansive immunity protections offered to child abuse accusers by the states are resulting in an overall lack of justice for those people who are falsely accused of child abuse. As a result, states should consider increasing legal protections for falsely accused persons. States can do this: (1) by requiring that child abuse reports be filed in good faith; (2) by allowing good faith non-reporting of child abuse; (3) by enacting legislation which clearly explains the rights of the falsely accused; (4) by requiring that good faith reports be measured by an objective standard; and (5) by creating a state division which investigates child abuse reports which are allegedly made in bad faith. These proposed changes, although not representative of a comprehensive fix, will help to increase the availability of justice for the falsely accused because the changes allow for a potential legal cause of action against child abuse reporters, which, in return, allows for the falsely accused to be treated impartially, fairly, properly, and reasonably by the law.

¹⁷² See *If You Are Falsely Accused*, *supra* note 46.

¹⁷³ See *Lassiter v. Dep't of Soc. Servs. of Durham Cnty.*, N.C., 452 U.S. 18, 32–33 (1981).