

CATCHING AMERICAN SEX OFFENDERS OVERSEAS: A PROPOSAL FOR A FEDERAL INTERNATIONAL MANDATED REPORTING LAW

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I. INTRODUCTION

Good News for All (“GNA”) is a large American missionary organization that sends missionaries into remote parts of the world to provide basic medical and educational services.¹ One of its largest missions is on Buton Island, Indonesia. In the main city of Bau-Bau, GNA operates a hospital and an elementary school that service the surrounding population. The hospital is named the “Stewart Coop Memorial Hospital” in honor of the retired GNA missionary who started the hospital many years ago. Dr. Mark Coop is the son of Stewart Coop and had been the chief physician of the mission hospital for many years. Dr. Coop was a thirty-five year old married father of three children who was a very well liked and influential member of the mission field. Though he had a reputation as the most brilliant physician serving with GNA, Dr. Coop was also known for intimidating those around him who were less educated.

Mary and Lewis Swanson are an elderly couple who served on the GNA Bau-Bau mission. Mr. Swanson was assigned to be the caretaker of the hospital. Ms. Swanson served as a teacher’s aide in the GNA elementary school. Lewis and Mary had little formal education, but were passionate about serving the people of Buton Island.

All the GNA missionaries in Bau-Bau live in a residential compound that adjoins the hospital and elementary school. At the time, Mr. and Ms. Swanson lived in a small house located next door to the larger house occupied by Dr. Coop and his family. Though the two families got along, the Coop family spent most of their time socializing with the other missionary physicians and their families.

One day as Ms. Swanson was walking back to the house after school, she observed Dr. Coop walking away from his house with a ten-year-old missionary girl named Tabitha. Tabitha’s father was also a physician and worked with Dr. Coop at the hospital. At the time, Ms. Swanson didn’t think much of it, as she

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knew Tabitha was friends with Dr. Coop's children. A few days later, Ms. Swanson was locking up the house for the night when she thought she saw Dr. Coop and Tabitha walking together down the pathway that led to the hospital. Because it was getting dark, Ms. Swanson wasn't sure if the girl was Tabitha or one of Dr. Coop's daughters. Again, she didn't think much of what she had witnessed and didn't say anything to anyone.

About a week later, Ms. Swanson was at home during the lunch hour and heard the voices of Dr. Coop and Tabitha next door. Though she couldn't make out what they were talking about, she did not hear any other voices and believed that they were alone in the house. Before she finished her lunch, Ms. Swanson looked out the front window and saw Tabitha leave the Coop house alone appearing as if she was crying. This bothered Ms. Swanson so much that she immediately walked next door to confront Dr. Coop about what was going on. After she told him what she had heard and witnessed, Dr. Coop told Ms. Swanson that he was extremely insulted at her insinuations and demanded that she apologize. Dr. Coop said that Tabitha had come to the house to talk to him about something that was upsetting her. He proceeded to insult Ms. Swanson, saying that she should "mind your own simple business and leave the complicated stuff to those who are much more educated." Ms. Swanson left humiliated and returned home in tears, convincing herself that Dr. Coop was probably right and that she had overreacted. Later that evening when she told her husband what had happened, he admonished her saying, "Dr. Coop is one of the most influential men in this field. You need to stop meddling or we're going to find ourselves being sent home." Ms. Swanson decided to try and put the entire episode out of her mind and do her best to ignore Dr. Coop.

A few weeks later, Ms. Swanson saw Dr. Coop and Tabitha riding on a moped together during the early evening hours. She was so bothered that, on the following day, she met with Tabitha's parents and told them about the concerning interactions she had seen between Dr. Coop and their daughter. Tabitha's parents reacted with shock and told Ms. Swanson that Dr. Coop was a "dear family friend" and would "never hurt a child." They told her that they were offended at her insinuation, but were not going to tell Dr. Coop in order to "keep the peace." Once again, Ms. Swanson walked home second-guessing herself about Dr. Coop.

For the next few months, Ms. Swanson only saw Dr. Coop on a handful of occasions. She did her best to avoid him and spent most of her free time inside her house.

Later that year, Tabitha's parents had to return to the United States for a family emergency. Ms. Swanson became alarmed when she learned that Tabitha was staying with the Coop family while her parents were away. One afternoon after lunch, she once again heard the voices of only Dr. Coop and Tabitha coming from the Coop house. A few minutes later, everything became quiet. Out of a growing sense of concern, Ms. Swanson convinced herself to go next door and find out what was going on. She was shocked to discover Dr. Coop open the front door wearing a bathrobe. She immediately demanded to know

what was going on and to see ten-year-old Tabitha. Dr. Coop told Ms. Swanson that he was alone in the house and had not seen Tabitha since earlier that morning. He demanded that she return home and leave him alone to take his mid-afternoon nap. Before slamming the door, Dr. Coop threatened that he was going to have Ms. Swanson and her husband sent back home if she continued to “insinuate disgusting things.” Ms. Swanson returned home shaken up and very confused. As she was sitting in her bedroom collecting her thoughts, she looked out the window and saw Tabitha leaving out of a back door of the Coop home.

The following morning, Ms. Swanson met with the director of the GNA Buton Island mission and reported everything she had observed during the past months between Dr. Coop and young Tabitha. She informed the director that she suspected Dr. Coop was “sexually abusing” Tabitha and that it needed to be addressed, or she was going to contact the Indonesian authorities. The mission director chastised Ms. Swanson for “jumping to conclusions” and told her that Dr. Coop was the most gifted and influential GNA missionary in Indonesia. He explained how much the hospital needed the services of Dr. Coop and that he was not going to allow an “unsubstantiated hunch from an uneducated woman” ruin the reputation of GNA and the career of such a reputable man. He ordered her to mind her own business or risk having her and her husband sent home. As Ms. Swanson was walking out the door, the director stated, “Mary, don’t waste your time reporting this to the authorities here in Bau-Bau. They don’t really care what goes on inside this missionary compound between U.S. citizens.” As she returned home that afternoon, Ms. Swanson decided that she had done everything she could to make her concerns known. She was not going to risk being sent home if nobody else seemed to care. Ms. Swanson never said another word about the suspicious behavior of Dr. Coop with Tabitha or any other child.

Five years later, Ms. Swanson learned that fifteen-year-old Tabitha was living back in the United States and had reported being sexually abused by Dr. Coop while living in Bau-Bau. He was eventually prosecuted, convicted, and sentenced to life in prison. Ms. Swanson felt sick about her silence.

This case scenario describes many of the extremely difficult and often-competing influences faced by those who consider reporting someone they have come to suspect of sexually abusing a child. The second-guessing, the intimidation, the threats of retaliation, and the discouragement from reporting are often weighed against the concerns the individual may have regarding the safety and welfare of the child. The fact that all of this has transpired on foreign soil intensifies the already complex dynamics for everyone involved. For example, the alleged perpetrator in the hypothetical is highly influential and an extremely valuable member of a religious organization who has invested time and money into the development of this foreign mission. On the other hand, Ms. Swanson is regarded as an uneducated and expendable member of GNA. Her expressed suspicions result in the organization taking steps to protect its own work and reputation in Indonesia and that of its star physician, regardless of the consequences to a little child. Unfortunately, this type of corporate response to abuse disclosures is not uncommon. Besides the moral questions faced by Mary

Swanson about what should or should not be done with her suspicions regarding Dr. Coop, this case study raises a number of extremely important legal questions, such as:

Did Mary Swanson have any legal duty to report Dr. Coop to the United States authorities when she suspected that he was sexually abusing a ten-year-old child?

Was it unlawful for Ms. Swanson to remain silent about the suspected sexual abuse of ten-year-old Tabitha?

Did GNA have any legal incentive to encourage Ms. Swanson to report the suspected abuse?

Could Dr. Coop or the leadership of GNA be held criminally responsible for intimidating Ms. Swanson into not reporting her suspicions?

Does Tabitha have any civil recourse against Ms. Swanson or GNA for failing to report Dr. Coop's abuse to the authorities?

Would Ms. Swanson have had any legal protection if she reported the suspected abuse?

Did the law provide Ms. Swanson with any legal recourse if GNA had decided to send her back to the United States in retaliation for reporting the suspected abuse?

Under current United States law, the answer to all of these questions is "no."

In all fifty states, the sexual abuse of a child is a serious crime. Each state also has a corresponding mandated reporting law that requires certain persons to report the suspected sexual abuse of a child.² It is a federal crime for an American citizen to sexually abuse a child in a foreign jurisdiction.³ However, unlike all fifty states, there is no corresponding federal reporting requirement for citizens who suspect such abuse. Furthermore, current federal law does not prohibit individuals or employers from discouraging or even preventing American citizens overseas from reporting the suspected sexual abuse of a child by a fellow citizen. In fact, federal law does not prevent employers from imposing adverse employment action against overseas employees who

² The requirements under mandated reporting laws vary from state to state. For example, some states designate all adults as mandated reporters. *See, e.g.*, R.I. GEN. LAWS § 40-11-3 (2014). Other states limit the duty to certain enumerated professions. *See, e.g.*, S.C. CODE ANN § 63-7-310 (2014). Regardless of these differences, all fifty states mandate the reporting of suspected child sexual abuse.

³ *See* U.S.C. § 2423(c) (2014).

report these crimes. Perhaps most disturbing is the fact that federal law provides no legal recourse to child victims who were sexually abused overseas by American citizens while other citizens remained silent and looked the other way.

In Asia alone, over 62,000 Americans visit each year for the purpose of sexually victimizing children.⁴ These numbers do not include other parts of the world, nor the United States citizens who reside overseas and sexually abuse children. This considerable problem requires a bold and practical response that has proven to be effective in the United States. It is time that federal law catch up to the states and mandate its citizens who are overseas to report Americans who are suspected of sexually abusing children in foreign countries.

Section II of this Article provides a brief foundational history of mandated reporting laws in the United States. Section III outlines the increased involvement of the federal government in promoting mandated reporting laws. Section IV summarizes the modern state of mandated reporting, and Section V analyzes the effectiveness of the current law. Section VI shifts the focus to the growing problem of United States citizens sexually victimizing children in foreign countries. Section VII introduces and analyzes the PROTECT Act, exposing a significant gap in the ability to enforce this federal law. Section VIII proposes a federal international mandated reporting law that will help close the gap and allow the PROTECT Act to achieve its objective of identifying and prosecuting United States citizens who sexually abuse children overseas. Finally, Section IX applies this proposed law to the GNA case study in order to demonstrate its unique applicability to the enforcement of the PROTECT Act, and ultimately in saving the lives of children.

PART ONE: MANDATED REPORTING IN THE UNITED STATES

II. A BRIEF HISTORY OF MANDATED REPORTING

The history of child protection in the United States can be divided into three eras: (1) the era preceding formalized child protection (colonial period–1875); (2) privatized child protection (1875–1962); and (3) the modern era (1962–present).⁵ In the era preceding formalized child protection, children were not entirely unprotected. Though intervention was rare, cases of extreme abuse

⁴ See Karen D. Breckenridge, *Justice Beyond Borders: A Comparison of Australian and U.S. Child-Sex Tourism Laws*, 13 PAC. RIM L. & POL'Y J. 405, 413 (2004).

⁵ John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 449-54 (2008).

were sometimes prosecuted. A few states even authorized magistrates to remove children from unfit homes.⁶

The era of privatized child protection began after the rescue of nine-year-old Mary Ellen Wilson from the notorious Hell's Kitchen in New York City tenement housing in 1874.⁷ Mary Ellen had been neglected and routinely abused when her situation finally came to the attention of a missionary named Etta Wheeler.⁸ Wheeler contacted the police, who declined to investigate, claiming that the law prevented the removal of the child from the home.⁹ She also sought help from children's charitable organizations.¹⁰ These organizations lacked any authority to intervene and protect Mary Ellen.¹¹ Ms. Wheeler ultimately contacted Henry Bergh, the founder of the American Society for the Prevention of Cruelty to Animals.¹² With the assistance of Bergh's attorney, Elbridge Thomas Gerry, Mary Ellen was eventually removed from her guardians by a writ of habeas corpus.¹³

Upon realizing that there were no organizations focused on the protection of children, Mr. Gerry and Mr. Bergh eventually created the New York Society for the Prevention of Cruelty to Children in December 1874.¹⁴ By 1922, there were over 300 private child protection organizations known primarily as societies for the prevention of cruelty to children ("SPCCs").¹⁵ The economic climate of the Great Depression in the 1930s saw a decline of SPCCs, which had been predominantly supported by charitable donations. By 1956, the number of

⁶ See, e.g., An Act Concerning the Care and Education of Neglected Children, ch. 283, 1866 Mass. Acts 267 (authorizing judicial intervention and removal of a child when, "by reason of orphanage or neglect, crime, drunkenness or other vice of parents," the child was being raised "without education or salutary control, and in circumstances exposing said child to an idle and dissolute life . . ."). See, e.g., Myers, *supra* note 5, at 451 (quoting JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA § 1341 (13th ed. 1886) ("For although in general parents are intrusted with the custody of the persons and the education of their children, yet this is done upon the natural presumption that the children will be properly taken care of But whenever this presumption is removed, whenever (for example) it is found that a father is guilty of gross ill treatment or cruelty towards his infant children, . . . in every such case the Court of Chancery will interfere and deprive him of the custody of his children")).

⁷ Myers, *supra* note 5, at 451. Mary Ellen was given up for adoption by her destitute mother after her father had died in the Civil War. See Howard Markel, *Case Shined First Light on Abuse of Children*, N.Y. TIMES, Dec. 14, 2009, at D6, available at http://www.nytimes.com/2009/12/15/health/15abus.html?ref=science&_r=0.

⁸ Myers, *supra* note 5, at 451.

⁹ *Id.* See also ERIC A. SHELMAN & STEPHEN LAZORITZ, *OUT OF THE DARKNESS: THE STORY OF MARY ELLEN WILSON* (1999).

¹⁰ Myers, *supra* note 5, at 451.

¹¹ *Id.*

¹² *Id.* The ASPCA was founded in 1866. *About the ASPCA*, ASPCA, <https://www.aspc.org/about-us/about-the-aspc> (last visited Jan. 9, 2015).

¹³ Myers, *supra* note 5, at 451.

¹⁴ *History*, N.Y. SOC'Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, <http://www.nyspcc.org/about/history/> (follow "1874-1875" hyperlink) (last visited Jan. 9, 2015).

¹⁵ See Myers, *supra* note 5, at 452.

SPCCs nationwide had dwindled down to only eighty-four.¹⁶ Child abuse prevention received only small pockets of attention from researchers and the government until 1962.¹⁷

The Modern Era of Child Protection began in 1962 in response to two major developments. First, the publication of an article, *The Battered Child Syndrome*,¹⁸ called widespread attention to the problem of child abuse. Second, a federal agency known as The Children's Bureau convened two conferences that brought experts together who ultimately proposed a mandatory reporting duty to address child abuse.¹⁹

In 1962, Dr. Harold Kempe and his co-authors published an article entitled *The Battered Child Syndrome* in the American Medical Journal.²⁰ This groundbreaking article assessed the incidence of child abuse in the United States, and the role of treating physicians in investigating and diagnosing Battered Child Syndrome (BCS), a clinical condition in young children who have been abused. According to the article, BCS was grossly undiagnosed by treating physicians.²¹ It also asserted that most BCS occurrences were the product of abuse by the parents and guardians of children.²²

Dr. Kempe contended that physicians were reluctant to diagnose BCS, even in the face of clear evidence.²³ He argued that this reluctance was because of either (1) "emotional unwillingness" to admit caretaker culpability or (2) unfamiliarity with the physical signs of BCS.²⁴ Dr. Kempe took the position that physicians must investigate any unexplained child injuries.²⁵ Despite identifying the problem and providing some suggested solutions, the article also acknowledged the challenges for physicians in taking a more proactive duty in diagnosing and reporting abuse. Dr. Kempe wrote that a "physician's training and personality usually makes it quite difficult for him to assume the role of policeman or district attorney and start questioning parents as if he were investigating a crime."²⁶ Regardless of these challenges, Dr. Kempe advocated

¹⁶ *Id.* at 453.

¹⁷ *E.g.*, John Caffey, *Multiple Fractures in the Long Bones of Infants Suffering From Chronic Subdural Hematoma*, 56 AM. J. ROENTGENOLOGY 163, 163-73 (1946) (hinting that some types of injuries in young children were caused by abuse, which led to an increasing number of physicians that sought to draw attention to abuse as the source of childhood injuries); *see also* Myers, *supra* note 5, at 455.

¹⁸ C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MED. ASS'N 17 (1962); Meyers, *supra* note 5, at 455-56.

¹⁹ Meyers, *supra* note 5, at 456.

²⁰ Kempe et al., *supra* note 18.

²¹ *Id.* at 17.

²² *Id.*

²³ *See id.* at 19.

²⁴ *Id.* at 18.

²⁵ *Id.* at 23.

²⁶ *Id.* at 19.

that a complete investigation was necessary in cases of suspected abuse or neglect.²⁷

Dr. Kempe proposed that the reluctance by physicians to investigate questionable injuries in children could be assuaged by creating a duty to report.²⁸ Although Dr. Kempe and the others did not specify how such a duty would be enforced,²⁹ the rationale was clear: the physician is in a unique position to identify and investigate discrepancies between the child's injury and the parent's explanation.³⁰ The hope was that the combination of proper training and some type of professional or legal obligation would result in more physicians reporting abuse that would otherwise go unnoticed by other authorities. Another positive outcome of the publication of the article was that it increased media attention on the topic of child abuse, which resulted in greater awareness and concern among the populace.³¹

In January 1962, the Children's Bureau³² commissioned meetings of researchers and policy makers to discuss the problem of what was referred to as "child maltreatment."³³ Among those in attendance were Dr. Kempe and Vincent de Francis, researcher and director of the Children's Division of the American Humane Association.³⁴ The attendees eventually recommended state legislation to require doctors to report suspected abuse.³⁵ These meetings have been referred to as the "genesis of child abuse reporting laws."³⁶

As a result of these initial meetings, the Children's Bureau lobbied aggressively for legislation that would create a mandatory duty to report among healthcare professionals who suspected child abuse.³⁷ The Bureau also commissioned research with the objective of correctly measuring acts of child abuse in the United States.³⁸

²⁷ *Id.* at 20-21.

²⁸ *Id.* at 23-24.

²⁹ Because the article was published in the *Journal of the American Medical Association*, the authors did not specify whether the duty should be a legal duty or professional duty. *See generally id.*

³⁰ *Id.* at 18.

³¹ Monrad Paulsen, Graham Parker & Lynn Adelman, *Child Abuse Reporting Laws—Some Legislative History*, 34 GEO. WASH. L. REV. 482, 484, 488 (1966) [hereinafter Paulsen, *Legislative History*].

³² The Children's Bureau is a federal agency that was created in 1912 to address "matters pertaining to the welfare of children." KRISTE LINDENMEYER, *A RIGHT TO CHILDHOOD: THE U.S. CHILDREN'S BUREAU AND CHILD WELFARE, 1912-46*, at 26 (1997).

³³ Frank E. Vandervort, *Mandated Reporting of Child Maltreatment: Developments*, 3 APSAC ALERT 1 (2012).

³⁴ Myers, *supra* note 5, at 456.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Paulsen, *Legislative History*, *supra* note 31, at 484-86; *see also* Vandervort, *supra* note 33, at 1-2.

³⁸ Paulsen, *Legislative History*, *supra* note 31, at 484. An early study commissioned by the Bureau tallied newspaper articles that reported incidents of child abuse. *Id.* This 1962 study found 662

In light of the discussions of the conference in 1962, the Children's Bureau published a significant model child-abuse reporting law in 1963.³⁹ The Children's Bureau pamphlet was designed to serve as a guide for states to model mandated reporting legislation.⁴⁰ *The Abused Child* proposed legislation directed at medical practitioners and hospital personnel in contact with children.⁴¹ The proposal restated the need for a mandatory reporting duty and the importance of protecting children from abusive parents and guardians.⁴² The model statute also proposed immunity from civil or criminal penalties for healthcare workers due to breaches of confidentiality.⁴³

The Abused Child also included statutory model language for the creation of a legal duty to report. The model proposed a mandatory legal duty for physicians when there is "reasonable cause to suspect that physical injury [of a child] was inflicted by a parent or other person responsible for the care of the child."⁴⁴ The model also provided criteria for the content of the report, as well as direction to whom the report should be made.⁴⁵ Most importantly, the model statute provided for a misdemeanor penalty if a physician knowingly and willfully violated the duty to report.⁴⁶

This Children's Bureau publication and model statute had a significant influence in the 1964 passage of the first mandated reporting law in Maryland.⁴⁷ "By 1967, all fifty states had passed some [type] of mandated reporting law."⁴⁸

incidents of child abuse, with approximately 75 percent of the abuse perpetrated by a parent or guardian. *Id.*

³⁹ CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUC., & WELFARE, *THE ABUSED CHILD—PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD* (1963).

⁴⁰ *Id.* at 3.

⁴¹ *Id.*

⁴² *Id.* at 11.

⁴³ *Id.* at 12.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 12. This article suggests that reports be made to social services, where available. However, the Children's Bureau model statute directs physicians to report suspected abuse to the police. *Id.*

⁴⁶ *Id.* at 13.

⁴⁷ The first statute to address child abuse in Maryland became effective on June 1, 1963. See *Assault on Child*, ch. 743, 671 Md. Laws 1536 (1963) (providing that "[a]ny parent, adoptive parent or other person who has the permanent or temporary care or custody of a minor child under the age of fourteen years who maliciously beats, strikes, or otherwise mistreats" the minor child in his or her care "to such degree as to require medical treatment for such child shall be guilty of a felony . . ."). Upon conviction for this felony, the sentence was set at fifteen years. *Id.* There is no mention in the statute of sexual abuse. No Maryland case law could be found suggesting that sexual abuse was ever pursued under this version of the statute. The next year the statute was amended in section 11A to require physicians to report suspected child abuse to the police. *Id.* (codified as amended at MD. CODE ANN., CRIM. LAW § 3-601 (2002)); Barry L. Steelman, *Maryland Laws on Child Abuse & Neglect: History, Analysis & Reform*, 6 U. BALT. L. REV. 113, 116-17 (1976).

⁴⁸ Leonard G. Brown, III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical*

III. THE FEDERAL GOVERNMENT GETS MORE INVOLVED—CAPTA

Although every state passed a mandatory reporting statute by the late 1960s, significant problems persisted. Underreporting was still common despite the fact that physicians were required to report suspected child abuse.⁴⁹ Statutory variations from state to state, lack of focus within child protection services, limited procedures for following up on reports, and lack of funding were additional problems that left the newly created mandated reporting systems less successful than hoped.⁵⁰

The most significant limitation of the first generation of mandated reporting statutes was that few states actually defined “abuse.”⁵¹ This omission was intentional, as states were concerned that defining “abuse” would cause legitimate cases to go unreported because they did not fall within the definition.⁵² The hope was that if the term were undefined, mandated reporters would use a broader interpretation and err on the side of over-reporting.⁵³ However, the lack of definition produced the opposite effect, and reporting was often limited to instances of serious physical bodily injury.⁵⁴

This troubled and fragmented state of child protection prompted many to lobby for a national solution.⁵⁵ In response to concerns over lack of uniformity and lack of systematized child protection services, Congress passed the Child Abuse Protection and Treatment Act (CAPTA) of 1974.⁵⁶ Under this act, national child protection programs were created to support the “prevention, assessment, investigation, prosecution, and treatment . . .” of child abuse.⁵⁷

Perspective on the Evolution of States’ Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania, 59 VILL. L. REV. TOLLE LEGE 37, 37 (2013). Some states primarily relied upon the findings reported in *The Abused Child*. See, e.g., Paulsen, *Legislative History*, *supra* note 31, at 486 (stating that Vermont adopted the Model Statute in its entirety, and acknowledging that, outside *The Abused Child* publication, the legislature “made a rather superficial study of the problem”) (quoting Letter from Dr. R.J. McKay, Jr., Chairman, Vermont Governor’s Committee on the Abused Child (Sept. 4, 1964)).

⁴⁹ H.R. REP. NO. 93-685, at 2765 (1973), *reprinted in* 1974 U.S.C.C.A.N. 2763, 2764.

⁵⁰ *Id.*

⁵¹ Vandervort, *supra* note 33, at 1.

⁵² *Id.*

⁵³ *Id.* at 1-2.

⁵⁴ Monrad G. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 1, 12 (1967) [hereinafter Paulsen, *Shape of the Legislation*].

⁵⁵ Walter Mondale was the principal sponsor of CAPTA. See JOHN E.B. MYERS, *CHILD PROTECTION IN AMERICA: PAST, PRESENT AND FUTURE* 95 (2006). Congressional hearings were conducted, which included testimony by Dr. Kempe “that 90 percent of maltreating parents could be helped with appropriate treatment.” *Id.*

⁵⁶ Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, Jan. 31, 1974, 88 Stat. 4 (codified as amended at 42 U.S.C. § 5101 (2014)).

⁵⁷ Reena Kapoor & Howard Zonana, *Forensic Evaluations and Mandated Reporting of Child Abuse*, 38 J. AM. ACAD. PSYCHIATRY & LAW 49, 50 (2010).

States were also offered financial incentives to comply with federal standards.⁵⁸ These federal funding incentives resulted in all states either creating new statutes or overhauling their existing ones.⁵⁹ The Act also created the National Center on Child Abuse and Neglect (NCCAN) to oversee the administration of CAPTA.⁶⁰ An important facet of CAPTA was that it finally provided a specific and clear definition of abuse and maltreatment.⁶¹ While state statutes may vary in their precise definitions of “abuse,” most are guided in some fashion by the CAPTA definition. The inclusion of sexual abuse within the CAPTA definition prompted its eventual inclusion within most modern mandated state reporting laws.

IV. MODERN DAY MANDATED REPORTING

A. Primary Purpose of Modern Mandated Reporting Laws

The history of mandated reporting clearly indicates that its purpose is the protection of children. For example, the state of Minnesota expressly states that the purpose of its mandated reporting law is to “protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.”⁶² These reporting laws protect children in many different circumstances and are

⁵⁸ According to the United States House of Representatives,

A State, in order to receive such assistance, must

1. have a child abuse and neglect law which included provisions for immunity from prosecution under State or local laws arising out of reporting child abuse and neglect;
2. provide for reporting known and suspected instances of abuse and neglect;
3. provide for an investigation of the report;
4. provide for preserving the confidentiality of all records;
5. demonstrate that there are trained personnel throughout the state and that personnel, facilities, multidisciplinary programs and services are available;
6. provide for the cooperation of law enforcement officers;
7. provide for the appointment of a guardian if a judicial proceeding is necessary;
8. provide for the dissemination of information to the public; and
9. insure that, among applicants for assistance, parental organizations receive preferential treatment.

H.R. REP. NO. 93-685 (1974), reprinted in 1974 U.S.C.C.A.N. 2763, 2768.

⁵⁹ Kapoor & Zonana, *supra* note 57, at 50.

⁶⁰ Myers, *supra* note 5, at 457.

⁶¹ CAPTA defines child abuse and neglect as “any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.” CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320, § 142, 124 Stat. 3459, 3482 (2010).

⁶² MINN. STAT. § 626.556(1) (2014); *see also* FLA. STAT. § 39.001(1)(a) (stating that the state’s goal is “[t]o provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development,” as well as “to ensure secure and safe custody” and “to promote the health and well-being of all children under the state’s care” in the attempt “to prevent the occurrence of child abuse, neglect, and abandonment”).

oftentimes the only way the authorities receive notice that a child is being maltreated.⁶³ A primary component of any mandated reporting law is that the suspicion of criminal abuse be reported and subsequently investigated by the appropriate designated authorities. For example, a report of suspected child sexual abuse requires the immediate intervention of child protection professionals and law enforcement.⁶⁴ Hence, mandated reporting laws are able to protect children by assisting law enforcement in identifying, investigating, and possibly prosecuting sexual offenders.

B. The Expanding Duty

A significant characteristic of modern mandated reporting statutes has been the expansion of the duty beyond just physicians. Though some state statutes initially *encouraged* reporting among a spectrum of professionals, the compulsory duty had been limited to physicians.⁶⁵ At the time, the reason for excluding other professions from the mandated reporting duty was that most other professional groups had a history of consistently reporting suspected abuse to authorities.⁶⁶

However, this rationale was proven to be invalid, as underreporting is all too common among the spectrum of professions.⁶⁷ Consequently, over the past

⁶³ Every jurisdiction has a statutory process by which mandated reports are received and investigated in order to take steps to protect the child. As one source notes,

Each State has laws requiring certain people to report concerns of child abuse and neglect. While some States require all people to report their concerns, many States identify specific professionals as mandated reporters; these often include social workers, medical and mental health professionals, teachers, and child care providers. Specific procedures are usually established for mandated reporters to make referrals to child protective services.

Children's Bureau, *Mandated Reporting*, CHILD WELFARE INFORMATION GATEWAY, <https://www.childwelfare.gov/topics/responding/reporting/mandated/> (last visited Jan. 10, 2015). Oftentimes, a child's very survival is dependent upon those who report suspected abuse.

⁶⁴ Donna M. Pence & Charles A. Wilson, *Reporting and Investigating Child Sexual Abuse*, 4 THE FUTURE OF CHILDREN 70, 74 (1994), available at http://futureofchildren.org/futureofchildren/publications/docs/04_02_03.pdf.

⁶⁵ Paulsen, *Shape of the Legislation*, *supra* note 54, at 3-4. A host of considerations related to the very nature of the physician's role justified their inclusion. The duty was a way to preempt professional ethical codes that would otherwise prevent physicians from disclosing patient information, and as a way to obligate physicians to report, even though many at the time disapproved of reporting and perceived it as "meddling." *Id.* at 4. Second, abused children will most frequently come to the attention of doctors when the caretakers seek medical assistance for the child. *Id.* at 3. The third reason is the diagnostic skill and training of the physician to "report professional insights gained during a medical examination . . ." *Id.* at 4.

⁶⁶ *See id.* at 4.

⁶⁷ According to child protection expert, Victor Vieth:

A 1990 study found that only 40% of maltreatment cases and 35% of the most serious cases known to professionals mandated to report, were in fact reported or otherwise getting into the child protection system (CPS). A study published

fifteen years, all states have extended the duty to report to include other professions.⁶⁸ These extensions reflect additional policy considerations beyond the immediate protection of the child.⁶⁹ This expansion of duties falls into one of two categories: (1) limited reporting or (2) universal reporting.

C. Limited Reporting

Though forty-eight states designate specific professionals with a duty to report suspected abuse, the types of professions vary depending upon jurisdiction.⁷⁰ For example, California lists forty-four categories of professionals with a duty to report,⁷¹ whereas Illinois lists fifty-seven professions.⁷² Professionals typically included are those who come in contact with children or who are likely to discover abuse, including social workers, teachers and school personnel, physicians and healthcare workers, child care providers, mental health professionals, medical examiners, and law enforcement officers.⁷³ Some other professions covered by select states include: (1) commercial film and photograph processors;⁷⁴ (2) substance abuse counselors;⁷⁵ (3) probation and parole officers;⁷⁶ (4) domestic violence workers;⁷⁷ (5) animal control or humane officers;⁷⁸ (6) CASA volunteers;⁷⁹ and (7) clergy.⁸⁰

one decade later found that approximately 65% of social workers, 53% of physicians and 58% of physician assistants, were not reporting all cases of suspected abuse.

Victor I. Vieth, *Unto the Third Generation: A Call to End Child Abuse in the United States Within 120 Years (revised and expanded)*, 28 *HAMLIN J. PUB. L. & POL'Y* 1, 9 (2006).

⁶⁸ DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* (2d ed. 1994), available at 2 *Leg. Rts. Child. Rev.* 2D § 16:17 (2d ed. 2014).

⁶⁹ See Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 *FAM. L.Q.* 141, 142-43 (1986).

⁷⁰ CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., *Mandatory Reporters of Child Abuse and Neglect*, CHILD WELFARE INFO. GATEWAY 1 (2013), <https://www.childwelfare.gov/pubPDFs/manda.pdf> [hereinafter CHILDREN'S BUREAU, *Mandatory Reporters*]. The District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands also designate professionals. *Id.* New Jersey and Wyoming do not specify professions, but require "all persons to report." *Id.* at 1 n.1.

⁷¹ CAL. PENAL CODE § 11165.7 (West 2014).

⁷² 325 ILL. COMP. STAT. 5/4 (2014).

⁷³ CHILDREN'S BUREAU, *Mandatory Reporters*, *supra* note 70, at 2.

⁷⁴ Alaska, California, Colorado, Georgia, Illinois, Iowa, Louisiana, Maine, Missouri, Oklahoma, South Carolina, and West Virginia, as well as Guam and Puerto Rico. *Id.* at 2 n.2 and accompanying text.

⁷⁵ Alaska, California, Connecticut, Illinois, Iowa, Kansas, Massachusetts, Nevada, New York, North Dakota, Oregon, South Carolina, South Dakota, and Wisconsin. *Id.*

⁷⁶ Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Massachusetts, Minnesota, Missouri, Nevada, North Dakota, South Dakota, Texas, Vermont, Virginia, and Washington. *Id.* at 2 n.3 and accompanying text.

⁷⁷ Alaska, Arizona, Arkansas, Connecticut, Illinois, Maine, and South Dakota. *Id.* at 2 n.5 and accompanying text.

D. Universal Reporting

Some states have expanded the designation of mandated reporter to include all adults. Eighteen states and Puerto Rico require “any person who suspects . . . abuse or neglect” to report.⁸¹

The primary rationale for universal mandated reporting is that the protection of the child should not be based upon the profession of who becomes aware of the abuse. Victor Vieth articulates this position,

[i]f a child’s abuse is known only to a neighbor, relative or someone otherwise not mandated to report, the information is less likely to be reported and the child is more likely to endure additional abuse. Indeed, many of the most vulnerable children do not regularly come into contact with a mandated reporter.⁸²

Thus, those who offend vulnerable children in jurisdictions that limit the category of mandated reporters are less likely to be identified. Not only do these limitations protect offenders, but they do so at the peril of children. As Vieth argues, “Absent any intervention, abuse can be expected to escalate.”⁸³ An accompanying rationale is that data suggests that individuals who are traditionally designated as mandated reporters report abuse at a much higher rate compared to those who do so voluntarily.⁸⁴ Finally, there seems to be some evidence that indicates states that have universal mandated reporting laws have

⁷⁸ California, Colorado, Illinois, Maine, Ohio, Virginia, and West Virginia. *Id.*

⁷⁹ Arkansas, California, Louisiana, Maine, Montana, Oregon, South Carolina, Virginia, Washington, and Wisconsin. *Id.* at 2 n.6 and accompanying text.

⁸⁰ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Vermont, West Virginia, and Wisconsin, as well as Guam. *Id.* at 2 n.7 and accompanying text.

⁸¹ Delaware, Florida, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, and Utah. *Id.* at 2 n.9 and accompanying text. “New Jersey and Wyoming require all [adults] to report without specifying any profession[.]” *Id.* at 2.; see also CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., *State Statutes Search*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/> (last visited Jan. 11, 2015).

⁸² Victor I. Vieth, *Passover in Minnesota: Mandated Reporting and the Unequal Protection of Abused Children*, 24 WM. MITCHELL L. REV. 131, 155 (1998).

⁸³ *Id.* at 156.

⁸⁴ For example, in 2012, three-fifths of all suspected child abuse reports came from professions that are mandated to do so by law. CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., *CHILD MALTREATMENT 2012*, at 7 (2012), available at <http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf> [hereinafter CHILD MALTREATMENT 2012].

higher rates of abuse substantiation.⁸⁵ This seems to indicate that universal mandated reporting results in a higher discovery of actual abuse.

E. Training

One significant reason mandated reporters fail to report suspected abuse is the failure to understand the law and how it is to be applied.⁸⁶ As a result, more jurisdictions are requiring some degree of training for mandated reporters. A handful of states have required such training for at least a few years.⁸⁷ In 2013, there was an abundance of new legislative material introduced regarding required trainings for mandated reporters.⁸⁸ For example, Arkansas passed a law that requires mandated reporter training for school personnel in the 2013–2014 school year and every four years thereafter.⁸⁹ Illinois passed a new law that “[w]ithin one year of initial employment and at least every [five] years thereafter, school personnel required to report child abuse as provided under this Section must complete mandated reporter training by a provider or agency with expertise in recognizing and reporting child abuse.”⁹⁰ Louisiana recently enacted a law that

⁸⁵ Rebecca McElroy, *An Analysis of State Laws Regarding Mandated Reporting of Child Maltreatment*, CHILD FOCUS 3 (2012), available at http://www.ncdsv.org/images/SPARC-FF-CF_AnAnalysisOfStateLawsRegardingMandatedReportingOfChildMaltreatment_9-2012.pdf.

⁸⁶ Douglas J. Besharov & Lisa A. Laumann, *Child Abuse Reporting*, SOCIETY, May/June 1996, at 40, 44. An older survey of mandated reporters in Iowa revealed that many were unsure whether certain injuries were reportable under the Iowa mandated reporting law. Meriwether, *supra* note 69, at 153.

⁸⁷ Connecticut, Massachusetts, and Nevada have had mandated reporting laws. Connecticut’s law was shaped by Public Act 11-93, which called for the mandatory training of school district employees. see CONN. GEN. STAT. § 17a-101(b) (2014) (as amended by 2011 Conn. Legis. Serv. P.A. 11-93 (H.B. 5431)), available at <http://www.cga.ct.gov/2011/pub/chap319a.htm#Sec17a-101.htm>. As of January 2010, in Massachusetts, all mandated reporters who have professional licenses in the state are required to complete a mandated reporter training. see MASS. GEN. LAWS ch. 119, § 51A(k) (2014) (as amended by 2008 Mass. Legis. Serv. Ch. 176 (H.B. 4905)), available at <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section51A>. In Nevada, every employee of a licensed childcare setting must complete mandated reporter training within ninety days of initial employment. see NEV. REV. STAT. § 432B.220.4(f) (2014); see also *Mandated Reporting for Child Abuse & Neglect*, NEVADA REGISTRY, <http://www.nevadaregistry.org/child-care-licensing/mandated-reporting.html>; see also NEV. REV. STAT. § 432B.195 (2014) (as amended by 2005 Nev. Laws Ch. 455 § 14).

⁸⁸ *Mandatory Reporting of Child Abuse & Neglect 2013 Introduced State Legislation*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Sept. 23, 2014), <http://www.ncsl.org/research/human-services/mandatory-rprt-g-of-child-abuse-and-neglect-2013.aspx> [hereinafter *2013 Introduced State Legislation*].

⁸⁹ ARK. CODE ANN. § 6-17-709 (2014) (as amended by 2013 Ark. Acts 969, § 8); see also H.B. 1262, 89th General Assemb. (Ark. 2013), available at <ftp://www.arkleg.state.ar.us/ACTS/2013/PUBLIC/ACT969.PDF>.

⁹⁰ 325 ILL. COMP. STAT. 5/4 (2014) (as amended by 2013 Ill. Legis. Serv. P.A. 98-408 (H.B. 2245) (amending ch. 23, ¶ 2054)), available at <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=032500050K4>; see also *2013 Introduced State Legislation*, *supra* note 88.

requires training for mandated reporters; it also requires the “training shall be made available by the child welfare division of the Department of Children and Family Services or any other mechanism as approved by the department as long as it includes information on the reporting procedure and the consequences of failing to report.”⁹¹ A recent bill introduced in Maine required mandated reporters to complete training prior to receiving a professional license or certification.⁹² Oregon has passed something similar to require its state bar to provide rules for trainings of attorneys.⁹³ In 2014, a number of bills were introduced in state legislatures throughout the country that required some degree of training for mandated reporters.⁹⁴

Regardless of whether training is required, some states offer voluntary trainings for those who wish to learn more about their statutorily mandated reporting duties.⁹⁵

⁹¹ LA. CHILD. CODE ANN. ART. 609A(3)(a) (2014) (as amended by 2013 La. Sess. Law Serv. Act 163 (H.B. 557)); H. B. 557, Reg. Sess. (La. 2013), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=857036>. See also 2013 Introduced State Legislation, *supra* note 88.

⁹² See 2013 Introduced State Legislation, *supra* note 88; H.B. 1094, 126th Legis., 1st Reg. Sess. (Me. 2013) available at <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1094&item=1&num=126>; Me. Rev. Stat. tit. 10, § 8010 (repealed 2013).

⁹³ OR. REV. STAT. § 9.114 (2014) (as amended by 2013 Or. Laws. Ch. 352 (H.B. 2205)); H.B. 2205, 77th Legis. Assemb., Reg. Sess. (Or. 2013), available at https://www.oregonlegislature.gov/BILLS/_LAWS/LAWSSTATUTES/2013ORLAW0352.PDF; see also 2013 Introduced State Legislation, *supra* note 88.

⁹⁴ The Iowa legislature brought forth two bills, one of which is still pending. S.F. 350, 85th Gen. Assemb., (Iowa 2013) (formerly S.F. 178 (Iowa 2013)). S.F. 178 detailed the training requirements for mandated reporters and posed a time limit—between twenty-four or thirty-six months after employment—for successful completion of the interactive, ninety-minute training. S.B. 178 (Iowa 2013), available at <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=sf178>. The New York legislature submitted Assemb. B. 4662—a bill still pending—that directs educational institutions to give notice to employees and volunteers required to report of that duty and provides policies and procedures to employees and volunteers through required training. Assemb. B. 4662, Reg. Sess. (N.Y. 2013), available at http://assembly.state.ny.us/leg/?default_fld=&bn=A04662&term=2013&Summary=Y&Actions=Y&Text=Y&Votes=Y. Another New York proposed law, S.B. 3347, offers that medical professionals who are mandated reporters must undergo three hours of training to learn how to identify signs of abuse. S.B. 3347, Reg. Sess. (N.Y. 2013), available at http://legiscan.com/NY/text/S03347/id/720733/New_York-2013-S03347-Introduced.html.

⁹⁵ California: *Child Abuse Mandated Reporter Training*, CAL. DEP’T OF SOC. SERVS., <http://mandatedreporter.ca.com/training/generaltraining.htm> (last visited Jan. 11, 2015); District of Columbia: *Keeping DC Children & Youth Safe: Mandated Reporter Training*, D.C. CHILDREN & FAMILY SERVS. AGENCY, <http://dc.mandatedreporter.org/pages/Welcome.action> (last visited Jan. 11, 2015); Georgia: *Mandated Reporter*, OFFICE OF THE CHILD ADVOCATE, <http://oca.georgia.gov/mandated-reporter> (last visited Jan. 11, 2015); Maine: *Mandated Reporter Training for Suspected Child Abuse & Neglect*, CHILD & FAMILY SERVS., <http://www.maine.gov/dhhs/ocfs/cps/> (last visited Jan. 11, 2015); Michigan: *Mandated Reporters*, MICH. DEP’T OF HUMAN SERVS., http://www.michigan.gov/dhs/0,4562,7-124-7119_50648_44443---,00.html (last visited Jan. 11, 2015); Minnesota: *Child Protection*, MINN. DEP’T OF HUMAN SERVS., http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestRel

F. Reporting Procedures

All mandated reporting laws provide a reporting protocol. Traditionally, reports are made to the police, the juvenile court, or the social service agency.⁹⁶ The current trend among states is toward central registries to process reports.⁹⁷ The registry “is a repository of reports and findings” within the jurisdiction.⁹⁸ When an individual suspects child abuse, a report⁹⁹ must be made immediately to the appropriate agency.¹⁰⁰ Generally, the report must include: (1) name and address of the child; (2) family composition; (3) child’s parent or person responsible for providing childcare; (4) nature and extent of injury; and (5) “any other information the reporter believes might be important.”¹⁰¹ Most states require reports to be confidential, though eighteen states oblige the reporter to provide a name and contact information.¹⁰²

G. Penalties for Failing to Report

1. Criminal Liability

Forty-eight states provide for a criminal penalty when the mandatory reporter willfully or knowingly fails to report of suspected abuse.¹⁰³ This was

eased&dDocName=id_000152 (last visited Jan. 11, 2015); Missouri: *Guidelines for Mandated Reporters of Child Abuse & Neglect*, MO. DEP’T OF SOC. SERVS., http://dss.mo.gov/cd/pdf/guidelines_can_reports.pdf (last visited Jan. 11, 2015); North Dakota: *Mandated Reporters Interactive Training*, N.D. DEP’T OF HUMAN SERVS., <http://www.stopchildabusend.com/NDDHS/mandatedreportertraining/index.html> (last visited Jan. 11, 2015); South Carolina: *Mandated Reporting*, CHILDREN’S TRUST OF S.C., http://www.schildren.org/prevention_learning_center/recognizing_child_abuse_and_neglect/reporting/mandated_reporting/ (last visited Jan. 11, 2015); and Washington: *How to Report Child Abuse or Neglect*, WASH. STATE DEP’T OF SOC. & HEALTH SERVS., <http://www.altsa.dshs.wa.gov/aps/training/reporters.htm> (last visited Jan. 11, 2015).

⁹⁶ 42 U.S.C. § 13031(d) (2014) (requiring the Attorney General to “designate an agency to receive and investigate the reports” and further stating that “[w]hen such reports are received by social services or health care agencies,” and those reports “involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child.”).

⁹⁷ Meriwether, *supra* note 69, at 148.

⁹⁸ *Id.*

⁹⁹ Reports may be made orally or in writing. Most states require the oral report to be followed by written report in order to create a record. CHILDREN’S BUREAU, *Mandatory Reporters*, *supra* note 70, at 3.

¹⁰⁰ Meriwether, *supra* note 69, at 147.

¹⁰¹ *Id.* at 147-48.

¹⁰² CHILDREN’S BUREAU, *Mandatory Reporters*, *supra* note 70, at 3. Though most states protect the reporter’s identity from disclosure to the alleged perpetrator, some allow for the release of the reporter’s name under specified circumstances or to specified departments. *Id.* at 3-4.

¹⁰³ KRAMER, *supra* note 68, at 16-17. Six states limit violations to civil fines when it cannot be established that the mandated reporter “knowingly or willfully” failed to report. Connecticut: *see*

best articulated by the court in *State v. Hurd*¹⁰⁴ when the court noted that “the legislature intended to hold accountable those persons who reasonably suspect child abuse and intentionally fail to notify the appropriate agencies.”¹⁰⁵ A conviction for violating a mandated reporting law often results in penalties such as jail, probation, or a fine.¹⁰⁶

Historically, there has been little research on the prosecutions related to the violation of mandated reporting laws. In recent years, however, limited statistics have been collected on the number of mandated reporters prosecuted for failing to report.¹⁰⁷ Although there has not been a strong history of prosecutions

CONN. GEN. STAT. § 17a-101a(b) (2014); *see also* CONN. GEN. STAT. § 17a-101(e) (2014). Delaware: DEL. CODE ANN. tit. 16, § 914 (2014). Maine: ME. REV. STAT. ANN. tit. 22, § 4009 (2014). Massachusetts: MASS. GEN. LAWS ch. 119, § 51A(c) (2014). Oregon: *see* OR. REV. STAT. § 419B.010(5) (2014). Vermont: VT. STAT. ANN. tit. 33, § 4913(f) (2014).

¹⁰⁴ *State v. Hurd*, 400 N.W.2d 42 (Wis. Ct. App. 1986).

¹⁰⁵ *Id.* at 47.

¹⁰⁶ *See, e.g.*, *Barber v. State*, 592 So. 2d 330, 331 (Fla. Dist. Ct. App. 1992) (upholding criminal conviction of foster care counselor who failed to report suspected abuse and was sentenced to probation); *Adams v. State*, No. 14-07-00710-CR, 2008 WL 5441418, at *1 (Tex. Ct. App. Dec. 30, 2008) (upholding 180 day jail sentence and a \$2,000 fine for failure to report under the mandated reporting statute); *Morris v. State*, 833 S.W.2d 624, 626 (Tex. Ct. App. 1992) (upholding 120 jail sentence and \$1,000 fine for violating state mandated reporting law); *Rodriguez v. State*, 47 S.W.3d 86, 87 (Tex. Ct. App. 2001) (upholding 2 day jail sentence and \$750 fine for violating mandated reporting law).

¹⁰⁷ For example, in 2011, *USA Today* gathered statistics on mandated reporting enforcement actions in each state. *See* Brad Heath, *Few Penalties for Keeping Child Abuse Secret*, U.S.A. TODAY (Dec. 16, 2011), <http://usatoday30.usatoday.com/news/nation/story/2012-01-02/unreported-child-abuse/51981108/1> (follow “Enforcement actions” row for each state under “Mandatory abuse-reporting laws” chart). The pertinent information is as follows: (1) Colorado initiated at least fifty cases against mandated reporters since 2001—nine of these cases resulted in convictions; (2) Connecticut had fifteen cases against mandated reporters since 2001, resulting in two convictions; (3) Delaware charged four individuals with failure to report since 2001. Although only one was convicted, two others were charged with even more serious crimes; (4) Florida police arrested 121 mandated reporters for failure to report since 2001; (5) Georgia police arrested nineteen mandated reporters since 2006; (6) Illinois police arrested twenty-six mandated reporters since 1997; (7) Kentucky charged sixty mandated reporters since 2006; (8) Michigan police arrested five mandated reporters since 2001; (9) Missouri arrested eight mandated reporters since 2007—two of which were convicted; (10) Nebraska charged twenty-eight mandated reporters with failure to report abuse since 2001; (11) Nevada police arrested four individuals since 2001; (12) New Jersey successfully convicted three mandated reporters for failure to report abuse; (13) New Mexico charged twenty-six cases against mandated reporters from 2006–2010; (14) Oklahoma charged eighty-two individuals with failure to report since 2001; (15) Pennsylvania charged three mandated reporters from 2004 until the Jerry Sandusky scandal; (16) Rhode Island charged three mandated reporters since 2001—all of which pleaded no contest; (17) South Carolina charged thirty-eight mandated reporters since 2007, leading to ten convictions; (18) South Dakota brought five prosecutions against mandated reporters since 2004; (19) Tennessee charged sixty-one mandated reporters since 2007; (20) Utah charged thirty-five mandated reporters since 2006, with twelve convictions; (21) Washington charged eight mandated reporters with failure to report since 2001. One of those reporters was convicted, charged a fine, and sentenced to probation; and (22) Wisconsin initiated eleven cases specifically against mandated reporters. *Id.*

for failure to report, recent news reports suggest that more and more mandated reporters are being held criminally accountable for their failure to act.¹⁰⁸

2. Civil Liability

Mandated reporters can also be held civilly liable for failing to report when there is a recognized duty to a child. Such a duty can be explicit or implied and can sometimes extend to the mandated reporter's employer.

a. Explicit Liability

At least seven states explicitly provide for civil liability for mandated reporters who fail to report suspected abuse.¹⁰⁹ In each of these jurisdictions, the

¹⁰⁸ As awareness of child protection continues to increase, stories of mandated reporters failing to report abuse make headlines. On December 12, 2012, the *Bonney Lake Courier-Herald* posted a story about a Washington State Trooper who was charged “with two counts of Failure to Comply with Mandatory Reporting Laws;” the local prosecutor stressed that “mandatory reporting laws exist to help protect our children” and that “[l]aw enforcement officers in particular are expected to follow our laws.” *Trooper Charged with Failure to Report Child Abuse*, BONNEY LAKE COURIER-HERALD (Dec. 12, 2012), <http://www.blscourierherald.com/news/183251092.html> (internal quotation marks omitted). *Take Two* reported a story about a principal who had been convicted of failure to report child abuse under the state's mandated reporting law and another principal who was at the center of an investigation for failure to report. Vanessa Romo, *School Principals Who Fail to Report Abuse are Rarely Prosecuted*, TAKE TWO (Feb. 8, 2013), <http://www.scpr.org/programs/take-two/2013/02/08/30435/school-principal-failure-to-report-abuse-lausd/>. While there had been some successful prosecutions, the story emphasized the need for reform to better protect children. *Id.* According to a local child abuse prevention agency, “[t]he penalty for failure to report should be equal to the perpetration of the abuse” because “[y]ou are sentencing that child to a lifetime of potential mental health problems and ultimately a total breakdown of their self confidence and sometimes suicide.” *Id.* (internal quotation marks omitted). Additionally, “authorities usually find out when a second child is victimized but by then it's too late to prosecute the earlier failure to report.” *Id.*

¹⁰⁹ Michigan: MICH. COMP. LAWS ANN. § 722.633(1) (2014) (providing that “[a] person who is required by this act to report an instance of suspected child abuse or neglect and who fails to do so is civilly liable for the damages proximately caused by the failure.”); Iowa: IOWA CODE ANN. § 232.75(2) (2014) (stating that “[a]ny person, official, agency, or institution required . . . to report a suspected case of child abuse who knowingly fails to do so or who knowingly interferes with the making of such a report in violation of [the mandated reporting law] is civilly liable for the damages proximately caused by such failure or interference.”); Montana: MONT. CODE ANN. § 41-3-207(1) (2014) (providing that “[a]ny person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.”); New York: N.Y. SOC. SERV. LAW § 420(2) (McKinney 2014) (stating that “[a]ny person, official or institution required by this title to report a case of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.”); *see also* *Kimberly v. Bradford Cent. Sch.*, 226 A.D.2d 85, 649 N.Y.S.2d 588 (N.Y. App. Div. 1996) (finding that a mandated reporter could be liable for money damages if she failed to report child abuse); Rhode Island: R.I. GEN. LAWS § 40-11-6.1

liability is not limited to just the mandated reporter, but extends to any person or institution that prevents the mandated reporter from making the report.¹¹⁰

b. Implicit Liability

Even in jurisdictions where mandated reporting statutes do not explicitly provide for civil liability, some courts have permitted civil remedies for a mandated reporter's failure to report abuse.¹¹¹ In *Beggs v. State Dept. of Social and Health Services*,¹¹² the Supreme Court of Washington found that the relevant mandated reporting statute "implies a cause of action against a mandatory reporter who fails to report suspected abuse."¹¹³ The court said that the mandated reporter statute did not "explicitly provide a civil remedy for a child who suffers further injury against a mandatory reporter who failed to report suspected abuse."¹¹⁴ Although not expressly mentioned in the statute, the court acknowledged that a civil cause of action is implied when (1) "the plaintiff is within the class for whose 'especial' benefit the statute was enacted," (2) "the legislative intent, explicitly or implicitly, supports creating or denying a remedy," and (3) "implying a remedy is consistent with the underlying purpose of the legislation."¹¹⁵ Using this test, the court authorized a civil remedy as a result of a mandated reporter's failure to report.¹¹⁶ To reach this conclusion, the court

(2014) (providing that "any person, official, physician, or institution who knowingly fails to perform any act required by this chapter or who knowingly prevents another person from performing a required act shall be civilly liable for the damages proximately caused by that failure."); Colorado: COLO. REV. STAT. ANN. § 19-3-304(4)(b) (2014) (stating that "[a]ny person who willfully violates the provisions of [the mandated reporting law] [s]hall be liable for damages proximately caused thereby."); Arkansas: ARK. CODE ANN. § 12-18-206 (2014) (providing that "[a] person required by this chapter to make a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline who purposely fails to do so is civilly liable for damages proximately caused by that failure").

¹¹⁰ *Id.*

¹¹¹ For example, two notable cases where a civil cause of action was found for a mandated reporter's failure to report abuse include: *Ham v. Hosp. of Morristown, Inc.*, 917 F. Supp. 531 (E.D. Tenn. 1995) and *Landeros v. Flood*, 551 P.2d 389 (Cal. 1976). *See also* *Doe v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 167 P.3d 1193 (Wash. Ct. App. 2007). In *Jane Doe*, the court found that "[i]f the legislature intended a remedy for parent victims of negligent child abuse investigations, it is reasonable to imply an intended remedy for child victims of sexual abuse when those required to report the abuse fail to do so." *Id.* at 1201 (emphasis added). Additionally, the court stated, "imposing civil consequences for failure to report motivates mandatory reporters to take action to protect victims of childhood sexual abuse." *Id.*

¹¹² *Beggs v. Dep't of Soc. & Health Servs.*, 247 P.3d 421 (Wash. 2011).

¹¹³ *Id.* at 424.

¹¹⁴ *Id.* at 425.

¹¹⁵ *Id.* (quoting *Bennett v. Hardy*, 784 P.2d 1258, 1261-62 (Wash. 1990)).

¹¹⁶ *Id.* As for the first requirement of the test, the court found that child abuse victims are within the class the mandated reporting statute was meant to benefit. *Id.* (citing *State v. Warner*, 889 P.2d 479, 486 (Wash. 1995) (stating "[t]he reporting statute is designed to secure prompt protection and/or treatment for the victims of child abuse" and that "[t]he class of persons it is designed to

acknowledged, “[g]overnmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities”¹¹⁷ The court held that, “[i]mplying a civil remedy as a means of enforcing the mandatory reporting duty is consistent with” the priority of protecting children and punishing offenders.¹¹⁸

3. Employer Liability

Not only can mandated reporters be subject to civil liability for failing to report, but courts have also held employers of mandated reporters liable for their employees’ failure to report abuse. In *Alejo v. City of Alhambra*,¹¹⁹ the California Court of Appeals found that a city could be liable when its police officers—all of whom were designated mandated reporters—fail to report “their reasonable suspicions” of child abuse.¹²⁰ The court specifically found there was a cause of action for negligence per se.¹²¹ Based on the language of the mandated reporting statute, the court concluded, “the Legislature intended to impose a mandatory duty on police officers to investigate and report known or reasonably suspected child abuse.”¹²² Though the court focused on police officers, it clarified that the “whole system [of child protection] depends on professionals such as doctors, nurses, school personnel and peace officers who initially receive reports of child abuse to investigate and, where warranted, report those accounts to the appropriate agencies.”¹²³ If mandated reporters ignored suspected abuse

protect is the victims, not the abusers”). For the second requirement, the court found the statute supported civil liability for failure to report, even though the statute was silent on the matter. *Id.* (quoting *Bennett*, 784 P.2d at 1261). In fact, “[a] grant of immunity from liability clearly implies that civil liability can exist in the first place.” *Id.* (quoting *Doe*, 167 P.3d at 1201). Finally, the court recognized that an implied cause of action was not inconsistent with the purpose of the mandated reporting statute. *Id.* (quoting WASH. REV. CODE ANN. § 26.44.010 (1999) (stating “[i]t is the intent of the legislature that . . . protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children”).

¹¹⁷ *Id.* (quoting Laws of 1985, ch. 259, § 1).

¹¹⁸ *Id.* at 425-26. See also *Ham v. Hosp. of Morristown, Inc.*, 917 F. Supp. 531, 537 (E.D. Tenn. 1995) (holding that the failure of a mandated reporter to report abuse can lead to civil liability, because the mandated reporter statute was designed “to provide the greatest possible protection as promptly as possible for children.”) (quoting TENN. CODE ANN. § 37-1-401(a) (1977)).

¹¹⁹ *Alejo v. City of Alhambra*, 89 Cal. Rptr. 2d 768 (Cal. Ct. App. 1999).

¹²⁰ *Id.* at 770.

¹²¹ *Id.* at 771. Only the first two elements of negligence per se—whether the defendant violated the statute and whether the defendant’s violation caused the injury to the plaintiff—were at issue in this case. *Id.*

¹²² *Id.* at 772. CAL. PENAL CODE § 11166(a) (West 2014) providing that “mandated reporter[s] shall make a report . . . whenever the mandated reporter, in his or her professional capacity or within the scope of his or her 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.”

¹²³ *Alejo*, 89 Cal. Rptr. 2d at 773.

circumstances, then “the Legislature’s entire scheme of child abuse prevention is thwarted.”¹²⁴

Police departments are not the only employers who have been held liable for the failure of its employees to comply with mandated reporting laws. In *Grimm v. Summit County Children Services Board*,¹²⁵ the Ohio Court of Appeals upheld a jury verdict finding a hospital liable for its employees’ failure to report abuse.¹²⁶ To reach this conclusion, the court considered the statute in question and found that a violation of the mandated reporting law was grounds for negligence per se.¹²⁷ Thus, the court recognized that “an employee’s liability for failure to report [which is negligence per se] may be imputed to the employer under the doctrine of respondeat superior.”¹²⁸

Schools have also been subject to civil liability for the failure of employees to comply with mandated reporting laws. In *Yates v. Mansfield Board of Education*,¹²⁹ the Ohio Supreme Court held that the school board could be liable when its employees violated the mandated reporting statute and such failure “proximately results in the sexual abuse of another minor student”¹³⁰

The potential for employer liability should motivate certain employers of designated mandated reporters to train and equip these employees on issues related to their legal responsibilities.

H. Statute of Limitations: Mandated Reporting as a Continuing Offense

An offense deemed to be continuing in character does not trigger the statute of limitations until the last act that is viewed to be criminal has occurred.¹³¹ However, such offenses are generally not held to be “continuing,”

¹²⁴ *Id.*

¹²⁵ *Grimm v. Summit Cnty. Children Servs. Bd.*, No. 22702, 2006 WL 1329689, (Ohio Ct. App. May 17, 2006).

¹²⁶ *Id.* at *1.

¹²⁷ *Id.* at *3. The statute provides that

[n]o [mandated reporter] who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age . . . has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division.

OHIO REV. CODE ANN. § 2151.421(A)(1)(a) (West 2011).

¹²⁸ *Grimm*, 2006 WL 1329689, at *6.

¹²⁹ *Yates v. Mansfield Bd. of Educ.*, 808 N.E.2d 861 (Ohio 2004).

¹³⁰ *Id.* at 871.

¹³¹ *Duncan v. State*, 384 A.2d 456, 459 (Md. 1978) (stating that “a continuing offense is marked by a continuing duty in the defendant to do an act which he fails to do. The offense continues as long as the duty persists, and there is a failure to perform that duty.”).

unless the explicit language of the substantive statute identifies the offense as “continuing” or the nature of the crime is such that Congress, or the legislature, intended it to be treated as one.¹³² Some courts have considered failing to report child abuse as a continuing criminal offense that cannot be cut off by the statute of limitations. In *Lebo v. State*,¹³³ a high school varsity volleyball coach was charged with failure to report child abuse under the mandated reporting statute because she knew of the junior varsity coach’s sexual misconduct toward student athletes.¹³⁴ The defendant argued that the charges were barred by the state’s two-year statute of limitations.¹³⁵ The appellate court in Indiana disagreed, finding that “failure to report is a continuing offense to which the statute of limitations does not apply”¹³⁶ The court specifically held that the language of the statute provided sufficient indication to indicate that the legislature deemed it to be a continuing offense.¹³⁷ If a mandated reporting statute is deemed to be a “continuing offense,” the prosecution of the alleged violator is not barred by the statute of limitations. This can be extremely important in cases where it is not discovered until much later that the mandated reporter failed to report suspected abuse.

I. Federal Mandated Reporting

Similar to state reporting laws, federal law also requires certain professions to report the suspected abuse of children on federal lands. These reporting obligations are addressed in 42 U.S.C. § 13031.¹³⁸ The law states:

¹³² *United States v. Reitmeyer*, 356 F.3d 1313, 1322 (10th Cir. 2004).

¹³³ *Lebo v. State*, 977 N.E.2d 1031 (Ind. App. 2012).

¹³⁴ *Id.* at 1033.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 1037 (stating that, “[a]lthough the statute does not utilize the terms ‘continuing’ or ‘continuous,’ it includes the following provision to that effect: ‘This chapter does not relieve an individual of the obligation to report on the individual’s own behalf, unless a report has already been made to the best of the individual’s belief.’ An individual who has not been ‘relieved’ of his duty to report must be considered to have a continuing duty to do so.” (quoting IND. CODE § 31-33-5-3 (2012))).

¹³⁸ 42 U.S.C. § 13031 (2014). 18 U.S.C. § 2258 outlines very similar requirements as 42 U.S.C. § 13031 in that it limits reporting to those engaged in activities on federal property or a federally operated facility. *Compare* 18 U.S.C. § 2258 (2014), *with* 42 U.S.C. § 13031 (2014). Aside from these two statutes, 18 U.S.C. § 1169 creates mandated reporting obligations and procedures specifically for the suspected abuse of Native American children. *See* 18 U.S.C. § 1169 (2014). 18 U.S.C. § 1169 lays out the basic reporting requirements. Like other mandated reporting laws, it provides a list of individuals subject to the law, including physicians, dentists, teachers, and counselors. 18 U.S.C. § 1169(a)(1)(A)-(H). Under this law, any of the specified individuals who know or have reasonable suspicion that a child in Indian country was or may be in danger of being abused will be fined or imprisoned if they fail to report that information to the appropriate authorities. 18 U.S.C. § 1169(a)(2)-(3). The reporting procedures are described in 25 U.S.C. § 3203. 25 U.S.C. § 3203 (2014). After an initial report of suspected abuse is received by a local

A person who, while engaged in a professional capacity or activity described in subsection (b) of this section on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d) of this section.¹³⁹

The statute imposes a duty on eight categories of professionals¹⁴⁰ to report suspected child abuse if the person engaged in the enumerated profession or activity learned of the suspected abuse while on federal property or facilities.¹⁴¹

law enforcement agency, the local law enforcement agency must draft a report that includes information about the child, the alleged offender, and the alleged abuse. 25 U.S.C. § 3203(b)(1)(B); 18 U.S.C. § 3203(c). If the alleged abuse involves an Indian child or if the alleged offender is Indian, the local law enforcement agency must notify the FBI. 25 U.S.C. § 3203(b)(2). The federal government has recognized the important role Indian children play in maintaining Indian culture and heritage, and, as a result, it has actively engaged in efforts to protect Indian children. Before implementing the Indian mandated reporting law, Congress made several findings: “[1] incidents of abuse of children on Indian reservations are grossly underreported; [2] such underreporting is often a result of the lack of a mandatory Federal reporting law.” Indian Child Welfare Act, 25 U.S.C. § 3201(a)(1)(A)-(B) (emphasis added). According to 25 U.S.C. § 3201, one of the goals of the United States is to identify and diminish abuse events in Indian country. 25 U.S.C. § 3201(a)(2)(A). To achieve this goal, the law has several direct purposes. 25 U.S.C. § 3201(b)(1)-(b)(9) (2014). Not only does a better system need to be in place to ensure reports of abuse are given to the appropriate authority, but also any other necessary steps may be taken to promote child protection.

¹³⁹ 42 U.S.C. § 13031.

¹⁴⁰ According to 42 U.S.C. § 13031,

- (1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.
- (2) Psychologists, psychiatrists, and mental health professionals.
- (3) Social workers, licensed or unlicensed marriage, family, and individual counselors.
- (4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.
- (5) Child care workers and administrators.
- (6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.
- (7) Foster parents.
- (8) Commercial film and photo processors.

42 U.S.C. § 13031(b)(1)-(8) (2014).

¹⁴¹ The Office of Legal Counsel for the Department of Justice issued this clarification regarding the duty:

First, you have asked whether section 13031's reporting requirement is limited to situations in which the suspected victim of child abuse is cared for or resides on federal land or in a federal facility. We conclude that it is not. Instead, under the VCAA, all persons who learn of suspected child abuse (as defined by the

Similar to many state reporting laws, the federal statute has an additional provision requiring that federal reporters receive training regarding “the obligation to report, [and] the identification of abused and neglected children.”¹⁴²

V. MANDATED REPORTING: IS IT EFFECTIVE?

Since its inception, mandated reporting has led to a steady increase in reports of child abuse to protective services.¹⁴³ In 1963, there were approximately 150,000 cases of suspected abuse or neglect brought to the attention of the authorities.¹⁴⁴ By 1972, the figure increased to an estimated 611,684 annually.¹⁴⁵ By 1982, just under 1.3 million child abuse cases were reported.¹⁴⁶ This number almost tripled to 3.8 million in 2012.¹⁴⁷ Data collected from the National Child Abuse and Neglect Data System (NCANDS) from 2008 shows an estimated 3.3 million referrals of abuse or neglect—concerning approximately six million children—were received by child protective services (CPS) agencies.¹⁴⁸ Of those referrals, 62.5% were accepted for investigation or

Act) while engaged in the enumerated activities and professions on federal land or in federal facilities must report that abuse, regardless of where the suspected victim is cared for or resides. We recognize that the scope of some of the statutory language may be ambiguous, and that narrower readings of the reporting requirement find some support in certain of the statute’s provisions. But we believe that section 13031, read as a whole and in light of its purpose, is best interpreted broadly.

Duty to Report Suspected Child Abuse Under 42 U.S.C. § 13031, 36 Op. Off. Legal Counsel 1 (2012).

¹⁴² 42 U.S.C. § 13031(h) (2014).

¹⁴³ See Al Ellard, Mary Lou Schilling & Cheryl Geisthardt, *Preventing Child Abuse in Recreation: A Call for a Comprehensive Professional Response*, 38 PARKS & REC., no. 1, 2003, at 58 (stating that “in 1999, mandated reporters were responsible for more than half (54.7%) of the cases of child abuse and maltreatment reported to child protective agencies.”).

¹⁴⁴ See CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH, EDUC., & WELFARE, JUVENILE COURT STATISTICS 13 (1966); see also Douglas J. Besharov, *Foster Care Reform: Two Books for Practitioners*, 18 FAM. L.Q. 247 (1984).

¹⁴⁵ SAAD Z. NAGI, CHILD MALTREATMENT IN THE UNITED STATES: A CHALLENGE TO SOCIAL INSTITUTIONS 35 (1977).

¹⁴⁶ NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, U.S. DEP’T OF HEALTH & HUMAN SERVS., STUDY FINDINGS: NATIONAL STUDY ON THE INCIDENCE AND SEVERITY OF CHILD ABUSE AND NEGLECT 11 (1981).

¹⁴⁷ CHILD MALTREATMENT 2012, *supra* note 84, at 18. See also Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL’Y & L. 1, n.1 (2000) (stating that “[e]stimates are based on Ching-Tung Wang & Deborah Daro, Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1996 Annual Fifty State Survey tbl.1 (1997) [hereinafter Wang & Daro] (3,126,000 reports of abuse and neglect),” as well as the “Admin. on Children, Youth, and Families, U.S. Dep’t of Health & Human Servs., Child Maltreatment 1997: Reports from the States to the National Child Abuse and Neglect Data System 3-2 (1999) [hereinafter 1999 U.S. Dep’t of Health & Human Servs.],” which provided that “nearly three million cases of child abuse reported to child protective service agencies[.]”).

¹⁴⁸ CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2008, at

assessment.¹⁴⁹ These numbers indicate that mandatory reporting statutes have dramatically increased the number of suspected child abuse reports made to authorities.¹⁵⁰ Not only have these laws increased the number of suspected reports, but there is also some evidence to support that a large number of substantiated abuse investigations were as a result of reports made from mandated reporters.¹⁵¹ These laws continue to help expose child abuse, prosecute offenders, and protect vulnerable children from ongoing harm. The abuse of children by United States citizens¹⁵² is not limited to the borders of this country. The sexual victimization of children is one of the most common types of child abuse being perpetrated by Americans in foreign countries.

PART TWO: AN INTERNATIONAL APPROACH TO MANDATED REPORTING

VI. U.S. CITIZENS AND THE OVERSEAS SEXUAL ABUSE OF CHILDREN

According to the World Health Organization, an estimated “150 million girls and 73 million boys” under the age of 18 were victims of sexual violence in 2002.¹⁵³ “The United Nations Educational, Scientific and Cultural Organization (“UNESCO”) estimates that the number of child prostitutes worldwide is between one and three million.”¹⁵⁴ United States citizens are sexually victimizing a large number of these children.

xii (2008), available at <http://archive.acf.hhs.gov/programs/cb/pubs/cm08/cm08.pdf> [hereinafter CHILD MALTREATMENT 2008].

¹⁴⁹ *Id.*

¹⁵⁰ ILL. DEP’T OF CHILDREN & FAMILY SERVS. CHILDREN’S JUSTICE TASK FORCE, MANUAL FOR MANDATED REPORTERS, 2 (rev. ed. 2014). In 2012, “approximately 65 percent of all calls to report abuse or neglect to . . . (the central registry . . .) came from mandated reporters.” *Id.*

¹⁵¹ See CHILD MALTREATMENT 2012, *supra* note 84, at 7. In 2012, 58.7% of all child abuse and neglect reports were made by professionals who are designated as mandated reporters in most jurisdictions, and thus a greater percentage of substantiated reports were as a result of mandated reporting. See *id.*

¹⁵² When referenced in this article, the term “United States citizens” will incorporate “resident aliens.”

¹⁵³ *Statistics*, INT’L CTR. FOR ASSAULT PREVENTION (1995), http://www.internationalcap.org/abuse_statistics.html. Though these figures are somewhat outdated, the most recent numbers establish that at between 20% of women and 10% of men around the world report being sexually victimized as children; these figures include both the commercial and non-commercial sexual victimization of children. See WORLD HEALTH ORG., CHILD MALTREATMENT HEALTH SHEET (2014), available at <http://www.who.int/entity/mediacentre/factsheets/fs150/en/index.html>. With the projected current world population over 7 billion, that is a staggering number of children who are being sexually abused. See U.S. CENSUS BUREAU, WORLD POPULATION CLOCK PROJECTION, <http://www.census.gov/popclock/> (last visited Jan. 14, 2015).

¹⁵⁴ Daniel Edelson, *The Prosecution of Persons Who Sexually Exploit Children in Countries Other Than Their Own: A Model for Amending Existing Legislation*, 25 FORDHAM INT’L L.J. 483, 492

In the past years, a growing number of United States citizens have been traveling to foreign countries.¹⁵⁵ In 2013, United States citizens made approximately 61,569,800 trips to foreign countries for a variety of reasons.¹⁵⁶ In addition to traveling overseas for short term visits to foreign countries, many United States citizens temporarily or permanently reside in foreign jurisdictions.¹⁵⁷ Due to the fact that the United States does not require its citizens to register a place of residence (within the United States or overseas), calculating the number of United States citizens living overseas is uncertain.¹⁵⁸ Current estimates of United States citizens living overseas range anywhere from 2.2 million to 6.8 million.¹⁵⁹ Even using the conservative estimates, there are more United States citizens who live overseas than live in at least fifteen states.¹⁶⁰ These numbers demonstrate that at any given time, there are millions of United States citizens visiting or residing in foreign jurisdictions.

The sexual abuse of children in foreign countries by United States citizens falls under two primary categories: (1) commercial and (2) non-commercial.

A. Commercial Abuse

The commercial sexual exploitation of children is defined as “sexual abuse where remuneration in cash or kind is made to the child or a third

(2001). In 2002, the United States’ State Department reported that one million children are forced into prostitution around the world each year. *See* Press Release, U.S. Dep’t of State, The Optional Protocol to the United Nations Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography (Dec. 24, 2002) (on file with author);

¹⁵⁵ As of 2013, there were 117,443,735 valid United States passports in circulation. U.S. DEP’T. OF STATE, VALID PASSPORTS IN CIRCULATION (1989-PRESENT), <http://travel.state.gov/content/passports/english/passports/statistics.html> (last visited Jan. 14, 2015).

¹⁵⁶ OFFICE OF TRAVEL AND TOURISM, U.S. CITIZEN TRAVEL TO INTERNATIONAL REGIONS, 2013, (Feb. 24, 2014), <http://travel.trade.gov/view/m-2013-O-001/index.html> This is a 1.4% increase from 2012. *See id.* In 2012, 47% of overseas trips by U.S. citizens were for vacation. U.S. DEP’T OF COMMERCE, U.S. TRAVEL TO INTERNATIONAL DESTINATIONS INCREASED THREE PERCENT IN 2012 (Dec. 16, 2013), http://travel.trade.gov/outreachpages/download_data_table/2012_Outbound_Analysis.pdf. This was a 27% increase from 2011. *Id.* Twenty-nine percent of overseas trips were for visiting friends/family and 12% constituted “business travel.” *Id.*

¹⁵⁷ The World Bank estimates the number at approximately 2.2 million, while the Federal Voting Assistance program estimates the numbers to be between 4.5 and 6.5 million. Joe Costanzo & Amanda Klekowski von Koppenfels, *Counting the Uncountable: Overseas Americans*, MIGRATION POLICY INSTITUTE (May 17, 2013), <http://www.migrationpolicy.org/article/counting-uncountable-overseas-americans>. As of January, 2013, the U.S. State Department’s calculates the number to be around 6.8 million. *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Compare supra* text accompanying note 157, with U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR THE UNITED STATES, REGIONS, STATES, & PUERTO RICO: APRIL 1, 2010 TO JULY 1, 2013 (JAN. 23, 2014), <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmkwww.census.gov/popest/data/state/totals/2013/index.html> (follow XLS hyperlink).

person(s). The child is treated as a sexual and commercial object.”¹⁶¹ This form of child sexual abuse is more commonly referred to as “child sex tourism.”¹⁶² Though some international child protection experts disagree on whether a foreign resident can be considered as a “child sex tourist,” the distinguishing characteristic is that the abuse involves some form of commercial transaction.¹⁶³ These international United States perpetrators are not limited by profession, education, or even socio-economic status. They include physicians, retired military, dentists, and teachers.¹⁶⁴ Some of the reasons why these American offenders travel to foreign countries to sexually victimize children were articulated by Congress in its Findings H.R. 5138:

Child sex tourists may travel overseas to commit sexual offenses against minors for the following reasons: perceived anonymity; law enforcement in certain countries is perceived as scarce, corrupt, or unsophisticated; perceived immunity from retaliation because the child sex tourist is a United States citizen; the child sex tourist has the financial ability to impress and influence the local population; the child sex tourist can “disappear” after a brief stay; the child sex tourist can target children meeting their desired preference; and, there is no need to expend time and effort “grooming” the victim.¹⁶⁵

A primary reason why United States citizens travel overseas to abuse children is best summed up by sociology professor and author, Julia O’Connell

¹⁶¹ *FAQs, END CHILD PROSTITUTION, CHILD PORNOGRAPHY, & TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES (ECPAT)*, <http://www.ecpat.net/faqs> (last visited Jan. 14, 2015).

¹⁶² “Child Sex Tourism” is defined by the United Nations as “tourism organized with the primary purpose of facilitating the effecting of a commercial sexual relationship with a child.” U.N. ECON. & SOC. COUNCIL [ECOSOC], Comm’n on Human Rights, *Rights of the Child: Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, ¶ 56, U.N. Doc. E/CN.4/1996/100 (Jan. 17, 1996). Sex Tourism has also been defined as “a specific form of child prostitution” which involves “the commercial sexual exploitation of children by people who travel from one place to another and there engage in sexual acts with minors.” International Megan’s Law of 2010, H.R. 5138, 111th Cong. § 2(a)(7) (2010). International Megan’s Law of 2010 was a House bill that required convicted United States sex offenders to notify the authorities of the foreign country they intended to visit. *Id.* at § 4. The Senate never passed this bill.

¹⁶³ ECPAT, *Combating Child Sex Tourism: Questions & Answers* 17 (2008), http://www.ecpat.net/sites/default/files/cst_fa_q_eng.pdf [hereinafter ECPAT, *Combating Child Sex Tourism*]. Some argue that a foreign resident who sexually abuses children cannot be considered a “child sex tourist” because the “word ‘tourist’ implies that the offending individual passes through the destination only briefly.” *Id.* For purposes of this article, the focus is whether the offender is engaged in some form of commercial conduct, not whether or not he/she is in the foreign jurisdiction on a temporary or permanent basis.

¹⁶⁴ U.S. DEP’T OF STATE, *THE FACTS ABOUT CHILD SEX TOURISM* (Feb. 29, 2008), <http://2001-2009.state.gov/g/tip/rls/fs/08/112090.htm>.

¹⁶⁵ International Megan’s Law of 2010, H.R. 5138, 111th Cong. § 2(a)(16) (2010).

Davidson,¹⁶⁶ who writes, “One of the most obvious explanations for this phenomenon [child sex tourism] is the fact that Westerners know that it is easier, cheaper, and safer to obtain sexual access to a child in poor and developing countries than it is back home”¹⁶⁷

The statistics on the number of Americans who sexually abuse children overseas are alarming. United States citizens make up approximately 25% of all adults who are engaged in the commercial sexual exploitation of children.¹⁶⁸ In 2004, attorney Karen D. Breckenridge wrote that “[t]he Australian Human Rights and Equal Opportunity Commission estimates that over 250,000 sex tourists visit Asia every year, with twenty-five percent coming from the United States and thirteen percent from Australia.”¹⁶⁹ If these numbers are correct, over 62,500 United States citizens travel to Asia each year and sexually abuse children.¹⁷⁰

B. Non-Commercial Abuse

Non-commercial sexual victimization occurs whenever a child is sexually abused without any financial or other kind of remuneration to the child or third party. Family members or acquaintances are the ones that primarily engage in this type of abuse.¹⁷¹ In the international context, non-commercial abuse occurs when United States citizen offenders have the access and opportunity to abuse a member of their own family,¹⁷² another child who is a United States citizen,¹⁷³ or a child who is a citizen of the host country.¹⁷⁴ The

¹⁶⁶ Professor of Sociology, University of Nottingham.

¹⁶⁷ JULIA O’CONNELL DAVIDSON, CHILDREN IN THE GLOBAL SEX TRADE 128 (2005). A common characteristic of child sex tourists is “the frequency with which they produce, collect and exchange images of abuse.” ECPAT, *Combating Child Sex Tourism*, *supra* note 163, at 21. Child pornography can draw child sexual tourists to particular destinations. *Id.*

¹⁶⁸ *About Child Sex Exploitation*, WORLDVISION.ORG 2 (2009), [http://www.worldvision.org/resources.nsf/main/SexExploitation.pdf/\\$FILE/SexExploitation.pdf](http://www.worldvision.org/resources.nsf/main/SexExploitation.pdf/$FILE/SexExploitation.pdf); *see also* Women’s UN Report Network (WUNRN), *Fact Sheet About Child Sex Tourism*, WUNRN.COM, http://www.wunrn.com/news/2009/07_09/07_20_09/072009_child.htm (last visited Jan. 14, 2015).

¹⁶⁹ Breckenridge, *supra* note 4, at 413.

¹⁷⁰ *See* ECPAT, *Combating Child Sex Tourism*, *supra* note 163, at 8.

¹⁷¹ A 2001 study conducted by Gene Able and Nora Harlow found that 68% of admitted offenders sexually victimized a child within their family; in that same study, 30% of the subject child molesters reported molesting a non-family member, but a child who was known by the offender. *See* Gene G. Abel & Nora Harlow, *The Abel and Harlow Child Molestation Prevention Study 8* (2002) (citing GENE G. ABEL & NORA HARLOW, *THE STOP CHILD MOLESTATION BOOK* (2001)), available at <http://www.childmolestationprevention.org/pdfs/study.pdf>.

¹⁷² By the very nature of the relationship, the abuse of family members overseas is difficult to detect, as the offender has easy access to the victim and a greater degree of control in keeping the child silent. *See* U.S. v. Weingarten, 632 F.3d 60 (2nd Cir. 2011) (exemplifying the dynamics common in overseas non-commercial familial abuse, where a father was charged with violating the Protect Act for sexually abusing his daughter for 6 years while living in Belgium).

¹⁷³ As investigations, and their corresponding reports, show, the abuse of children who are United States citizens by adult citizens often occurs within settings that are somewhat insulated from the

prevalence of non-commercial sexual abuse by Americans overseas is difficult to determine, since it is unclear whether the research on child sex tourism includes this category of abuse.

In recent years, the United States government has begun to realize that the sexual abuse of children in foreign countries by American citizens is a considerable problem. In 2003, Congress took a significant step forward in addressing both the commercial and the non-commercial sexual abuse of children by enacting the PROTECT Act.

VII. THE PROTECT ACT AND THE PROBLEM

A. Purpose of the Law

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, better known as the PROTECT Act,¹⁷⁵ is the most

foreign community, such as international boarding schools and religious missions. *See, e.g.*, Godly Response to Abuse in the Christian Environment (GRACE), *Amended Final Report for the Investigatory Review of Child Abuse at New Tribes Fanda Missionary School* (2010), <http://www.scribd.com/doc/36559323/Amended-GRACE-Report-on-NTM-Fanda-Amended-Edition>; *Pedophile Teacher Abused Dozens as Clues Missed*, DAILY RECORD (May 13, 2014), <http://www.dailyrecord.com/story/news/2014/05/13/pedophile-teacher-abused-dozens-as-clues-missed/9028905/>. The case study at the beginning of this article provides an example of non-commercial sexual abuse on a mission field by a United States citizen upon an American child. *See also* *NTM Abuse*, NEW TRIBES MISSION ABUSE BLOG (JUNE 5, 2013), www.fanda eagles.com (including dozens of accounts of sexual abuse perpetrated by United States citizens upon American children in various overseas religious mission environments) (last visited Jan. 14, 2015); *ABWE Mission Doctor Abuses Children in Bangladesh*, ABWE BLOG (Mar. 11, 2011) <http://bangladeshmksspeak.wordpress.com> (articulating the tragic report of a United States physician who admitted to sexually abusing an American child on a mission base in Bangladesh) (last visited Jan. 14, 2015); *Networking with MK Survivors*, MK SAFETY NET <http://www.mksafetynet.net/usa/home.html> (compiling a collection of independent reports relating to the sexual abuse of mostly American children by United States missionaries) (last visited Jan. 14, 2015).

¹⁷⁴ United States offenders target foreign children because they are often the most vulnerable and susceptible to sexual abuse. O'CONNELL DAVIDSON, *supra* note 167. Two recent cases highlight how United States offenders victimize children in foreign orphanages. Jack Moran, *Man Returned from Asia for Sex Case Prosecution*, REGISTER-GUARD (Dec. 27, 2014), <http://registerguard.com/rg/news/local/32591534-75/coos-county-man-charged-with-child-sex-abuse-in-cambodia.html.csp>; *see also* Jennifer Kay, *165 Years in Prison for US Man in Haiti Sex Abuse*, NPR (July 31, 2013, 5:03 PM), <http://www.npr.org/templates/story/story.php?storyId=207457993>.

¹⁷⁵ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, 117 Stat. 650 (2003) (codified as amended in various sections of both 42 U.S.C. and 18 U.S.C.); *see also* Christine L. Hogan, *Touring Commerce Clause Jurisprudence: The Constitutionality of Prosecuting Non-Commercial Sexually Illicit Acts Under 18 U.S.C. § 2423(c)*, 81 ST. JOHN'S L. REV. 641, 647 n.41 (2007) (citing 18 U.S.C. §§ 2241-46 (2000)).

comprehensive federal law designed to combat illicit sexual conduct against children by United States citizens overseas.¹⁷⁶ The PROTECT Act criminalizes commercial and non-commercial illicit sexual conduct against children by United States citizens anywhere in the world.¹⁷⁷

At the time President Bush signed the PROTECT Act into law, he stated, “This law carries forward a fundamental responsibility of public officials at every level of government to do everything we can to protect the most vulnerable citizens from dangerous offenders who prey on them.”¹⁷⁸ Enacted in response to the ongoing threats of sexual abuse against children all over the world, the PROTECT Act set off a new wave of protection for children that provides extensive standards for criminal liability.¹⁷⁹

The PROTECT Act, part of which is codified in 18 U.S.C. § 2423, contains several provisions that enhance child protection on an international scale. For purposes of this Article, sections (b) and (c) of § 2423 are the most significant. Section (b) makes it a crime for one to “travel with the intent to engage in illicit sexual conduct.”¹⁸⁰ Congress eliminated the evidentiary challenges created by section (b) when it added section (c) that eliminated the requirement for prosecutors to prove intent.¹⁸¹ Section (c) states:

Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual

¹⁷⁶ The PROTECT Act defines commercial, illicit sexual conduct as “any commercial sex act (as defined in section 1591) with a person under 18 years of age.” 18 U.S.C. § 2423(f) (2014). 18 U.S.C. § 1591 defines a commercial sex act as “any sex act, on account of which anything of value is given to or received by any person.” 18 U.S.C. § 1591(e)(3) (2014).

¹⁷⁷ 18 U.S.C. § 2423(c). The PROTECT Act defines non-commercial, illicit sexual conduct as “a sexual act . . . with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States.” *Id.* § 2423(f). The specific crimes covered under this provision include: “aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, abusive sexual contact, and sexual abuse offenses resulting in death.” Hogan, *supra* note 175, at 644.

¹⁷⁸ President George W. Bush, President’s Remarks Upon Signing of S. 151, the Protect Act (Apr. 30, 2003), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/04/20030430-6.html>.

¹⁷⁹ *International Child Sex Tourism: Scope of the Problem and Comparative Case Studies*, THE PROTECTION PROJECT 9, (2007), http://www.protectionproject.org/wp-content/uploads/2010/09/JHU_Report.pdf [hereinafter *International Child Sex Tourism*].

¹⁸⁰ 18 U.S.C. § 2423(b). The prosecution must prove that the defendant formed the intent to abuse at the time of travel. U.S. DEP’T OF JUSTICE, CITIZEN’S GUIDE TO U.S. FEDERAL LAW ON THE EXTRATERRITORIAL SEXUAL EXPLOITATION OF CHILDREN, available at http://www.justice.gov/criminal/ceos/citizensguide/citizensguide_child-sex-tourism.html (last visited Feb. 1, 2015) [hereinafter CITIZEN’S GUIDE] (“The difference between Section 2423(b) and Section 2423(c) is that Section 2423(b) statute requires proof that the defendant had formed his criminal intent at the time he began to travel.”). This element can be difficult to prove based upon the lack of evidence establishing a perpetrator’s intent.

¹⁸¹ H.R. REP. NO. 107-525, at 3 (2002).

conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.¹⁸²

While there is little legislative history specifically on § 2423(c) of the PROTECT Act,¹⁸³ the congressional record of the Sex Tourism Prohibition Improvement Act¹⁸⁴ reveals the purpose behind the section. The record acknowledged the need for the United States authorities to prosecute United States citizens for sexually abusing children overseas without having to establish that the intent to travel was for perpetrating abuse. According to the record:

There would be no need for a sex tourism statute if foreign countries successfully prosecuted U.S. citizens or resident aliens for the child sex crimes committed within their borders. However, for reasons ranging from ineffective law enforcement, lack of resources, corruption, and generally immature legal systems, sex tourists often escape prosecution in the host countries. It is in those instances that *the United States has an interest in pursuing criminal charges* in the United States.

.....

Current law requires the Government to prove that the defendant traveled to a foreign country with the intent to engage in sex with a minor. H.R. 4477 eliminates the intent requirement where the defendant completes the travel and actually engages in the illicit sexual activity with a minor. . . . This legislation will close significant loopholes in the law that persons who travel to foreign countries seeking sex with children are currently using to their advantage in order to avoid prosecution.¹⁸⁵

In order to identify and catch the growing number of United States citizens overseas who are sexually victimizing children, the PROTECT Act was

¹⁸² 18 U.S.C. § 2423(c). Before the PROTECT Act was enacted in 2003, § 2423(b) was already an active law under the Violent Crime Control and Law Enforcement Act of 1994. PL 103-322, September 13, 1994, 108 Stat 1796 (1994). Unlike the current version of the PROTECT Act, which allows prosecutors two options to charge an offender (one via intent and the other without intent), the old law limited the prosecutor's ability to charge an offender to cases where the State could prove intent. *Id.* at § 160001 (amending 18 U.S.C. § 2258(a)-(b)). Under the PROTECT Act, prosecutors no longer have to prove a perpetrator traveled with the intent to engage in illicit sexual conduct. CITIZEN'S GUIDE, *supra* note 180. While they still have the option to prove intent, the PROTECT Act provides prosecutors the option to prove the sexual offense, notwithstanding the defendant's intent at the time of travel.

¹⁸³ Hogan, *supra* note 175, at 648.

¹⁸⁴ H.R. REP. NO. 107-525 (2002), 2002 WL 1376220. The Sex Tourism Prohibition Improvement Act of 2002, which contained a provision much like § 2423(c), passed a vote in the House of Representatives but never reached the Senate. Hogan, *supra* note 175, at 648.

¹⁸⁵ H.R. REP. NO. 107-525 at *3 (2002), 2002 WL 1376220; *see also* 148 CONG. REC. H 3884 (2002), 2002 WL 1368904.

designed to encompass a broad territorial jurisdiction. Simply put, any United States citizen or permanent resident who sexually abuses a child *anywhere in the world* can be prosecuted under this law.¹⁸⁶ Not only does the PROTECT Act have worldwide territorial jurisdiction, but it also has no statute of limitations for child sex crimes.¹⁸⁷ For every sexual offense occurring after 2003, there is no time limit in which prosecution must be commenced. No longer can a perpetrator be protected by the passage of time.

Prior to the enactment of the PROTECT Act, only twelve United States citizens had ever been charged with child sex tourism offenses.¹⁸⁸ The passage of this law has resulted in a significant increase in prosecutions of United States citizens for sexually abusing children overseas; for example, between 2003 and 2009, the United States Immigration and Customs Enforcement agency (“ICE”) was responsible for obtaining seventy-three convictions against United States citizens for sexually victimizing children in foreign countries.¹⁸⁹

The PROTECT Act is implemented through a federal initiative known as Operation Predator that brings together various federal agencies to identify, investigate, and arrest overseas child offenders.¹⁹⁰ Operation Predator is primarily coordinated through ICE, which is an agency of the Department of Homeland Security.¹⁹¹ ICE agents operate out of approximately seventy-one

¹⁸⁶ *United States v. Pendleton*, 658 F.3d 299, 309, 311 (3rd Cir. 2011) (holding that both 18 U.S.C. § 2423(b) & (c) are constitutional as valid exercises of Congress’s “power to regulate the channels of commerce”).

¹⁸⁷ Section 202 of the PROTECT Act states there is “[n]o statute of limitations for child abduction and sex crimes.” Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 202, 117 Stat. 650 (2003) (codified as amended in 18 U.S.C. § 3283); *see also* H.R. REP. NO. 108-66 (2003), *available at* <http://www.gpo.gov/fdsys/pkg/CRPT-108hrpt66/html/CRPT-108hrpt66.htm>.

¹⁸⁸ *International Child Sex Tourism*, *supra* note 179, at 24. These cases were prosecuted under the predecessor of the 2003 PROTECT Act, which required the prosecution to prove the defendant’s intent to travel for the purpose of sexually victimizing a minor. The Violent Crime Control and Law Enforcement Act, H.R. 3355, 103rd Cong. § 160001 (1994); *see also International Child Sex Tourism*, *supra* note 179, at 10. This figure represents “sex tourism offenses” as no statistics are available for the number of cases brought under The Violent Crime Control and Law Enforcement Act for the non-commercial sexual abuse of a child. *International Child Sex Tourism*, *supra* note 179, at 24.

¹⁸⁹ *See International Megan’s Law of 2010*, H.R. 5138, 111th Cong. § 2(a)(12) (2010).

¹⁹⁰ Press Release, U.S. Immigration and Customs Enforcement, ICE Marks Milestone in Fight Against Global Child Sex Tourism: Makes Agency’s 10th PROTECT Act Arrest Against International Child Sex Predators (Nov. 23, 2004), *available at* <http://www.preda.org/en/news/child-abuse-crimes/germans-americans-and-cambodians-sentenced-in/>.

¹⁹¹ *Alien Removals Under Operation Predator: Hearing Before the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. On the Judiciary*, 108th Cong. 15 (2004) (statement of Michael J. Garcia, Assistant Sec’y, U.S. Immigration & Customs Enforcement, Dep’t of Homeland Sec.), *available at* http://commdocs.house.gov/committees/judiciary/hju92347.000/hju92347_0f.htm; *see also* DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, CHILD EXPLOITATION INVESTIGATIONS UNIT, <http://www.ice.gov/predator/> (last

offices located at forty-seven embassies.¹⁹² Besides investigating overseas cases of child sexual abuse, the primary focus of ICE is the enforcement of laws related to “border control, customs, trade and immigration.”¹⁹³ Besides ICE, other American agencies that participate in the fight against the sexual exploitation of children include the Federal Bureau of Investigation, United States Postal Service, the United States Diplomatic Security Service, and United States Customs and Border Protection.¹⁹⁴ In addition to governmental agencies, there are a number of non-governmental organizations (“NGOs”) that provide support to the United States’ international child protection efforts.¹⁹⁵

B. The Problem with the PROTECT Act: The Gaping Hole in International Child Protection

While there is little doubt the PROTECT Act has helped to address child sexual abuse perpetrated by United States citizens overseas, there is still a need for significant improvement.¹⁹⁶ With millions of United States citizens overseas at any given moment, United States law enforcement agencies are severely challenged in their ability to identify those who are allegedly abusing children.

This challenge is similar to what confronts the authorities within the United States as it relates to suspected cases of child sexual abuse. The sexual abuse of a child is unlawful within every jurisdiction of the United States. Corresponding domestic mandated reporting laws assist law enforcement in identifying and prosecuting those who violate those laws. On the international

visited Jan. 14, 2015).

¹⁹² News Release, Department of Homeland Security, U.S. Immigration and Customs Enforcement, ICE Unit Preps Special Agents for Life Overseas (March 27, 2012), *available at* <http://www.ice.gov/news/releases/1203/120327washingtondc.htm>.

¹⁹³ DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, ICE STRATEGIC PLAN FY 2010-2014, at 2 (2010), <http://www.ice.gov/doclib/news/library/reports/strategic-plan/strategic-plan-2010.pdf>. ICE has approximately 50 agents working overseas who focus almost exclusively on child sexual abuse cases. *See* E-mail from Ronald Wolflick, former Group Supervisor, Cyber Crime Investigations, ICE Homeland Security Investigations, Department of Homeland Security, Chicago, Illinois, to author (June 11, 2014) (on file with author).

¹⁹⁴ *See Alien Removals Under Operation Predator*, *supra* note 191, at 43 (statement of John Walsh, Chairman of the National Advisory Board of the National Center for Missing and Exploited Children).

¹⁹⁵ *Id.* at 8 (opening statement of the Honorable John N. Hostettler, a Representative in Congress From the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims). Other groups in place to aid in the international protection of children include the U.S. Embassies, World Vision, ECPAT-USA, International Justice Mission, and Shared Hope International.

¹⁹⁶ Though seventy-three convictions in three years is an improvement from days before the enactment of the PROTECT Act, that number is staggeringly low in light of the increased numbers of United States citizens sexually abusing children overseas. *See supra* text accompanying note 174; *see generally* Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, 117 Stat. 650 (2003).

front, the PROTECT Act similarly makes it unlawful for any United States citizen to sexually abuse a child.¹⁹⁷ However, unlike every domestic jurisdiction in the United States, there is no corresponding mandated reporting law to assist law enforcement in identifying and prosecuting United States citizens who sexually abuse a child on foreign soil. As a result, the voluntary reporting of suspected sexual abuse by United States citizens overseas is wholly lacking. For example, between 1998 and 2009, only 3,083 voluntary tips alleging suspected “Child Sex Tourism” by United States citizens were reported to the federal authorities.¹⁹⁸ That is an extremely small reporting rate based upon the millions of United States citizens overseas.¹⁹⁹ Though it is a crime for any United States citizen to sexually abuse a child inside or outside of the United States, only those citizens within the United States are mandated to report the suspected abuse. These reporting duties should be extended to United States citizens and resident aliens who are overseas. This critically important gap must be filled.

C. Foreign Mandated Reporting Laws: Do They Fill the Gap?

Foreign mandated reporting laws do not sufficiently fill the gap. At least fifty-three countries have some type of domestic mandated reporting laws for suspected child abuse.²⁰⁰ A handful of other countries have laws that simply

¹⁹⁷ See *supra* text accompanying note 186.

¹⁹⁸ See U.S. DEP’T OF STATE, OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY: PERIODIC REPORT OF THE U.S. AND U.S. RESPONSE TO COMM. RECOMMENDATIONS IN COMM. CONCLUDING OBSERVATIONS OF JUNE 25, 2008, at ¶21 (Jan. 22, 2010), <http://www.state.gov/documents/organization/136023.pdf> [hereinafter OPTIONAL PROTOCOL]. According to this same report, only one voluntary tip of suspected “Child Sex Tourism” was reported during the week of April 20, 2009. *Id.*

¹⁹⁹ Consider this domestic comparison: Delaware, a state with a population of approximately only 900,000, received a total of 16,721 reports of child maltreatment in 2012. CHILD MALTREATMENT 2012, *supra* note 84, at 11. These figures were calculated as follows: Approximately 9.3% of all reports received by child protective services in 2012 involved suspicions related to child sexual abuse. *Id.* at 20. This means that Delaware received approximately 1,555 reports of suspected child sexual abuse in 2012 alone. *Id.* at 11. Using these reported figures, in 11 years Delaware would have received over 17,000 calls of suspected sexual abuse, compared to the 3,083 reported by the State Department over an eleven-year period. OPTIONAL PROTOCOL, *supra* note 198, at ¶21.

²⁰⁰ The following is a list of countries who have reported having some form of mandated reporting law: Argentina, Armenia, Australia, Bangladesh, Belarus, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, Columbia, Democratic Republic of Congo, Egypt, Estonia, Finland, France, Greece, Guatemala, Honduras, Hungary, Iceland, India, Italy, Japan, Republic of Korea, Kyrgyzstan, Lebanon, Malaysia, Mauritius, Mexico, Montenegro, Morocco, Peru, Philippines, Romania, Russia, Rwanda, Serbia, Sierra Leone, South Africa, Spain, Sweden, Taiwan, Tajikistan, Thailand, Togo, Turkey, Ukraine, United Kingdom, United States of America, Yemen, and Zambia. See INTERNATIONAL SOCIETY FOR PREVENTION OF CHILD ABUSE AND NEGLECT, WORLD PERSPECTIVES ON CHILD ABUSE, 158-233 (8th ed. 2008), available at https://c.ymcdn.com/sites/ispcan.site-ym.com/resource/resmgr/world_perspectives/world_persp_2008_-_final.pdf?hhSearchTerms=%22world+and+perspectives+and+child+and+abuse%22.

encourage the voluntary reporting of child abuse.²⁰¹ Though most countries have some awareness as to the problem of child abuse, the current protections in place are not sufficient to provide a solution to the problem of United States citizens sexually abusing children in foreign countries.

1. Not Easily Identified

Although many United States citizens are aware of the existence of domestic mandated reporting laws, many of those same citizens may not realize the existence of a foreign country's mandated reporting law. Though the United States has the most clearly defined mandated reporting laws, such laws in most other countries are not easily identifiable.²⁰² An individual must search through the criminal codes of that particular country to find the duty and penalty—if any—that is required of a reporter.²⁰³ Locating and understanding these laws would most likely require the assistance of local legal counsel—something that most United States visitors and expatriates will not do or even know to do.

²⁰¹ The following is a partial list of countries that only have voluntary reporting laws: Bahrain, Cameroon, Fiji, Georgia, Hong Kong, Netherlands, New Zealand, Nigeria, Pakistan, Poland, Portugal, Singapore, Sri Lanka, Switzerland, and Uganda. *Id.* at 158-233.

²⁰² For example, in Armenia, the mandated reporting law fits under the general “failure to report crime” section of the criminal code. ARM. CRIM. CODE, ch. 31, art. 335, § 1 (2003). Article 335 provides that “[f]ailure to report a surely known grave or particularly grave crime, is punished with a fine in the amount of 300-500 minimal salaries, or arrest for 1-3 months, or imprisonment for up to 2 years.” *Id.* In Bosnia and Herzegovina, there is no clearly defined mandated reporting law. Penalties for such an offense fall under “failure to report a criminal offence or a perpetrator.” BOSN & HERZ. CRIM. CODE, ch. 29, art. 345 (2003). In Tajikistan, “[f]ailure to report about the preparation or commission of a felony” or a particularly “grievous crime as well as failure to report about a criminal and the place of his being, - is punishable by a fine in the amount of 500 to 1000 times the minimum monthly wage or deprivation of freedom for up to 2 years.” TAJ. CRIM. CODE, ch. 32, art. 347 (1998). In Uzbekistan, “failure to report about a certainly known serious or especially serious crime being prepared or having been committed—shall be punished with fine up to fifty minimum monthly wages, or correctional labor up to two years, or arrest up to six months, or imprisonment up to three years.” UZB. CRIM. CODE, ch. 16, art. 241 (1994).

²⁰³ In Bosnia, one must be quite resourceful to piece together the requirements for mandated reporters. One must look to Article 207, which defines the sexual abuse of a child, and Article 219, which defines what constitutes the neglect or maltreatment of a child or juvenile. BOSN & HERZ. CRIM. CODE, ch. 19, art. 207 (2003); BOSN. & HERZ. CRIM. CODE, ch. 20, art. 219 (2003). After that, one must look to Article 345, which outlines the penalties for failure to report criminal offenses. BOSN & HERZ. CRIM. CODE, ch. 29, art. 345. In the Ukraine, one must find a mandated reporter duty through a combination of articles in the criminal code. Unlike a typical failure to report provision, the Ukraine has a “failure to provide help to a person who is in a condition dangerous to life.” UKR. CRIM. CODE, ch. 2, art. 136 (2001).

2. Unreliable & Inconsistent

With only approximately fifty-three countries reporting to have some type of domestic mandated reporting law related to the abuse of children, that leaves the vast majority of countries with no mandated reporting laws.²⁰⁴ Therefore, the mandated reporting gap for United States citizens overseas is simply not addressed in most parts of the world. Of the known countries with mandated reporting requirements, over fifty percent report that such laws are inconsistently or almost never enforced.²⁰⁵ Even worse, some do not even have an enforcement mechanism to penalize those who fail to report abuse.²⁰⁶

Another significant issue is that the age of consent laws vary significantly amongst the nations of the world,²⁰⁷ with the ages of consent ranging from thirteen to eighteen.²⁰⁸ The authorities in a country with an age of consent lower than allowed under current federal law will have no interest in prosecuting United States offenders, let alone mandate others to report their behavior that violates only United States law. As a result, United States citizens are currently free to select the international forums with lower age of consent laws, no

²⁰⁴ In 2014, there were approximately 195 independent states in the world. See U.S. DEP'T OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH, INDEPENDENT STATES IN THE WORLD: FACT SHEET (2014), available at <http://www.state.gov/s/inr/rls/4250.htm>.

²⁰⁵ To be exact, these reports come from twenty-nine out of the fifty-three countries. See INTERNATIONAL SOCIETY FOR PREVENTION OF CHILD ABUSE AND NEGLECT, *supra* note 200, at 158-233.

²⁰⁶ For example, the Law of the Republic of Belarus on Child's Rights, Article 9 states: "The persons, who get to know the facts of cruel treatment, physical and (or) psychological violence toward a child, which pose a threat for child's life, health and development, shall immediately report about it to the competent state body." Law of the Republic of Belarus -On Child's Rights, art. 9 (1993) (amended 2013), available at <http://law.by/main.aspx?guid=3871&p0=V19302570e>. Unlike Belarus, the Ukraine does have a penalty for failure to report in its criminal code; however, the penalty is minimal. UKR. CRIM. CODE, art. 136 (2011). The "[f]ailure to provide help to a young child" in a dangerous condition is only subject to a restraint of liberty up to three years, or an arrest of up to six months, or a small fine. *Id.*

²⁰⁷ For example, if you live in Angola or Mexico, the age of consent is 12. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011, ANGOLA 30 (2012), available at <http://www.state.gov/documents/organization/186375.pdf>; see also Código Penal Federal [CPF] [Federal Criminal Code], art. 261, as amended, Diario Oficial de la Federación (DO), 19 de Agosto de 2010 (Mex.), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=199697#LinkTarget_486. In Japan, the age of consent "varies by jurisdiction and ranges from 13 to 18 years." See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011, JAPAN 17 (2012), available at <http://www.state.gov/documents/organization/186486.pdf>. On the other end of the spectrum, the age of consent in Tunisia is 20. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T. OF STATE, 2009 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, TUNISIA (2010), available at <http://www.state.gov/j/drl/rls/hrrpt/2009/nea/136081.htm>.

²⁰⁸ Almost half of the fifty-three countries have an age of consent under sixteen years of age, which is two years younger than age of consent enumerated in the PROTECT Act. See, e.g., Appendix A.

mandated reporting laws, or both in an attempt to avoid detection and prosecution under the PROTECT Act.²⁰⁹ The inconsistencies in the law and application amongst foreign nations actually assist United States offenders in deciding where to sexually victimize a child.

The solution to the gaping hole in international child protection under the PROTECT Act is not to depend upon the inconsistent, difficult to identify, and very limited number of foreign mandated reporting laws. The solution is the creation of a federal international mandated reporting law.

VIII. THE SOLUTION: A FEDERAL INTERNATIONAL MANDATED REPORTING LAW

A federal international mandated reporting law is needed that will largely mirror what already exists within the United States. Such a law will help to enforce already existing laws that criminalize the sexual abuse of children.

Domestic mandated reporting laws result in more reports of abuse, which result in the identification, investigation, and prosecution of perpetrators, and ultimately the protection of children. Similarly, an international mandated reporting law will prompt more reports of suspected abuse, which will result in the identification, investigation, and prosecution of more United States perpetrators under the PROTECT Act, and ultimately protect untold numbers of children around the world.

A. Federal Precedence for an international mandated reporting law

1. 18 U.S.C. § 2258A

The wheel does not have to be reinvented when it comes to a federal mandated reporting law that is not limited by geographic location. 18 U.S.C. § 2258A establishes a precedent for mandated reporting on a federal and international scale.²¹⁰

²⁰⁹ It is not uncommon for perpetrators to shift towards countries where the protection of children is weaker. Provisional Report of Mr. Valeriu Ghiletschi, *Fighting “child sex tourism”*, PARLIMENTARY ASSEMBLY 3 (2013), http://www.assembly.coe.int/Communication/Asocdoc16_2013.pdf; see also Tom Hilditch, *The Price of Innocence*, THE SCOTSMAN, June 23, 2001, at 10 (describing rise in child sex tourism in Cambodia following crackdown on child sex tourism in Thailand).

²¹⁰ 18 U.S.C. § 2258 also mandates the reporting of suspected child abuse. 18 U.S.C. § 2258 (2014). Though it designates certain professions as mandated reporters, it limits reporting to those engaged in activities on federal property or a federally operated facility. *Id.*, see *supra* text accompanying note 141.

As part of an effort to combat the sexual exploitation and abuse of children,²¹¹ 18 U.S.C. § 2258A came into effect in 2008.²¹² This statute provided for the first federal mandated reporting scheme that operated on an international level.²¹³ According to the statute, electronic communication service providers or remote computing service providers have a duty to report violations related to the electronic sexual exploitation of children.²¹⁴ To fulfill the requirements of this duty, service providers that obtain actual knowledge of such violations are mandated to report the violations to the CyberTipline of the National Center for Missing and Exploited Children.²¹⁵ The report may include such details as basic information about the individual,²¹⁶ information about the geographic location,²¹⁷ and the unlawful images.²¹⁸

Once the National Center for Missing and Exploited Children receives a report, it must forward the report to the appropriate Federal law enforcement

²¹¹ According to testimony taken before the Senate on April 16, 2008, “the Department [of Justice] attaches the utmost importance to protecting America’s children from sexual offenders through its coordinated and targeted efforts.” *Challenges and Solutions for Protecting Our Children from Violence and Exploitation in the 21st Century: Hearing on 18 U.S.C. § 2258A Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary*, 110th Cong. 1 (2008) (testimony of McGregor Scott, United States Attorney, Eastern District of California United States Department of Justice), available at http://www.judiciary.senate.gov/imo/media/doc/scott_testimony_04_16_08.pdf.

²¹² PROTECT Our Children Act of 2008, S. 1738, 110th Cong. § 501 (2008).

²¹³ See § 2258A(a)(1).

²¹⁴ § 2258A(a)(1)-(2) provides as follows:

(a) Duty To Report.—

(1) In general.— Whoever, while engaged in providing an electronic communication service or a remote computing service to the public through a facility or means of interstate or foreign commerce, obtains actual knowledge of any facts or circumstances described in paragraph (2) shall, as soon as reasonably possible—

(A) provide to the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by such center, the mailing address, telephone number, facsimile number, electronic mail address of, and individual point of contact for, such electronic communication service provider or remote computing service provider; and
(B) make a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by such center.

(2) Facts or circumstances.— The facts or circumstances described in this paragraph are any facts or circumstances from which there is an apparent violation of—

(A) section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography; or

(B) section 1466A.

§ 2258A(a)(1)-(2).

²¹⁵ § 2258A(a)(1).

²¹⁶ § 2258A(b)(1).

²¹⁷ § 2258A(b)(3).

²¹⁸ § 2258A(b)(4).

agency as determined by the Attorney General.²¹⁹ Besides sending the report to the requisite agency, the National Center for Missing and Exploited Children may forward the report to “an appropriate law enforcement official of a State”²²⁰ or to “any appropriate foreign law enforcement agency designated by the Attorney General.”²²¹

“Electronic communication service provider[s] or remote computing service provider[s] that knowingly and willfully fail[] to make a report” are in violation of this federal mandated reporting law.²²² There are a number of parallels between 18 U.S.C. § 2258A and an international mandated reporting law:

2. The Parallels

At first glance, one may not realize the degree of precedence 18 U.S.C. § 2258A creates for the adoption of an international mandated law. However, a closer examination clearly demonstrates that this already existing federal mandated reporting law has significant parallels with the international mandated reporting law that will be proposed in this Article. Summaries of those similarities are as follows:

a. Both Laws Address Child Abuse

18 U.S.C. § 2258A mandates the reporting of child abuse in the form of electronic sexual exploitation of children (ie. child pornography). Similarly, an international mandated reporting law will mandate reporting of child abuse in the form of suspected child sexual abuse.

b. Both Laws Assist in the Enforcement of Existing U.S. Law

The purpose of 18 U.S.C. § 2258A is to assist law enforcement in the identification, investigation, and prosecution of individuals who are violating seven delineated offenses related to the electronic sexual exploitation of children.²²³ The proposed international mandated reporting law will assist law enforcement in the identification, investigation, and prosecution of individuals who are violating 18 U.S.C. § 2423 of the PROTECT Act.

²¹⁹ § 2258A(c)(1), (d)(2).

²²⁰ § 2258A(c)(2).

²²¹ § 2258A(c)(3)(A).

²²² § 2258A(e) (providing that the first failure to follow the reporting requirements will result in a fine not to exceed \$150,000; subsequent violations will result in a fine not to exceed \$300,000).

²²³ See § 2268A(a)(2).

c. Both Laws Apply Internationally

18 U.S.C. § 2258A mandates reporting on an international level. The requirement to report is not limited to the electronic sexual exploitation of children discovered within the United States. In fact, when testifying in support of this law, Grier Weeks, the Executive Director of the National Association to Protect Children, recognized the *urgent* need for “making child exploitation a greater formal priority internationally.”²²⁴ Similar to 18 U.S.C. § 2258A, an international mandated reporting law will apply to suspected child sexual abuse anywhere in the world.

d. Both Laws Ultimately Protect Children

The ultimate objective of 18 U.S.C. § 2258A is to protect children by catching those engaged in the making, possession, or distribution of child pornography. Children are protected when those engaged in child pornography are caught and imprisoned. Similarly, the ultimate purpose of an international mandated reporting law will be to protect children by catching American citizens who sexually victimize children overseas. Children around the world are protected when those who sexually violate them are caught.

18 U.S.C. § 2258A clearly establishes that there is existing federal precedent that requires mandated reporting to assist in the enforcement of various federal offenses related to the sexual exploitation of children, regardless of geographic location. A federal international mandated reporting law would merely build upon this precedent to assist in the international enforcement of another federal offense related to the sexual abuse of children.

B. The Proposal

The following is a proposed federal law that will mandate United States citizens and resident aliens to report the suspected sexual abuse of any child by a United States citizen or resident alien in a foreign country:

²²⁴ *Challenges and Solutions for Protecting Our Children from Violence and Exploitation in the 21st Century: Hearing on 18 U.S.C. § 2258A Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary*, 110th Cong. 2 (2008) (testimony of Grier Weeks, Executive Director, National Association to Protect Children), available at http://www.judiciary.senate.gov/imo/media/doc/weeks_testimony_04_16_08.pdf.

International Mandated Reporting Law²²⁵

I(A). Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and who knows, or has reasonable cause to suspect, that a United States citizen or alien is or has been engaged in illicit sexual conduct in a foreign country shall, within 24 hours, make a report of such knowledge or suspicion to the CyberTipline of the National Center for Missing and Exploited Children or any successor to the CyberTipline operated by such center.

I(B). The National Center for Missing and Exploited Children shall forward each report made under subsection I(A) to the appropriate law enforcement agency as designated by the Attorney General.

“Illicit sexual conduct” means:

- (1) a sexual act with a person under eighteen years of age; or
- (2) any commercial sex act with a person under eighteen years of age.

“Sexual act” is defined in 18 U.S.C. § 2246(2).

“Commercial sex act” is defined in the Pattern Instruction for 18 U.S.C. § 1591(E)(3). (FORM 485-7their 18 U.S.C. § 2423(f)) Jury Instruction - U.S. Circuit Court of Appeals, 7th Circuit.

I(C). The United States shall provide sufficient notice of the requirement under this law to all United States citizens and resident aliens traveling to foreign jurisdictions. The Department of Justice and the Department of State will work together to determine the manners and methods of such notification.²²⁶

The proposed law follows the lead of eighteen states in that it designates all adult citizens and resident aliens as mandated reporters.²²⁷ This expanded designation does not limit the reporting duty to a select few who may never have any contact with the alleged victim or perpetrator.

The international mandated reporting law applies to any United States citizen who is in a foreign country and suspects another citizen of sexually abusing a child in a foreign country. Similar to the 18 U.S.C. § 2423(c), the jurisdiction over citizens overseas is authorized under Congress’s authority to “regulate channels of foreign commerce” clause.²²⁸ Thus, this law can be

²²⁵ This proposal does not include all necessary provisions of such a law. I have chosen to highlight only what I believe to be the most significant and necessary features.

²²⁶ These sections—I(A), I(B), and I(C)—identify mandatory reporters, a timeframe for reporting, the entity that the mandatory reporter must report to, the forwarding responsibility of the entity that the mandatory reporter reports to, define Illicit Sexual Conduct and Sexual Act, and provide the notification requirement for the United States to its citizenry and resident aliens.

²²⁷ See *supra* text accompanying note 81.

²²⁸ *United States v. Clark*, 315 F. Supp. 2d 1127, 1133 (W.D. Wash. 2004), *aff’d*, 435 F.3d 1100

enforced against any United States citizen who has satisfied the essential conduct element of “traveling in foreign commerce.”²²⁹

Unlike most domestic mandated reporting laws, the proposed international mandated reporting law limits reporting requirements to the knowledge or suspicion of only “illicit sexual conduct.”²³⁰ Due to the fact that the purpose of the proposed international mandated reporting law is to support the enforcement of 18 U.S.C. § 2423 of the PROTECT Act, it limits the reporting duties to the same enumerated offense(s) outlined in that law.²³¹

The proposed law requires that the report be made within twenty-four hours of the mandated reporter having knowledge or suspicion of the abuse.²³² This proposed law also sets forth a reporting mechanism already established in 18 U.S.C. § 2258A.²³³ The CyberTipline of the National Center for Missing and Exploited Children has been previously authorized by Congress to “receive[] leads and tips regarding suspected crimes of sexual exploitation committed against children.”²³⁴ It currently partners with many of the federal agencies that will be responsible for following up and investigating the reports required by the proposed international mandated reporting law.²³⁵ Similar to 18 U.S.C. § 2258A, the proposed law requires the Attorney General to designate where the Center for Missing and Exploited Children must forward the reports received from the CyberTipline.

The Justice Department and the State Department Attorney are directed to work together in developing appropriate mechanisms that will provide

(9th Cir. 2006).

²²⁹ *Clark*, 435 F.3d at 1114. All that is required to satisfy this element is that at some point the defendant travelled to or from the United States to a foreign state. *See id.* (holding that getting on a plane in the United States and traveling to a foreign country satisfies the “travels in foreign commerce element”).

²³⁰ Other forms of child abuse, neglect, or maltreatment are not included. The proposed law also limits the reporting to known or suspected “illicit sexual conduct” perpetrated by United States citizens. The definition of “illicit sexual conduct” is identical to the definition provided in 18 U.S.C. § 2423. 18 U.S.C. § 2423(f) (2014).

²³¹ The focus of this proposed law is upon United States perpetrators, because it is jurisdictionally constrained as to directing services for the children who have been victimized. A primary focus of domestic mandated reporting laws is protecting the victim. Once a report is made, Child Protective Services typically are the first to respond to ensure the safety of the child. On the other hand, the primary focus of the proposed International Mandated Reporting Law is apprehending the perpetrator. It is the hope of this author that the United States government will develop a process with each foreign government that will notify the United States government of the alleged abuse so that appropriate services can be provided to the victims.

²³² This is the maximum amount of time the mandated reporter has to comply with the law after knowing or suspecting the illicit sexual conduct. Similar time limitations are found in domestic mandated reporting laws. *See, e.g.*, VA. CODE ANN. § 63.2-1509(D) (2014).

²³³ *See supra* notes 213-222 and accompanying text.

²³⁴ *See CyberTipline*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, <http://www.missingkids.com/cybertipline> (last visited Jan. 16, 2014).

²³⁵ *Id.*

sufficient notification to United States citizens regarding their duties under this law. This notification requirement is critical because many United States citizens will not be aware that federal law has designated them as mandated reporters while overseas.

Penalties:

II(A) Any person required by this law to report known or suspected illicit sexual conduct and knowingly and willfully fails to do so, or who knowingly interferes with the making of such a report, commits a class E felony, punishable as provided in 18 U.S.C. § 3559.

II(B) Any person required by this law to report known or suspected illicit sexual conduct and fails to do so is civilly liable for the damages proximately caused by the failure.

II(C) Any organization who employs persons in one of the following professions, who are required by this law to report known or suspected illicit conduct, shall be civilly liable for any damages proximately caused by the employee's violation of this law if such noncompliance occurs within the course and scope of employment:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
2. Health or mental health professional other than one listed in subparagraph 1;
3. School teacher or other school official or personnel;
4. Social worker, day care-center worker, or other professional childcare, foster care, residential, or institutional worker;
5. Law enforcement officer; or
6. Any employee or member of a religious or humanitarian organization.

II(D) Any person making a report under this law shall have a civil cause of action for appropriate compensatory and punitive damages against any employer or person who causes detrimental changes in the employment status of such reporting party by reason of his or her making such report. Any detrimental change made in the residency or employment status of such person, including, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations within a prescribed period of time shall establish a rebuttable presumption that such action was retaliatory.²³⁶

²³⁶ These sections—II(A), II(B), II(C), and II(D)—identify the criminal responsibility and civil

Not only do mandated reporters who willfully fail to report face criminal penalties under this law, but those who discourage or otherwise attempt to prevent others from reporting their suspicions will also be held criminally responsible.²³⁷

A knowing and willful violation of this law is designated as a class E felony, which allows for imprisonment of more than one year but less than five years.²³⁸

The proposal also creates a civil cause of action against a mandated reporter who fails to report the known or suspected illicit sexual conduct. Unlike the criminal penalty provision, civil liability does not require the knowing and willful failure to report. The simple failure to report, regardless of intent, is sufficient to establish the basis to find the mandated reporter liable for any damages proximately caused by the violation. One purpose of this provision is to provide possible remedies to a victim regardless whether or not the government prosecutes the mandated reporter.²³⁹

Under the proposed law, employers of individuals of certain professions who are designated mandated reporters can be held civilly liable should their employee knowingly and willfully fail to report and such failure was during the course and scope of their employment. This means that any United States citizen employed by an organization in one of the listed professions who violates this law within the scope of their employment will expose the employer to civil liability for damages caused as a proximate result of the violation.²⁴⁰ The enumerated professions are those that come into regular contact with children and are often in the best position to suspect the perpetration of illicit sexual conduct. This provision will create an incentive for employers of these professions doing work overseas to develop policies and practices to notify and train these employees of their obligations under this law. It is also designed to discourage employers from dissuading their employees from reporting suspected abuse as required by this proposed law.

liability of mandatory reporters who fail to report, and provide protection for mandatory reporters against an employer's retaliatory action resulting from the mandatory reporter's report.

²³⁷ This provision is derived from section 232.75(2) of the Iowa Code. *See* IOWA CODE § 232.75(2) (2014).

²³⁸ This provision is derived from 18 U.S.C. § 3559(a)(5) (2014).

²³⁹ Due to the fact that many victims of illicit sexual conduct in foreign countries are nationals and have little ability or means to initiate civil proceedings in the United States, this provision will primarily be a benefit to United States children who are victimized in a context similar to the case study provided at the beginning of this article.

²⁴⁰ Employer liability for employees who violate mandated reporting laws has been upheld even without an explicit statutory provision providing for such. *See* *Alejo v. City of Alhambra*, 89 Cal. Rptr. 2d 768, 776 (Cal. Ct. App. 1999); *Grimm v. Summit Cnty. Children Servs. Bd.*, No. 22702, 2006 WL 1329689, at *6 (Ohio Ct. App. May 17, 2006); *Yates v. Mansfield Bd. of Educ.*, 808 N.E.2d 861, 864 (Ohio 2004).

The final penalty provision of the proposed law protects any employee who is designated as an international mandated reporter from any type of adverse personnel action in retaliation for complying with the law.²⁴¹ This will protect mandated reporters who report suspected abuse that may have a “negative” impact upon a particular individual or the reputation of the employer.²⁴² This anti-retaliation provision provides a remedy for those who are in a foreign country and find themselves being penalized for following the law.

Continuing Offense:

III. Failure to report as required by this law is a continuing offense. A person subject to this law is not relieved of his/her lawful obligation to report unless a report has already been made to the best of the individual’s belief.²⁴³

Being explicitly defined as a “continuing offense” significantly limits the ability of this offense from being cut off by the statute of limitations. As stated by the court in *Duncan v. State*, “[t]he offense continues as long as the duty persists, and there is a failure to perform that duty.”²⁴⁴ As a continuing offense, the mandated reporter has a continuing duty to make the required report and the statute of limitations will not be triggered until that duty has been satisfied.

²⁴¹ This provision is derived from section 39.203(b) of the Florida Statutes. See FLA. STAT. § 39.203(2)(b) (2014).

²⁴² See, e.g., Barbara Hollingsworth, *Pennsylvania Has Lowest Reporting of Child Abuse in U.S., Group Says*, CNS NEWS (June 20, 2014, 4:44 PM), <http://cnsnews.com/news/article/barbara-hollingsworth/pennsylvania-has-lowest-reporting-child-abuse-us-group-says> (recounting mandated reporters’ allegations that they are “forced to choose between obeying the law and risking career-ending retaliation”); Richard Chin, *St. Paul Charter School Teachers File Whistleblower Lawsuit*, PIONEER PRESS (Apr. 1, 2014), http://www.twincities.com/education/ci_25469112/st-paul-charter-school-teachers-file-whistleblower-lawsuit (describing teacher and former teacher filing suit for retaliation after complaining about how a school “fail[ed] to follow proper procedures to report allegations of child abuse . . .”); *Member Wrongly Fired for Reporting Child Abuse Agrees to Settle Lawsuit*, GEORGIA ASSOCIATION OF EDUCATORS (Dec. 3, 2013), <http://pv.gae2.org/content.asp?contentid=3931> (involving teacher alleging retaliation for reporting suspected child abuse); *School Nurse Who was Terminated After Reporting Suspected Child Abuse was Allowed to Proceed with Retaliatory Discharge Claim Under State’s Whistleblower Statute*, LIEBERT CASSIDY WHITMORE (Apr. 10, 2012), <http://www.lcwlegal.com/82220> (involving New York nurse alleging that “she was terminated for not being a ‘team player’” after reporting suspected child abuse); Alice C. Elwell, *Middleboro School Bus Driver Claims Retaliation for Reporting Case of Suspected Child Abuse*, ENTERPRISE (Dec. 3, 2010), <http://www.enterpriseneews.com/article/20101203/News/312039610> (involving Massachusetts bus driver claiming retaliation for reporting suspected abuse of supervisor’s child).

²⁴³ Section III establishes that a mandatory reporter’s failure to report is a continuing offense.

²⁴⁴ *Duncan v. Maryland*, 384 A.2d 456, 459 (Md. 1978).

C. Will Americans Follow This Law?

There is strong evidence to suggest that United States citizens overseas will effectively follow this law. This evidence comes in the form of a recent research study entitled, *Why People Obey the Law*,²⁴⁵ which offers explanations based upon objective data as to the driving forces behind compliance to laws.²⁴⁶ The study found that people are more inclined to follow laws they believe are legitimate.²⁴⁷ In other words, “[t]he relationship between legitimacy and compliance [is] linear: as legitimacy increases, so does compliance”²⁴⁸

This study explored “the everyday behavior of citizens toward the law” and the reasons why they follow or disregard it.²⁴⁹ It also sought to differentiate between “the instrumental and normative perspectives” on law compliance.²⁵⁰ The instrumental perspective deals with deterrence strategies and focuses on citizens’ self-interest to follow the law.²⁵¹ According to the instrumental perspective, “increasing the severity and certainty of punishment for committing a crime has frequently been viewed as an effective way of reducing the rate at which the crime is committed.” Instrumental compliance is a form of behavior that is driven by “external factors” that is more commonly known as “deterrence”.²⁵² Unlike the self-interested motivation behind instrumental compliance, normative compliance looks to why “citizens will voluntarily act against their self-interest”²⁵³ While several studies have been conducted on

²⁴⁵ TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006).

²⁴⁶ This research is based primarily on the results of the Chicago study, where 1,575 citizens were interviewed by telephone regarding their “experiences, attitudes, and behavior.” *Id.* at 8. Another 804 of the original participants were then reinterviewed a year later. *Id.* Specifically, “[t]he Chicago study focus[ed] on six laws chosen to represent the range of laws people deal with in their everyday lives.” *Id.* at 40. The study dealt with such prohibited behavior as “making enough noise to disturb neighbors, littering, driving a car while intoxicated, driving faster than fifty-five miles an hour, taking inexpensive items from stores without paying, and parking illegally.” *Id.* Citizens were probed how often, if at all, they violated each law. *Id.*

²⁴⁷ This is true “whether the legitimacy is expressed as obligation or as support.” *Id.* at 31.

²⁴⁸ *Id.* at 57.

²⁴⁹ *Id.* at 3.

²⁵⁰ *Id.* Mr. Tyler presents an example of the instrumental and normative perspectives in a hypothetical:

If people refrain from using drugs because they think laws ought to be obeyed, then legitimate authority is influencing their behavior. If they do so because drug abuse violates their convictions, then personal morality is influencing their behavior. If they fear being caught and sent to prison, deterrence is influencing their behavior. And if they do not use drugs because they fear the disapproval of their friends, the social group is exerting its influence.

Id. at 25.

²⁵¹ *Id.* at 3.

²⁵² *Id.*

²⁵³ *Id.* at 24.

the instrumental perspective, this study focused on the normative perspective to identify underlying motives for law compliance of the average citizen.²⁵⁴

The normative perspective can be divided into two prongs: (1) personal morality and (2) legitimacy.²⁵⁵ The study defines the normative obligation through morality as, “obeying a law because one feels the law is just”²⁵⁶ The normative obligation through legitimacy is defined as “obeying a law because one feels that the authority enforcing the law has the right to dictate behavior.”²⁵⁷ While both personal morality and legitimacy are prongs of the normative perspective, authorities tend to focus more on attaining legitimacy as it allows for effective governance.²⁵⁸ In fact, legitimacy is so important that “[c]hanges in legitimacy will affect the degree to which people comply with laws in their everyday lives.”²⁵⁹

Interestingly, individuals do not typically focus on the potential for reward or punishment.²⁶⁰ The study notes, “In studying general compliance with the law, attention has been directed to instances where compliance cannot be easily explained using a simple deterrence perspective.”²⁶¹ It goes on to mention, “Citizens have been found to obey the law when the probability of punishment

²⁵⁴ *Id.* at 4.

²⁵⁵ *Id.* According to the results of the Chicago study, “[j]ust as respondents almost universally feel that breaking the law is immoral, they feel a strong obligation to obey the law: both personal morality and the legitimacy of legal authorities encourage citizens to be law-abiding.” *Id.* at 46.

²⁵⁶ *Id.* at 4.

²⁵⁷ *See id.* (The study breaks down the prongs in the following example: “[a]ccording to a normative perspective, people who respond to the moral appropriateness of different laws may (for example) use drugs or engage in illegal sexual practices, feeling that these crimes are not immoral, but at the same time will refrain from stealing. Similarly, if they regard legal authorities as more legitimate, they are less likely to break any laws, for they will believe that they ought to follow all of them, regardless of the potential for punishment.”).

²⁵⁸ *See id.* at 64-65 (While authorities tend to care more about legitimacy than personal morality, the study finds: “[t]he most important normative influence on compliance with the law is the person’s assessment that following the law accords with his or her sense of right and wrong; a second factor is the person’s feelings of obligation to obey the law and allegiance to legal authorities. According to the Chicago study, those who feel that they “ought” to follow the dictates of authorities are more likely to do so. One important and striking finding of the study is the high level of normative commitment found among the public to abiding by the law. People generally feel that law breaking is morally wrong, and that they have a strong obligation to obey laws even if they disagree with them. Further, within the range of everyday laws studied, these two sources of commitment to law-abiding behavior reinforce each other. Law breaking is viewed both as morally wrong and as a violation of an obligation owed to authorities. This high level of normative commitment to obeying the law offers an important basis for the effective exercise of authority by legal officials. People clearly have a strong predisposition toward following the law. If authorities can tap into such feelings, their decisions will be more widely followed.”).

²⁵⁹ *Id.* at 5.

²⁶⁰ *See id.* at 21-22. “If rewards and punishments alone produced sufficient compliance for society to function effectively, the authorities would find their task simple and straightforward. *Id.* at 21. Furthermore, “it has been widely suggested that in democratic societies the legal system cannot function if it can influence people only by manipulating rewards and costs.” *Id.* at 22.

²⁶¹ *Id.* at 22.

for noncompliance is almost nil and to break laws in cases involving substantial risks.”²⁶² Instead of considering the rewards and costs, most citizens “comply with the law [when] they view the legal authority they are dealing with as having a legitimate right to dictate their behavior”²⁶³ In this sense, legitimacy is often viewed as the more stable normative perspective prong; citizens will feel obligated to obey laws as long as the authority issuing the laws acts “within appropriate limits.”²⁶⁴ Essentially, the Chicago study found that most people feel “obliged to obey the law and the directives of legal authorities” regardless of how well the law is enforced.²⁶⁵

The history and prevalence of mandated reporting laws are strong indicators that such laws are deemed to be legitimate by most American citizens.²⁶⁶ Though legitimacy is the most important normative perspective prong, personal morality also plays a central role in compliance to the law. In explaining how this was determined, the author of the Chicago study writes,

In studies of these effects, people are asked to what extent a law or rule accords with their own judgments of right and wrong, and these judgments are correlated to whether they obey the law. Five studies of this kind found that personal assessments of the morality of the law typically have a strong influence on whether citizens say that they break the law.²⁶⁷

For example, the Chicago study found that a majority of respondents believed it would be wrong to violate six mostly minor laws due to the fact that each law was deemed to be morally imperative at some level.²⁶⁸ The study concluded that, “[c]itizens seem to view breaking laws as a violation of their personal morality.”²⁶⁹

²⁶² *Id.* An example of normative compliance occurs when law breaking decreases in response to public service campaigns against drunk driving, even though such campaigns do not have any influence on whether a citizen will be punished. *Id.* “Legitimacy is a particularly important normative factor, for it is believed to be the key to the success of legal authorities. If authorities have legitimacy they can function effectively; if they lack it it is difficult and perhaps impossible for them to regulate public behavior.” *Id.* at 57.

²⁶³ *Id.* at 25. “Citizens with higher levels of support for the authorities are less likely to engage in behavior against the system.” *Id.* at 33.

²⁶⁴ *Id.* at 26. According to the study, “[p]eople generally feel that existing legal authorities are legitimate, and this legitimacy promotes compliance with the law.” *Id.* at 170.

²⁶⁵ *Id.* at 56.

²⁶⁶ For over forty years, all fifty states have had some form of mandated reporting law. John E.B. Myers, *A Short History of Child Protection in America*, 42 *Fam. L.Q.* 449, 456 (2008), available at http://www.americanbar.org/content/dam/aba/publishing/insights_law_society/ChildProtectionHistory.authcheckdam.pdf.

²⁶⁷ TYLER, *supra* note 245, at 36-37.

²⁶⁸ *Id.* at 43. The six laws were: (1) noise disturbance, (2) littering, (3) driving while intoxicated, (4) driving in excess of the speed limit, (5) retail theft, (6) parking violation. *Id.*

²⁶⁹ *Id.* at 44. Most individuals already “feel a strong obligation to obey the law.” *Id.* at 31. In fact,

The very fact that the sexual abuse of minors is a serious felony in all fifty states is a strong indicator that most United States citizens believe it to be morally wrong to sexually abuse a child. This is further demonstrated by the fact that many people feel at least some degree of obligation to protect a child who is at risk of being abused or maltreated.²⁷⁰

An international mandated reporting law will simply be an extension of existing domestic mandated reporting laws. Because these laws are largely accepted as legitimate, it follows that United States citizens will also accept an international mandated reporting law as legitimate. Not only will such a law be embraced as legitimate, but personal morality will also promote compliance of a law that requires the reporting of the suspected sexual abuse of children.

United States citizens who sexually abuse children are not likely to be deterred from their criminal actions by the PROTECT Act. However, the proposed international mandated reporting law is crafted with a normative perspective directed at the average law abiding citizen. Hence, this law can become a primary enforcement mechanism of the PROTECT Act because law abiding United States citizens will embrace a law that they believe as being legitimate and morally imperative. As long as law abiding United States citizens traveling or living overseas have sufficient notice of their duties under this law, there is little doubt it will achieve its objective—supporting the PROTECT Act by catching offenders and protecting children.

IX. APPLICATION OF THE INTERNATIONAL MANDATED REPORTING LAW PROPOSAL

A. Case Study Summary

The existence of a federal international mandated reporting law could have made a significant difference in protecting the life of Tabitha. This case provides many of the common dynamics associated with the sexual abuse of children overseas, those who abuse, and those who suspect abuse. The case involves United States citizens who were living in a foreign country as missionaries. The alleged offender is a well-educated and very influential physician who used his position and reputation to abuse a child and silence someone who suspected the abuse. The failure to report is largely fueled by fear caused by ongoing criticisms and threats of termination. At some point, this fear drives Ms. Swanson to conclude that she has done “everything possible” and to make the conscious decision to remain silent regarding her suspected sexual

“70 percent of adults said a law ‘must always be obeyed,’” and “93 percent of 1,001 adults said a law should always be obeyed regardless of personal feelings” *Id.*

²⁷⁰ MONICA L. MCCOY & STEFANIE M. KEEN, CHILD ABUSE AND NEGLECT 33 (2009). The authors point out that many people who are not mandated reporters report child abuse or suspicions of child abuse, even though there are no legal consequences for failure to report. *Id.*

abuse of a child. This decision provides the offender continued opportunities to abuse the suspect child and other children until the victim eventually reports the abuse years later.²⁷¹

B. Case Study Application

Under the current law, Dr. Coop could certainly be prosecuted under 18 § 2423(c) of the PROTECT Act.²⁷² However, the United States authorities have to be made aware of the suspected abuse before being able to investigate and prosecute Dr. Coop. Neither Ms. Swanson, nor any other United States citizen working with GNA on Buna Island has a duty under current United States law to take any action to stop another citizen from sexually abusing children.²⁷³ For five years, Tabitha and other children remained at risk as nothing was done about a suspected sexual offender in their midst. The current state of the law all too often promotes silence when United States citizens suspect other citizens of abusing children while in a foreign country. Not only is there no mandated duty to report, but there is also no prohibition against discouraging, threatening, or otherwise preventing one who suspects sexual abuse from making a report. Though it is a violation of federal law for Dr. Coop to sexually abuse children in Bau-Bau, the means of enforcing that law are significantly restricted without a duty to report.

All of this changes under the proposed mandated reporting law. Under Section I(A), Ms. Swanson would be designated as a mandated reporter due to the fact that she is a United States citizen who has traveled in foreign commerce.²⁷⁴ At the point in time when she had reasonable cause to suspect Dr. Coop was having sexual contact with Tabitha, a person under the age of eighteen, Ms. Swanson would have been legally mandated to call the CyberTipline within twenty-four hours.²⁷⁵ Under the proposed law, Ms. Swanson would have been forced to weigh the threats to her employment against the fact that failing to

²⁷¹ The case study gives a strong indication that the “suspicious behavior” of Dr. Coop continued with Tabitha and other children after Ms. Swanson decided to remain silent. *See supra* text accompanying note 1.

²⁷² “Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.” *See supra* text accompanying note 182. Dr. Coop was a United States citizen who traveled in “foreign commerce” and engaged in illicit sexual conduct with a minor. *See supra* text accompanying note 1.

²⁷³ Even if she had not remained quiet, the current law would not have protected Ms. Swanson and her husband had GNA retaliated by sending them back home to the United States.

²⁷⁴ *See supra* text accompanying note 1; *supra* Part VIII.B.

²⁷⁵ Though there could be some debate about the exact point in time when Ms. Swanson developed a reasonable cause to suspect that Dr. Coop was sexually abusing Tabitha, she certainly had such a suspicion when she met with the director of the GNA Buton Island mission. *See supra* text accompanying note 1; *see also supra* Part VIII.B.

report would be a federal crime.²⁷⁶ Furthermore, the proposed law would have given her an added measure of confidence to make the report knowing that she had a civil cause of action against Dr. Coop, the GNA director, and GNA should they cause any detrimental change in her employment with GNA.²⁷⁷ Ms. Swanson would have likely accepted this legal duty as both legitimate and morally imperative, and thus made the report despite the intimidation and threats. It must also be noted that both Dr. Coop and the GNA director would have to weigh the criminal consequences of interfering with Ms. Swanson's reporting of the suspected abuse.²⁷⁸ The criminal prohibition against interference would have been a strong deterrent to threatening, or even discouraging Ms. Swanson from making the report. If Ms. Swanson had followed the law and made the report, the Center for Missing and Exploited Children would have forwarded the suspected abuse information to the appropriate law enforcement agency and a criminal investigation would have been initiated.²⁷⁹ The mandated report could have resulted in Dr. Coop being prosecuted for abusing Tabitha, as well as being prevented from further opportunities to abuse her or anyone other child on Buton Island.²⁸⁰ Without this proposed law, Dr. Coop was given an additional five years to sexually victimize children with little fear of being reported.

Under the proposed law, if Ms. Swanson had not reported the suspected abuse, she would have been subject to criminal prosecution and could have been found civilly liable to Tabitha and any other person for damages proximately caused by not reporting.²⁸¹ The proposed law would also likely make GNA liable for Ms. Swanson's failure to report. Under Section II (C), Ms. Swanson fell under at least two of the enumerated professions that subject an organization to

²⁷⁶ A knowing and willful failure to report would subject Mary Swanson to being convicted of a Class E felony and up to five years in federal prison. *See supra* Part VIII.B. and text accompanying note 236 (discussing § II(A)).

²⁷⁷ *See supra* Part VIII.B. and text accompanying note 236 (discussing § II(D)). This available cause of action should also discourage GNA from engaging in any type of retaliatory actions against Mr. & Ms. Swanson.

²⁷⁸ Section II(A) of the proposed International Mandated Reporting Law makes such interference a Class E felony punishable by up to five years in prison. *See supra* Part VIII.B. and text accompanying note 236 (discussing § II(A)). A strong argument could be made that making threats to send her and her husband back to the United States constitutes such interference. This criminal prohibition against interference will be a strong deterrent to those who may otherwise attempt to stop a report from being made.

²⁷⁹ This would be determined in advance by the Attorney General as directed in Sections I(A) and I(B) of the proposed law. *See supra* Part VIII.B. and text accompanying note 226 (discussing § I(A)-(B)).

²⁸⁰ Even if the United States Attorney's office declined to prosecute Dr. Coop, it is possible that the criminal investigation would have at least prompted GNA to remove him from the field.

²⁸¹ In Section II(B) of the proposed International Mandated Reporting Law, any mandated reporter who fails to report suspected sexually illicit conduct is civilly liable for any damages proximately caused by the failure. *See supra* Part VIII.B. and text accompanying note 236 (discussing § II(B)). This could conceivably make Ms. Swanson civilly liable for any damages caused by abuse perpetrated by Dr. Coop upon Tabitha or any other child as a result of her failure to report.

civil liability for the failure of its employee to report suspected sexual abuse.²⁸² It was during the course and scope of her employment with GNA (a religious organization) that she learned of the suspected abuse and decided not to report. As a result, GNA would be subject to civil liability for any damages proximately caused by the failure to report.²⁸³ Ultimately, this potential liability would most likely have prompted GNA to actually encourage Ms. Swanson to make the report and to initiate mandated reporter training and education programs for all employees who serve in foreign countries.

As can be seen by the application of this proposed law to the case study, an international duty of United States citizens to report the suspected sexual abuse of children by other citizens will transform the international child protection landscape. United States citizens who protect or ignore suspected United States perpetrators would subject themselves to considerable risk of criminal prosecution and civil liability. Additionally, this proposed law will encourage employers to educate and train employees on the legal obligations to report suspected abuse overseas.

X. CONCLUSION

The proposed federal international mandated reporting law simply expands the mandated reporting laws that already exist in all fifty states. Like already-existing mandated reporting laws, the proposed law helps identify and prosecute United States citizens who sexually abuse children while overseas.. United States federal law criminalizes the sexual abuse of children committed by United States citizens, regardless of the location. Thus, citizens overseas who suspect a fellow citizen of sexually abusing a child have no less responsibility than they do domestically to report such suspicions simply because of their location. The proposed federal law will fill the gap that currently limits the effectiveness of the PROTECT Act—ultimately protecting more children around the globe as more perpetrators are exposed and prosecuted. Children deserve nothing less from us.

²⁸² Ms. Swanson was both a member of the school personnel and an employee of a religious organization. *See supra* p. 1.

²⁸³ Similar to Ms. Swanson under Section II(B) of the proposed International Mandated Reporting Law, Section II(C) of the law authorizes GNA to be held liable for any damages caused by sexual abuse perpetrated by Dr. Coop upon Tabitha or any other child as a result of Ms. Swanson's failure to report. *See supra* Part VIII.B. and text accompanying note 236 (discussing § II(C)).

APPENDIX A: Age of Consent

1. **Argentina (13 years old):** ARG. PEN. CODE, art. 120 (1984) (amended 2012), *available at* <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#17>.
2. **Armenia (16 years old):** ARM. CRIM. CODE, art. 141 (2003), *available at* <http://www.legislationline.org/download/action/download/id/1655/file/bb9bb21f5c6170dadc5efd70578c.htm/preview>.
3. **Australia (16 years old):** Criminal Code Act, 1913, s. 321 (Austl.); *see also* Australian Federal of AIDS Organisations, Inc., *Age of Consent Laws in Australia*, http://www.afao.org.au/library/topic/youth/AFAO_Fact_sheet_Age_of_Consent_Laws_in_Australia.pdf (last visited July 4, 2014).
4. **Bangladesh (14 years old):** Child Marriage Restraint Act, BANGL. PENAL CODE, ch. 16, art. 375 (1860), *available at* http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=11; *see also* GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), BANGLADESH (2011) (revised 2013), http://www.fosigrid.org/asia/bangladesh_profile (last visited July 4, 2014).
5. **Belarus (16 years old):** BEL. CRIM. CODE, art. 117 (1999), *available at* https://www.unodc.org/tldb/pdf/Belarus/BYE_Crim_Law_EN.pdf.
6. **Bolivia (Puberty):** BOL. PEN. CODE, art. 308 (1973); *see also* GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), BOLIVIA (2014), <http://www.fosigrid.org/south-america/bolivia> (last visited July 4, 2014).
7. **Bosnia/Herzegovina (14 years old):** BOS. & HERZEG. CRIM. CODE, art. 207 (2003), *available at* <http://www.legislationline.org/download/action/download/id/1661/file/5863a4917995d1a282d020fb2715.htm/preview>; *see also* BOS. & HERZEG. CRIM. CODE, art. 2(8) (defining “child” as “a person who has not reached fourteen years of age”).
8. **Brazil (14 years old):** Jessica Best, *What is the age of consent around the world? From Angola at 12 to Bahrain at 21*, MIRROR, Nov. 17, 2013, *available at* <http://www.mirror.co.uk/news/uk-news/what-age-consent-around-world-2802173#ixzz36YjwVrrE>.
9. **Bulgaria (14 years old):** BULG. CRIM. CODE, art. 149 (1968) (amended 1997), *available at* <http://www.legislationline.org/documents/action/popup/id/8881/preview>.

10. **Canada (16 years old)**: Canada Criminal Code, R.S.C., art. 151 (1985), *available at* <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-1.html>.
11. **Chile (14 years old)**: GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), CHILE (2012) (revised 2014), <http://www.fosigrid.org/south-america/chile> (last visited July 4, 2014).
12. **Columbia (14 years old)**: GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), COLUMBIA (2014), <http://www.fosigrid.org/south-america/colombia> (last visited July 4, 2014).
13. **Democratic Republic of Congo (18 years old)**: *DRC: Behind Bars for Rape*, IRIN NEWS, July 7, 2010, *available at* <http://www.irinnews.org/report/89761/drc-behind-bars-for-rape>.
14. **Egypt (18 years old)**: UNICEF, ARE YOU OLD ENOUGH? (2009), http://www.unicef.org/rightsite/433_457.htm (last visited July 4, 2014).
15. **Estonia (14 years old)**: EST. PEN. CODE, art. 145 (2001), *available at* <http://www.legislationline.org/documents/section/criminal-codes>.
16. **Finland (16 years old)**: FIN. PEN. CODE, Article 6(1) (1990) (amended 2003), *available at* <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.
17. **France (15 years old)**: C. PÉN., art. 227-25 (1810) (amended 1959).
18. **Greece (15 years old)**: Poinikos Kodikas [P.K.] [Criminal Code], art. 339 (1950); *see also* GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), GREECE (2010) (revised 2014), <http://www.fosigrid.org/europe/greece> (last visited July 4, 2014).
19. **Guatemala (14 years old)**: GUAT. PEN. CODE, art. 173 (1973) (amended 2009); *see also* GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), GUATEMALA, <http://www.fosigrid.org/central-america/guatemala> (last visited July 4, 2014).
20. **Honduras (14 years old)**: HOND. PEN. CODE, art. 140 (1983); *see also* GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), HONDURAS, <http://www.fosigrid.org/central-america/honduras> (last visited July 4, 2014).

21. **Hungary (14 years old)**: BüntetőTörvénykönyv [B.T.K] [Penal Code], sect. 201 (1978); Ireland (17 years old): Criminal Law (Sexual Offenses) Act 2006, <http://www.oireachtas.ie/documents/bills28/acts/2006/a1506.pdf> (last visited July 4, 2014).
22. **India (18 years old)**: Mala Das, *Anti-rape bill cleared by Lok Sabha, many ministers, MPs missing*, ALL INDIA, Mar. 19, 2013, available at <http://www.ndtv.com/article/india/anti-rape-bill-cleared-by-lok-sabha-many-ministers-mps-missing-344461?curl=1404532679>.
23. **Israel (16 years old)**: Maayana Miskin, *After Marriage Law, MKs Eye Age of Consent*, ISRAEL NATIONAL NEWS, Nov. 21, 2013, available at <http://www.israelnationalnews.com/News/News.aspx/174291#.U7d5Hfl dXg0>.
24. **Italy (14 years old)**: Codice Penale, art. 609(c) (1930); see also GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), ITALY, <http://www.fosigrid.org/europe/italy> (last visited July 4, 2014).
25. **Japan (13 years old)**: Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (Act No. 52 of May 26, 1999), Keihō [KEIHŌ] [Penal Code], ch. XXII, art. 177 (1999); see also GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), JAPAN, <http://www.fosigrid.org/asia/japan> (last visited July 4, 2014).
26. **Republic of Korea (13 years old)**: REPUB. KOR. PEN. CODE, sec. 305, (1953) (amended 1998).
27. **Kyrgyzstan (16 years old)**: KYRG. CRIM. CODE, art. 132 (1997); see also GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), KYRGYZSTAN, <http://www.fosigrid.org/asia/kyrgyzstan> (last visited July 4, 2014).
28. **Lebanon (15 years old)**: GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), LEBANON, <http://www.fosigrid.org/middle-east/lebanon> (last visited July 4, 2014).
29. **Malaysia (16 years old)**: GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), MALAYSIA, <http://www.fosigrid.org/asia/malaysia> (last visited July 4, 2014).
30. **Mauritius (16 years old)**: GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), MAURITIUS, <http://www.fosigrid.org/africa/mauritius> (last visited July 4, 2014).

31. **Mexico (15 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), MEXICO, <http://www.fosigrid.org/mexico/mexico-country-profile> (last visited July 4, 2014).
32. **Montenegro (14 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), MONTENEGRO, <http://www.fosigrid.org/europe/montenegro> (last visited July 4, 2014).
33. **Morocco (18 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), MOROCCO, <http://www.fosigrid.org/africa/morocco> (last visited July 4, 2014).
34. **Peru (14 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), PERU, <http://www.fosigrid.org/south-america/peru> (last visited July 4, 2014).
35. **Philippines (18 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), PHILIPPINES, <http://www.fosigrid.org/asia/philippines> (last visited July 4, 2014).
36. **Romania (15 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), ROMANIA, <http://www.fosigrid.org/europe/romania> (last visited July 4, 2014).
37. **Russia (16 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), RUSSIA, <http://www.fosigrid.org/europe/russia> (last visited July 4, 2014).
38. **Rwanda (18 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), RWANDA, <http://www.fosigrid.org/africa/rwanda> (last visited July 4, 2014).
39. **Serbia (14 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), SERBIA, <http://www.fosigrid.org/europe/serbia> (last visited July 4, 2014).
40. **Sierra Leone (18 years old):** *see generally* GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), SIERRA LEONE, <http://www.fosigrid.org/africa/sierra-leone> (last visited July 28, 2014); *see also* BUREAU OF DEMOCRACY, HUMAN RTS., AND LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013, SIERRA LEONE (2014), *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220156>.

41. **South Africa (16 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), SOUTH AFRICA, <http://www.fosigrid.org/africa/south-africa> (last visited July 4, 2014).
42. **Spain (13 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), SPAIN, <http://www.fosigrid.org/europe/spain> (last visited July 4, 2014).
43. **Sweden (15 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), SWEDEN, <http://www.fosigrid.org/europe/sweden> (last visited July 4, 2014).
44. **Taiwan (16 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), TAIWAN, <http://www.fosigrid.org/asia/taiwan> (last visited July 4, 2014).
45. **Tajikistan (16 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), TAJIKISTAN, <http://www.fosigrid.org/asia/tajikistan> (last visited July 4, 2014).
46. **Thailand (18 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), THAILAND, <http://www.fosigrid.org/asia/thailand> (last accessed July 4, 2014).
47. **Togo (16 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), TOGO, <http://www.fosigrid.org/africa/togo> (last visited July 4, 2014).
48. **Turkey (15 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), TURKEY, <http://www.fosigrid.org/europe/turkey> (last visited July 4, 2014).
49. **Ukraine (16 years old):** UKR. CRIM. CODE, art. 156 (2001).
50. **United Kingdom (16 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), UNITED KINGDOM, <http://www.fosigrid.org/europe/united-kingdom> (last accessed July 4, 2014).
51. **United States (16-18 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), UNITED STATES, <http://www.fosigrid.org/united-states/united-states-country-profile> (last visited July 4, 2014).
52. **Yemen (17 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), YEMEN, <http://www.fosigrid.org/middle-east/yemen> (last visited July 4, 2014).

53. **Zambia (16 years old):** GLOBAL RESOURCE & INFORMATION DIRECTORY (GRID), ZAMBIA, <http://www.fosigrid.org/africa/zambia> (last visited July 4, 2014).