



# Arkansas Association of Defense Counsel

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## Mandatory Reporting Under the Child Maltreatment Act

While any person is permitted to report suspected child abuse to the Department of Human Services' Child Abuse Hotline, certain individuals have a duty under Arkansas law to report such abuse. In 2011, the Arkansas Legislature enacted the Child Maltreatment Act to, among other things, "provide a system for the reporting of known or suspected child maltreatment." Ark. Code Ann. § 12-18-102 (West). Labeled "mandatory reporters" under the Act, these persons are required to report any perceived maltreatment, which includes "abuse, sexual abuse, neglect, sexual exploitation, or abandonment." Ark. Code Ann. § 12-18-103(7) (West). The statute lists a wide array of individuals as mandatory reporters, including doctors, attorneys, school teachers, clergy members, etc. Ark. Code Ann. § 12-18-402(b) (West).

The Act imposes a duty upon mandatory reporters to immediately notify the Child Abuse Hotline if they have reasonable cause to suspect that a child has been subjected to maltreatment, died as a result of maltreatment, or died suddenly and unexpectedly. § 12-18-402(a). In addition to creating a duty to report abuse, the Act also includes statutory mechanisms imposing criminal liability on mandatory reporters who fail to report potential or known abuse. Failure to notify may occur in either the first or second degree. First degree failure to notify occurs if a mandatory reporter has reasonable cause to suspect that a child has been subjected to or died from child maltreatment, or if the reporter observes a child being subjected to conditions that would reasonably result in maltreatment and they knowingly fail to notify the Hotline. Ark. Code Ann. § 12-18-201(a) (West). The same rule applies to second degree failure to notify, except that the failure to notify is committed recklessly by the reporter. Ark. Code Ann. § 12-18-202(a) (West). These offenses are considered Class A and Class C misdemeanors, respectively.

While the Act requires mandatory reporters to report abuse "immediately," neither statutory authority nor

Arkansas courts have established a definitive window of time in which a report must be made. § 12-18-402(a). In a 2015 case, a teacher accused of failing to notify in the first degree challenged the mandatory reporter statute on grounds that it was unconstitutionally vague for failing to define "immediately," as used in the statute. *Griffin v. State*, 454 S.W.3d 262, 269 (Ark. App. 2015). The court concluded that the statute was not unreasonably vague, but chose not to outline any concrete parameter of time required by the statute. *Id.* The court reasoned that the defendant's failure to call the hotline for two weeks after learning of the maltreatment constituted a clear violation of the statute's immediacy requirement. *Id.* Thus, while mandatory reporters have a duty to call the Child Abuse Hotline when they perceive maltreatment, it is unclear how long individuals have to report before a delay constitutes a violation of the Act. Until there is more clarification on this question, either from the courts or the state legislature, reason dictates that mandatory reporters should call the hotline as soon as they recognize any possible abuse.

Another question that arises from this duty to report maltreatment is whether an individual may face liability if they report abuse that is determined to be unfounded. The Child Maltreatment Act provides that "a person or agency required by this chapter to report suspected child maltreatment who acts in good faith in making notification . . . is immune to suit and to civil and criminal liability." Ark. Code Ann. § 12-18-107(a) (West). The same immunity applies to reporters not categorized as mandatory under the Act. § 12-18-107(b). The implication of this statutory language is that persons may incur liability for acting in bad faith when reporting individuals to the Child Abuse Hotline. Therefore, just as mandatory reporters can be found liable for failing to notify authorities of potential or known abuse, any individual who reports to the hotline may also incur for making unreasonable, bad faith reports of maltreatment. Statutory authority also imposes criminal liability on individuals who "purposely make a report containing a false allegation to the child abuse hotline." Ark. Code Ann. § 12-18-203 (West). The

question, then, centers on what constitutes bad faith or false reporting pursuant to these statutes.

Case law on this issue is lacking, but there is some precedent that shows how the courts approach the question of bad faith reporting. In a case before the Supreme Court of Arkansas, a woman brought a libel suit against employees of the human development center where her mentally retarded son resided after their reports of her potential child abuse were deemed untrue. *Cundiff v. Crider*, 792 S.W.2d 604, 604 (Ark. 1990). The court noted that the mandatory reporter statute imposes “a compelling duty on the classes of persons named therein to act” when they suspect maltreatment. *Id.* at 605. Even though the complaint did not allege any bad faith on the part of the development center, the court took the opportunity to hold that bad faith must be shown in order to nullify the immunity of child abuse reporters. *Id.* The court explained that “it would be wholly inconsistent with the letter and spirit of the [Child Maltreatment Act] to hold that immunity and privilege cannot prevail against a complaint which alleges essentially that the defendants were negligent or careless in their assumption or that their accusations were unfounded.” *Id.* Accordingly, no liability was assigned to the development center employees. *Id.*

In another case, a child’s mother brought suit against two physicians alleging false reporting of child abuse in violation of the good faith provision of the reporting requirement. *Sanders v. Lakin*, 3:04CV00307 SWW, 2006 WL 827835, at \*1 (E.D. Ark. Mar. 30, 2006). Specifically, the plaintiff alleged that defendants acted in bad faith by reporting potential abuse to the police after finding that the child had a broken rib, then neglecting to inform the police a week later after discovering that the injury was caused by a medical condition. *Id.* The United States District Court for the Eastern District of Arkansas determined that Tennessee law should be applied in the case, but noted that “Arkansas requires the same elements of proof” and that the court would resolve the case in the same way under Arkansas law. *Id.* at footnote 4. In order to revoke the doctors’ immunity, the court ruled, the “plaintiff must demonstrate by clear and convincing evidence that defendants acted in bad faith.” *Id.* at 5. After finding nothing in the record indicating that the doctors willfully withheld the report from the police and hearing expert testimony indicating that suspicions of child abuse in these instances were reasonable, the court concluded that no bad faith could be found and the defendants were immune from liability. *Id.* at 7.

There does not appear to be any case law in which an Arkansas court found that an individual was acting in bad faith when reporting child abuse, thus precluding immunity from criminal liability. However, the precedent above illustrates that the courts essentially equate bad faith reporting with false reporting or the willful withholding of information refuting child abuse accusations. Without clear and convincing evidence of bad faith, mandated reporters and other persons reporting to the Child Abuse Hotline will remain immune from liability.

State courts have not heard many cases concerning mandatory reporters since the enactment of the Child Maltreatment Act in 2011. When the opportunity arises, the courts will have to address the unanswered questions stemming from the immediacy requirement and define more precisely what qualifies as bad faith reporting. Until the judiciary resolves these issues, individuals that qualify as mandatory reporters under the Act should take care to report any potential child abuse as soon as possible, and all persons must be sure to exercise good faith and honesty in their reporting.

**The thanks of the AADC go out to Taylor Williams, second year at UALR’s Bowen School of Law. Taylor is currently clerking at Watts, Donovan & Tilley and may be reached at [tnwilliams2@ualr.edu](mailto:tnwilliams2@ualr.edu).**



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