

## Chapter 2: Reporters

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# Chapter 2: Reporters

## A. Mandated reporters

Mandated reporters are those individuals who are required by law to report suspected child abuse or maltreatment to the Statewide Central Register of Child Abuse and Maltreatment (SCR), operated by the New York State Office of Children and Family Services (OCFS) [SSL §413].

Mandated reporters are mandated to make a report, or cause a report to be made, when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is abused or maltreated, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or person legally responsible for the child comes before them in their professional or official capacity and states from personal knowledge facts, conditions, or circumstances which, if correct, would render the child an abused or maltreated child.

*Note:* There is an exception for the standard under which mandated reporters are required to report that is applicable only to social services workers. See **Section A, Mandated Reporters**.

### 1. Professions classified as mandated reporters

The following persons are mandated to report or cause a report to be made when they have reasonable cause to suspect that a child coming before them in their professional capacity is an abused or maltreated child [SSL §413(1)(a)]:

- Any physician
- Registered physician assistant
- Surgeon
- Medical examiner
- Coroner
- Dentist
- Dental hygienist
- Osteopath
- Optometrist
- Chiropractor
- Podiatrist
- Resident
- Intern
- Psychologist
- Registered nurse
- Social worker
- Emergency medical technician
- Licensed creative arts therapist
- Licensed marriage and family therapist
- Licensed mental health counselor
- Licensed psychoanalyst
- Licensed behavior analyst
- Certified behavior analyst assistant
- Hospital personnel engaged in the admission, examination, care or treatment of persons
- A Christian Science practitioner
- School official, which includes, but is not limited to, any school administrator, teacher, psychologist, social worker, nurse, guidance counselor, or other school personnel required to hold a teaching or administrative license or certificate
- Full- or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate

- Social services worker (See **Section A.2, Reporting requirement applicable to social services workers only** of this chapter for special requirements applicable to social services workers only)
- Employee of a publicly funded emergency shelter for families with children<sup>1</sup>
- Director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in Section 1392 of the Public Health Law
- Day care center worker
- School-age child care worker
- Provider of family or group family day care
- Employee or volunteer in a residential care facility for children that is licensed, certified or operated by OCFS
- Mental health professional
- Substance abuse counselor
- Alcoholism counselor
- All persons credentialed by the Office of Alcoholism and Substance Abuse Services
- Peace officer
- Police officer
- District attorney or assistant district attorney
- Investigator employed in the office of a district attorney
- Other law enforcement official

## 2. Reporting requirement applicable to social services workers only

Social services workers *only* are additionally required to report or cause a report to be made when *any person* comes before them in their professional or official capacity with information from personal knowledge that causes them to have reasonable cause to suspect that a child is an abused or maltreated child [SSL §413(1)(d)]. All other mandated reporters are required to report or cause a report to be made only when confronted with a child whom they suspect to be abused or maltreated or when a parent, guardian, custodian or other person legally responsible for a child provides information which, if true, would mean that child was abused or maltreated [SSL §413(1)(a)]. Further, any person is permitted to report any reasonable suspicion of abuse or maltreatment no matter how that information is brought to their attention [SSL §414], and OCFS encourages such reporting.

OCFS has determined that the term “social services worker” applies to the following categories of persons:

- Professional and paraprofessional staff of local departments of social services (LDSSs). This includes not only child welfare staff but all professional and paraprofessional LDSS staff, regardless of their function or area of responsibility, who provide services to children and/or families.
- Professional and paraprofessional staff who provide services to children and/or families and who work for organizations or entities that have contracts with LDSSs to provide services related to foster care, adoption, or preventive services. It would also apply to

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<sup>1</sup> Note: This includes domestic violence shelters.

individuals who have contracts or subcontracts with the LDSS to supply professional or paraprofessional services related to foster care, adoption, or preventive services.

- OCFS Regional Office staff who have responsibilities for inspections or investigation of complaints at residential facilities and day care programs, other than those staff whose sole responsibility is to inspect facilities and investigate complaints related to physical plant or building safety issues.

For the purpose of this definition of “social services worker,” paraprofessionals are trained aides who provide support and assistance to professionals in carrying out the professional functions of the professional person.<sup>2</sup>

### **3. Reporting procedures**

#### **a. Oral reports**

The law requires mandated reporters to immediately report suspected child abuse or maltreatment to the SCR by telephone, or by fax on an [LDSS-2221A](#) (rev. 09/2016) form [[SSL §415](#)]. A mandated reporter submitting a report via fax must have a prior agreement with the SCR to do so.

The SCR accepts reports of suspected child abuse or maltreatment perpetrated by a parent or other person legally responsible for a child, including a child day care program staff person or a foster parent.

#### **b. Written reports**

Within 48 hours of making an oral report, the mandated reporter must provide a signed, written report to the local child protective service (CPS) on OCFS Form [LDSS-2221A](#) (rev 09/2016). The form is available in the English, Spanish, Italian, Haitian Creole, Russian, Korean, and Chinese languages.

Written reports must include the names and addresses of the child and his or her parents or other person legally responsible for his or her care, if known, and, as the case may be [[SSL §415](#)]:

- The child's age, sex and, race
- The name of the person(s) alleged to be responsible for causing the injury, abuse or maltreatment, if known
- Family composition, where appropriate
- The source of the report
- The person making the report and where they can be reached
- The reasons for suspicion, including the nature and extent of the child's injuries, abuse or maltreatment, past or present, as well as any injuries, abuse or maltreatment of the child's siblings, and any evidence or suspicions of “parental” behavior contributing to the problem
- The actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child, or notifying the medical examiner or coroner

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<sup>2</sup> OCFS. (2007). “*Xctasy’s Law: Chapter 513 of the Laws of 2007*” ([07-OCFS-ADM-15](#)).

- Any other information that the person making the report believes might be helpful

Where the mandated reporter works in an organization with more than one mandated reporter, the person in charge or that person's designee may provide any additional written reports needed. (See **Section 6**, *Reporting procedures for institutions with multiple mandated reporters*.)

**c. Reports that must be made to the Justice Center**

Reports of suspected abuse or neglect of a child or adult vulnerable person by a staff person, consultant, contractor or volunteer in a facility or program operated, licensed or certified by the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), or the Office of Alcoholism and Substance Abuse Services (OASAS) must be made to the **Vulnerable Persons' Central Register (VPCR)**, operated by the New York State Justice Center for the Protection of People with Special Needs (Justice Center). Other

programs where reports must be made to the VPCR rather than to the SCR include camps for children with developmental disabilities, as defined in regulations of the Department of Health, and certain schools for the blind, for the deaf, for students with

disabilities, or that have been approved by the commissioner for education for special education services or programs. [See [SSL § 488\(4\)](#): [SSL §491\(4\)](#).]

**Vulnerable Persons' Central Register**  
(VPCR) Hotline Number: 1-855-373-2122

Reports must also be made to the VPCR, not to the SCR, regarding the suspected abuse or neglect of children in any program or facility operated by OCFS for juvenile delinquents or juvenile offenders placed in OCFS's custody or children who are being cared for in residential programs certified, licensed, or operated by OCFS. This includes runaway and homeless youth programs, Close to Home programs, congregate foster care programs operated by voluntary agencies, and youth detention programs. It does not include foster boarding homes; reports of alleged abuse and maltreatment in foster boarding homes are made to the SCR. The VPCR also receives reports of suspected abuse or neglect of adults residing in Family Type Homes for Adults [[SSL § 488\(4\)\(b\)](#)]. Information about the Justice Center is available on its website at: <https://www.justicecenter.ny.gov/>.

Mandated reporters in programs that are supervised, operated, or funded by OCFS are advised that, when they are aware of an assault, criminally abusive behavior, or another possible crime against a child, they should report that information to the police. In some instances, they may be required to do so by law or regulation. If a mandated reporter observes an emergency, the first call should always be to 911.

#### **4. Provision of records by mandated reporters**

Mandated reporters who make a report that results in an investigation of an allegation of child abuse or maltreatment are required to comply with all requests for records made by a CPS relating to the report. This includes information that may be covered by one of the privileges set forth in Article 45 of the New York State Civil Practice Laws and Rules (e.g., the physician-patient privilege, the psychologist-patient privilege, the social worker-client privilege) and any other law to the contrary [SSL §415]. The records available to CPS include records relating to diagnosis, prognosis, or treatment, and the clinical records of any patient or client that are essential for a full investigation of allegations of child abuse or maltreatment. Disclosure of substance abuse treatment records, however, can only be made pursuant to the standards and procedures for disclosure of such records delineated in federal law.

Written reports from mandated reporters are admissible in evidence in any proceedings relating to child abuse or maltreatment. In addition, federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations [45 CFR 160.203(c)] state that HIPAA privacy rules do not apply to reporting of child abuse. The U.S. Department of Health and Human Services has provided exceptions to make it clear that health care providers suspecting child abuse or maltreatment must report it and provide CPS investigators with relevant information in accordance with state law.

The mandated reporter, as the owner of the records, decides in the first instance if the records sought by CPS are essential to the CPS investigation. If CPS seeks to obtain records from a mandated reporter who is unwilling to provide the records sought, CPS should clearly explain how the records are pertinent to the investigation. If the mandated reporter still refuses, CPS can provide an appropriate authorization or release, or obtain a court order requiring production of the records.

#### **5. Photographs and x-rays**

Mandated reporters may take or cause to be taken at public expense photographs of the areas of trauma visible on a child who is subject to a report and, if medically indicated, cause to be performed a radiological examination on the child. Any photographs or x-rays taken shall be sent to the CPS along with the written report, or as soon thereafter as possible. Any mandated reporter who is on the staff of an institution, school, facility, or agency must immediately notify the designated person in charge and that person must take or arrange to be taken, at public expense, color photographs of visible trauma and must, if medically indicated, arrange for x-rays to be taken [SSL §416].

The LDSS is authorized to reimburse any mandated reporter or official for the cost of any such photographs or x-rays.

#### **6. Reporting procedures for institutions with multiple mandated reporters**

Whenever a mandated reporter is required to report in his/her capacity as a staff member of a medical or other public or private institution, school, facility or agency, the reporter must make the report as required and immediately notify the person in charge of the institution or agency or that person's designee. That person in charge, or that person's designee, is then responsible for all subsequent administration necessitated by the report. Any report made shall include the

name, title and contact information for every staff person of the institution who is believed to have direct knowledge of the allegations in the report [[SSL §413\(1\)\(b\)](#)].

The mandated reporter law is not intended to require more than one report from any institution, school, facility or agency on any one incident of suspected child abuse or maltreatment [[SSL §413\(1\)\(b\)](#)].

No institution, school, facility or agency is permitted to take any retaliatory personnel action against an employee who made a report to the SCR. In addition, no school, school official, child care provider, foster care provider, residential care facility provider, hospital, medical institution provider or mental health facility provider is permitted to impose any conditions, including prior approval or prior notification, upon a member of its staff mandated to report suspected child abuse or maltreatment [[SSL 413\(1\)\(c\)](#)].

An organization such as a school or hospital should designate one or more individuals to be liaisons between the organization and the SCR and/or CPS, and to be responsible for all subsequent administration necessitated by the report. This may include providing follow-up information (e.g., relevant information contained in the child's educational record) to CPS, and also includes completing Form [LDSS-2221A \(Rev. 09/2016\)](#), which requires listing the names, titles, and contact information of all staff of the institution, school, facility, or agency who are believed to have knowledge of the allegations contained in the report. It is important, however, to note that a mandated reporter who has the direct knowledge of the facts that created a reasonable cause to suspect abuse or maltreatment has the legal obligation to *personally* make a report to the SCR. A mandated reporter may not inform the organization's leader and/or liaison of the concern with the intent that that person will make the call. Similarly, an institution, agency, or school may not create any policy or procedure that establishes such a practice.

The requirement that every mandated reporter who has direct knowledge personally make a report to the SCR could potentially result in situations in which multiple reports are made. For example, there may be many people on a hospital staff who encounter a single child whom they have reasonable cause to suspect has been abused by a parent.

OCFS has provided guidance specifying how mandated reporters and organizations may fulfill their responsibility to report in situations in which there are multiple mandated reporters with direct knowledge of the situation.<sup>3</sup> This guidance can serve to both facilitate the communication to the SCR of all pertinent information and relieve the burden for every mandated reporter with direct knowledge of the situation to call in separate reports. The following summarizes the elements suggested in the guidance:

- Organizations are encouraged to establish a policy that complies with the statute, but the policy must require that at least one mandated reporter with direct knowledge causing suspicion of abuse or maltreatment makes a report to the SCR.
- Once one report has been made, other mandated reporters in the same organization who have knowledge that such a report was made and accepted by the SCR are not required to make additional reports. A mandated reporter who has made a report to the SCR may advise other mandated reporters that a call was made to the SCR and may state whether the report was accepted or not.

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<sup>3</sup> OCFS. (2008). "Mandated Reporters: Chapter 193 of the Laws of 2007" ([08-OCFS-INF-01](#)).



- If a mandated reporter who believes that they have reasonable cause to suspect abuse or maltreatment is told by another mandated reporter that a report was not accepted by the SCR, and the mandated reporter believes that they have additional information not known to the mandated reporter who previously contacted the SCR, the mandated reporter is required to make a report to the SCR and advise the SCR of the additional information.
- The mandated reporter who called in a report, as well as all other mandated reporters who have direct knowledge that causes them to reasonably suspect abuse or maltreatment, must each notify the person in charge or that person's designee regarding the information that they have about the alleged abuse or maltreatment.

## **7. Mandated reporter access to results of the investigation**

A person or official who is required to make a report of suspected child abuse or maltreatment shall receive, upon request, the findings of a CPS investigation resulting from that person's report. No information may be released, however, unless the person or official's identity is confirmed. If the request for information is made prior to the completion of an investigation of a report, the released information shall be limited to the statement that the report is "under investigation." If the request for information is made after the investigation is complete, the released information shall be limited to whether the report is "indicated" or "unfounded," whichever the case may be [SSL §422(4)(A)].

A mandated reporter may register his or her desire to be informed of the findings of an investigation on the form [LDSS-2221A](#) (Rev. 09/2016) or may submit a request to CPS at any time.

When a report has been assigned to a family assessment response (FAR), there is no determination of "indicated" or "unfounded." A mandated reporter who asks for the findings regarding the report will receive the information that the report has been assigned to a Family Assessment Response, regardless of whether the case is closed or still in progress. A CPS worker can access letters in CONNECTIONS to use for the purpose of responding to a mandated reporters request, both for investigations and FAR.

## **8. Failure to report**

A mandated reporter's willful failure to report suspected child abuse or maltreatment is a Class A misdemeanor (punishable by up to a year in jail and/or a fine of up to \$1,000) and the mandated reporter can also be held civilly liable for the damages proximately caused by the failure to report [SSL 420]. When a commissioner of social services in a LDSS has reasonable cause to suspect that a mandated reporter has willfully failed to report a case of suspected child abuse or maltreatment, the commissioner must inform the district attorney of the suspected failure [18 NYCRR 432.8].



## B. Immunity provisions for reporters

All mandated reporters who have reported suspected child abuse or maltreatment are presumed to have done so in good faith if they made the report during the discharge of their duties and within the scope of their employment. Mandated reporters who report, take photographs, take protective custody of a child, or disclose CPS information in compliance with the Social Services Law are immune from both civil and criminal liability for actions taken in good faith [SSL §419]. This immunity does not prevent civil or criminal proceedings from being filed, but presumed good faith provides a defense against libel, slander, invasion of privacy, false arrest and other types of law suits that might be filed by persons who feel that their rights were violated, provided that the person was acting without willful misconduct or gross negligence [SSL §419; FCA §1024(c)]. See **Chapter 1, Section F, Immunity**.

## C. OCFS Model Policy on Reporting Educational Neglect

The SSL includes a requirement that the Commissioner of OCFS, in conjunction with the Commissioner of the New York State Department of Education, develop model practices and procedures for LDSSs and school districts regarding the reporting and investigation of educational neglect [SSL §34-a(8)]. The OCFS Model Policy on Educational Neglect is at:

[http://ocfs.ny.gov/main/documents/press/NYS\\_OCFS\\_PRESS\\_022808\\_Model\\_policy\\_educational\\_neglect.pdf](http://ocfs.ny.gov/main/documents/press/NYS_OCFS_PRESS_022808_Model_policy_educational_neglect.pdf)

## D. Protective custody by certain mandated reporters

A limited number of mandated reporters are authorized to take a child into protective custody in order to protect the child from imminent danger to the child's life or health. The law requires these individuals to take all appropriate measures to protect a child's life and health including, when appropriate, taking or keeping a child in protective custody without the consent of the parent or guardian if such person has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his or her residence or in the care and custody of the parent, guardian, custodian, or other person legally responsible for the child's care presents an imminent danger to the child's life or health [SSL §417(1)(a); FCA §1024(a)].

The persons holding this right and responsibility are:

- Peace officers, acting pursuant to their special duties
- Police officers
- Law enforcement officials
- Designated employees of a city or county department of social services
- Agents or employees of an Indian tribe that is authorized to provide CPS
- Persons in charge of a hospital or similar institution

Although not authorized to take a child into protective custody, a physician treating a child whom the physician believes is in imminent danger must notify the LDSS or the appropriate police authorities to take custody of the child [[SSL §417\(1\)\(b\)](#); [FCA §1024\(a\)](#)].

## 1. Procedures for removals

Anyone removing a child shall:

1. Bring the child immediately to a place approved for such purpose by the LDSS, unless the person is a physician and the child is or will be admitted to a hospital;
2. Make every reasonable effort to inform the parent where the child was taken;
3. Coincident with removal, give written notice to the parent or other person legally responsible for the child's care of the right to apply to the Family Court for the return of the child and of the right to be represented by counsel and procedures of obtaining counsel, if indigent. [OCA Form 10-1a, Notice of Temporary Removal of Child and Right to Hearing](#), should be used for this purpose. See **Chapter 12, Notifications**; and
4. Inform the court and make a report to the SCR as soon as possible [[FCA §1024\(b\)](#)].
5. If a person in charge of a hospital or similar institution has taken the child into protective custody, that person must immediately notify the appropriate CPS, which shall immediately commence an investigation. CPS must begin a child protective proceeding in the family court at the next regular weekday session or recommend to the court at that time that the child be returned to his or her parents or guardian [[SSL §417\(2\)](#); see [PHL §2801\(1\)](#) for the definition of a "hospital"]. See **Chapter 6, Section G.4, Medical examinations and evaluations**. Also, see **Chapter 9, Family Court Proceedings (Article 10)**, and **Chapter 6, Section D, Investigation/Assessment**.

## 2. Persons in charge of hospitals

The law provides special rights and responsibilities for the doctors or other persons in charge of a hospital or similar institution regarding temporary custody of children suspected of being abused or maltreated. A "hospital or similar institution" is defined in [Public Health Law §2801\(1\)](#).

Where the hospital administrator has reasonable cause to believe that the circumstances and conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child, is presenting imminent danger to the child's life and health, they must take all measures necessary to protect the child, including, where appropriate, taking and retaining custody of the child. [SSL §417\(2\)](#) states that, where appropriate, the person in charge of a hospital may retain custody of an abused or maltreated child until the next regular week day session of the family court, at which time CPS can file an Article 10 petition or recommend to the court that the child be returned to their parents or guardian. Hospital administrators cannot retain children indefinitely.

A hospital may keep custody of the child whether or not additional medical treatment is required and whether or not a parent or guardian has asked for the return of the child. Whenever the person in charge of a hospital makes the decision to retain a child in protective custody, the person in charge of the hospital who has retained the child must make a call to the SCR and advise CPS immediately. The report should state that the hospital is taking protective custody and the reasons for that action. In all cases, CPS must immediately commence a CPS investigation. If during this stage of the investigation, the child no longer needs hospital care, CPS must take all necessary steps to protect the child. Where appropriate, this can include taking

a child into protective custody. If the LDSS receives custody in this way, the parent or other persons responsible for the child's care must be notified immediately, as must the family court. See **Chapter 12, Notifications**.

CPS is then obliged to commence a child protective proceeding (i.e., file a petition) in Family Court at the next regular weekday session or, if appropriate, CPS may recommend to the court that the child be returned home [SSL §417(2)]. See **Chapter 9.J, Family Court Proceedings (Article 10)**.

### **3. Other medical personnel**

A physician outside of a hospital setting may not take a child into protective custody. However, any physician treating a child is required to notify the appropriate police authorities or CPS to take protective custody of that child if the physician has reasonable cause to believe that the circumstances or conditions of the child are such that continuing in their place of residence or in the care and custody of the parent, guardian, custodian, or other person responsible for the child's care presents an imminent danger to the child's life or health. When the physician notifies CPS pursuant to this provision, CPS must evaluate the child's circumstances or conditions and make a determination regarding appropriate action at that time [SSL 417(1)(b); FCA 1024(d) and (e)].

### **4. Immunity pertaining to protective custody**

Any person or institution acting in good faith in the removal or keeping of a child shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or keeping [FCA §1024(c); SSL §419].