



## **Mandatory Reporting of Domestic Violence to Law Enforcement by Health Care Providers: A Guide for Advocates Working to Respond to or Amend Reporting Laws Related to Domestic Violence**

This paper provides an overview of the implications of state laws that govern health care reporting of injuries, suspected abuse and/or domestic violence to law enforcement. It also offers information for state domestic violence coalitions and domestic violence advocates, who are determining if their laws should be amended, provides examples from states that have created mandatory reporting exceptions for victims of domestic violence and recommendations on how to implement such changes in your state. A brief discussion about health care providers disclosing their limits on confidentiality and universal domestic violence education is also included.

### **Reporting Specified Injuries, Wounds or Suspected Abuse of Adults**

Most U.S. states have enacted mandatory reporting laws, which require the reporting of specified injuries and wounds, and suspected abuse by health care providers. Additionally, a few states specifically address reporting domestic violence. Mandatory reporting laws are distinct from elder abuse or vulnerable adult abuse and child abuse reporting laws. With mandatory reporting laws, reporting is not limited to a specific group of individuals being treated by a health care professional. Mandatory reporting laws pertain to all individuals to whom specific health care professionals provide treatment or medical care, or those who come before the health care facility. The laws vary from state-to-state, but generally fall into four categories: states that require reporting of injuries caused by weapons; states that mandate reporting for injuries caused in violation of criminal laws, as a result of violence, or through non-accidental means; states that specifically address reporting in domestic violence cases; and states that have no general mandatory reporting laws. (Mandatory Reporting of Domestic Violence by Health Care Providers: A Policy Paper, Hyman, A., Family Violence Prevention Fund, 1997)

### **Implications for Victims of Domestic Violence**

Many visits by victims of domestic violence to health care providers in primary care and women's health care settings will not generally fall into a category that requires a report: i.e. visit for injuries caused by gunshot or knife wounds etc. The visits might be for health problems associated with abuse, such as chronic health issues. During the visit, women may disclose coercive behaviors, such as emotional abuse, tactics used by a batterer to maintain power and control in a relationship and reproductive and sexual coercion (reproductive and sexual coercion involves behaviors that a partner uses, such as forced non-condom use, related to reproductive health). That type of disclosure usually will fall outside of the legal definitions of mandatory reporting statutes and,

therefore, may not need to be reported to law enforcement. However, with the increasing awareness about domestic violence as a health care issue, attention has turned to how health care providers can best assist their patients through routine assessment, documentation, intervention, and referral. Still, many of the available educational and training resources often emphasize the role of the health care provider as a mandated reporter.

Futures Without Violence believes that the most critical elements of providing domestic violence victims with quality health care responses include offering ongoing and supportive access to medical care, addressing safety concerns, and guiding patients through available options, including referrals to domestic violence and sexual assault programs. Unfortunately, applying mandatory criminal injury reporting laws to domestic violence cases is most often not helpful to domestic violence victims and may actually jeopardize their safety.

The goals potentially served by requiring mandatory reporting include enhancing patient safety, improving health care providers' response to domestic violence, holding batterers accountable, and improving domestic violence data collection and documentation. However, upon closer examination it becomes apparent that mandatory reporting does not necessarily accomplish these goals.

#### Enhancing Patient Safety and Increasing Access to Health Care Services

For some victims of domestic violence calling the police invokes retribution by their batterers. Criminal justice intervention is not always the best or safest response for victims who may fear that law enforcement reports made by medical personnel will place them in greater danger. Consequently, domestic violence victims may have no choice but to withhold information from their health care providers regarding the origin of their injuries or other health problems, or avoid seeking medical attention entirely.

#### Improving Health Care Provider Responses to Domestic Violence Victims

Removing the requirement to report can allow domestic violence victims to be more candid about their injuries, allowing health care providers to make informed judgments about medical treatment and follow-up care. Mandatory reporting laws can be amended to require that health care providers offer referrals to appropriately trained domestic and sexual violence service agencies, helping to ensure that domestic violence victims are given access to a wide range of services geared toward meeting their specific needs.

Domestic/sexual violence advocates work with victims to address needs related to safety planning, protection/restraining orders, children, finances, emotional/spiritual support, and emergency shelter/housing. By helping to connect patients to community or onsite domestic violence advocates, safety can be enhanced.

(Oklahoma, Pennsylvania and Texas have amended their laws to require that health care providers offer referrals to domestic violence programs/victim service agencies— please see Futures Without Violence’s Compendium of State Statutes and Policies on Domestic Violence and Health Care)

- **Preserving Patient Autonomy and Control of the Decision-Making Process:** The foundation of domestic violence is the use of force to control an intimate partner or family member. Batterers use a myriad of tactics to obtain and assert this control, often making their victims feel powerless over their lives. Mandatory reporting further limits victims control over their lives. Removing mandatory reporting requirements can help empower victims of domestic violence to make decisions that they feel are best for themselves based on their knowledge and experience. It can help victims gain control over their lives and health care options.
- **Protecting Patient Confidentiality:** In addition, health care providers have patient/provider confidentiality that is a critical foundation for building trust and providing adequate care in health settings. For many victims, isolated by their abuser from their friends, family and social services, health care providers may be the only professionals to whom they have safe access. Mandatory reporting of domestic violence related injuries interferes with the confidential nature of the provider-patient relationship and can undermine victims’ trust in health care providers.
- **Recognizing the Value of Informed Consent in Health Care Environments:** In the health care system, competent and informed patients determine the course of action that is in their best interest. Mandatory reporting of domestic violence related injuries negates patients’ ability to make critical life decisions, raises serious ethical issues, and compromises the integrity of the provider’s relationship with a patient. Removing reporting requirements corrects this inconsistency by empowering domestic violence victims to make informed decisions for themselves.

#### Holding Batterers Accountable

Very few state reporting statutes specify what is to be done with reports made by health care providers or what the state's purpose was in enacting the particular reporting requirement. (Mandatory Reporting of Domestic Violence by Health Care Providers: A Policy Paper, Hyman, A; Family Violence Prevention Fund, 1997) After a report is made, there is no guarantee that there will be an effective law enforcement response that meets the patient's safety needs or that there will be any actions taken to hold batterers accountable.

#### Improving Data Collection and Documentation

Noncompliance with reporting requirements may be common and there is likely a significant unevenness of reporting among providers in various health care

settings. Additionally, there are virtually no provisions in any state reporting statute regarding data collection and documentation. Only Tennessee requires any health care practitioner, who knows or has reasonable cause to suspect that a patient's injuries are the result of domestic violence, to report to the department of health, office of health statistics on a monthly basis and that identifying information not be disclosed. This required reporting is not linked to mandatory reporting to law enforcement. (Compendium of State Statutes and Policies on Domestic Violence and Health Care, Durborow, N; Lizdas, K; Flaherty, A; Marjavi, A; Family Violence Prevention Fund, 2010) Mandatory reporting to law enforcement is not a preferred means of accomplishing this goal. Documentation of abuse in the medical record or anonymous collection of data by state health departments can better preserve a patient's privacy and confidentiality.

### **Advocating for Victims of Domestic Violence**

It is important that state domestic violence coalitions, domestic violence advocates and health care providers understand their state's reporting laws. In order to maximize domestic violence victim input regarding law enforcement action, providers and advocates should also familiarize themselves with how their local law enforcement agency responds to such reports. Becoming familiar with such procedures will allow advocates and providers to better assist the patient in safety planning, and in knowing what to expect.

### **Disclosing Limits of Confidentiality**

*Mandated reporting responsibilities should always be discussed with patients seeking care prior to assessing for domestic violence.* It is absolutely critical for health care providers to *ALWAYS* discuss the limits of confidentiality prior to doing an assessment for domestic or sexual violence. Providers need to be familiar with their state law and how it is implemented. Not disclosing these limits can harm the relationship between patient and provider, can be disempowering to the patients choice to disclose/not disclose domestic violence and may put the patient at risk for retaliation by the batterer. Below are sample scripts for providers on how to inform patients about the limits of confidentiality. The scripts should be adapted to the specifics of your state's mandatory reporting law. Again, be aware that most state mandatory statutes apply only to hospital personnel and may not apply to private practitioners or clinics. For more information about your state statutes please see the Compendium of State Statutes and Policies on Domestic Violence and Health Care, Durborow, N; Lizdas, K; Flaherty, A; Marjavi, A; Family Violence Prevention Fund, 2010 at <http://www.futureswithoutviolence.org/userfiles/file/HealthCare/Compendium%20Final.pdf>

“I’m really glad you came in today. I’m going to be asking you a lot of questions to make sure that you get what you need from today’s visit. Before we get started I want you to know that everything here is confidential, meaning I won’t talk to anyone else about what is happening unless you tell me that someone has hurt you, which may require a report

to the police, you are planning to hurt yourself or you are planning on hurting someone else.”

“Domestic violence is a very prevalent issue in our society that will affect approximately 25% of all women at some point in their lives. In fact, domestic violence is so prevalent that *(health system)* thinks it is important to give all of our patients basic information about this issue at every contact. Even if you never need this information for yourself, chances are that you know or will know someone who could be helped by this information. In our community, *(agency name)* provides confidential phone hotlines, in-person counseling and even shelter for those who are experiencing domestic violence *(give brief info and/or handout sheet)*. Of course, here at *(health system/doctor’s office)* we have staff that are very sensitive to the needs of victims, and if you would like to talk to any of us, we are here to listen and help you. However, I do have to let you know that under state law, I am obligated to make a police report to *(name police agency with jurisdiction over the facility)*, if I/we are treating someone for any injury sustained by means of violence *(tailor this information to the specifics of your state law)*. So, if you would have any concerns about that, I would encourage you to speak with one of the domestic violence advocates/counselors at *(DV agency)*, who are able to provide confidential services and help without being required to make a police report.” (Developed by the Michigan Coalition Against Domestic and Sexual Violence)

By disclosing these limits of confidentiality the decision making power is given to the patient about what to discuss with the provider.

Additionally, Federal Health Insurance Portability and Accountability Act (HIPAA) privacy regulations require providers to inform patients of health information use and disclosure practices in writing, and whenever a specific report has been made. Health care facilities should ensure that their domestic violence protocols and training materials address their state reporting laws and federal regulations. (For more information on privacy regulations, please go to [www.futureswithoutviolence.org/health](http://www.futureswithoutviolence.org/health)).

It is also critical for health care providers to be clear about the parameters of what the law requires to be reported and where it needs to be reported. Reporting information that is outside the parameters of what is required by the law could be a violation of HIPAA. Additionally, no state law requires that the health care facility provide access to the patient.

### **Universal Education**

If your state has a mandatory reporting law that has not been amended to exclude reporting domestic violence injuries, you can still work with providers to help victims stay safe and healthy. In addition to training providers on how to disclose any limits of

confidentiality in their setting, especially if you have major concerns about your reporting law and the risks it might pose for patients, providers can always offer universal education about the health consequences of abuse and the resources available in the community for help.

For more information about how to train providers on disclosing limits of confidentiality or conduct universal education about domestic violence please go to: [www.futureswithoutviolence.org/health](http://www.futureswithoutviolence.org/health). Patient safety cards are available for providers to use and are designed to provide information for patients on safety and safety planning, and help in recognizing how their relationship impacts their health as well as the lives of their children. The safety cards offer helpful suggestions for patients to improve their health and safety, and lists specific health problems that may be the result of chronic stress from an abusive relationship. The back of the card refers patients to the National Hotline on Domestic Violence for further support.

### **Amending State Laws**

In addressing mandatory reporting laws, including those that specifically require reporting of domestic violence, it is critical to have the leadership of the state domestic violence and sexual assault coalitions, supported by advocates and health care professionals. There are many things to consider when determining if the state's law needs to be amended, including careful assessment of the risks of drawing attention to the law and opening the statute for change.

### **State Laws with Domestic Violence Exceptions**

Three states, New Hampshire, Oklahoma and Pennsylvania, have exceptions for reporting injuries due to domestic violence. (Compendium of State Statutes and Policies on Domestic Violence and Health Care, Durborow, N; Lizdas, K; Flaherty, A; Marjavi, A; Family Violence Prevention Fund, 2010)

New Hampshire's statute excuses a person from reporting if the victim is over 18, has been the victim of a sexual assault offense or abuse (defined in RSA 173-B:1), and objects to the release of any information to law enforcement. However, this exception does not apply if the victim of sexual assault or abuse is also being treated for a gunshot wound or other serious bodily injury.

Oklahoma's statute does not require reporting domestic abuse if the victim is over age 18 and is not incapacitated, unless the victim requests the health care provider to do so orally or in writing. The statute also provides that in all cases, what is reported to be domestic abuse shall clearly and legibly be documented by the health care provider and any treatment provided and that the provider refer the victim to domestic violence and victim services.

Pennsylvania's statute states that failure to report such injuries when the act caused bodily injury (defined in § 2301) is not an offense if the victim is an adult and; the injury was inflicted by an individual who is the current or former spouse or sexual or intimate



partner or; has been living as a spouse or who shares biological parenthood and; the victim has been informed of the physician's duty to report and that report cannot be made without the victim's consent or; the victim does not consent to the report; and the victim has been provided with a referral to the appropriate victim service agency. However, this exception does not apply if the victim of domestic violence is also being treated for a gunshot wound or other serious bodily injury.

## **Advocacy Tips for Amending State Mandatory Reporting to Law Enforcement by Health Care Providers Statutes**

### **1. Be clear about your message.**

Be prepared to support your belief that removing the requirement that health care professionals report domestic violence injuries to law enforcement will do the following:

- Enhance the quality of medical care offered to domestic violence victims
- Support the safety and autonomy of patients
- Reduce the risk that patients will refrain from seeking care
- Ensure that domestic violence victims receive referrals to free and confidential services
- Provide clear direction to health care providers and law enforcement on reporting requirements

### **2. Do your homework.**

- Survey domestic violence programs and health care colleagues in your state to determine if any of the following consequence/situations may have occurred. Has health care reporting to law enforcement of domestic violence invoked retribution by batterers and placed victims in greater danger, caused domestic violence victims to withhold information from their health care providers regarding the origin of their injuries, or avoid seeking medical attention entirely?
- Be aware that most of the national major medical professional associations are on record as being opposed to the mandatory reporting of domestic violence to law enforcement professionals. Those organizations include the American College of Obstetricians and Gynecologists (ACOG), the American Medical Association (AMA), the American Nurses Association (ANA), the American College of Emergency Physicians and the American Academy of Pediatricians (AAP).

- Become familiar with the research (both pro and con) that addresses mandatory reporting of domestic violence to law enforcement by health care providers. The research can help in preparing the rationale to amend the law. Please see the bibliography of research on mandatory reporting on page.

### **3. Understand the parameters of the legal definitions in your state's current statute.**

Understanding the legal definitions can help to craft amendments and determine where compromises may need to be made. For example, Pennsylvania's statute has an exception for reporting bodily injuries when a patient objects, but requires the reporting of serious bodily injury. The factors influencing the decision to compromise on the Pennsylvania reporting requirement to permit reporting serious bodily injury included recognizing that there may be more evidence that could lead to an arrest and the domestic violence victim is more likely to be hospitalized. This would allow time for referral to a domestic violence program and safety planning.

### **4. Reach out to allies that may support amending reporting statutes.**

As cited earlier, most of the national major medical professional associations are opposed to mandatory reporting of domestic violence to law enforcement professionals. Reach out to the state counterparts of those national associations such as your state's medical society, academy of family physicians, college of obstetricians and gynecologists, college of emergency physicians, and nursing associations etc. Their support can facilitate educating policy makers about the problems with mandatory reporting and contribute to a greater likelihood of amending the statute.

Other sources of support can include the state sexual assault coalition or the office of the victim advocate, if your state has one.

#### **Pennsylvania's legal definitions of bodily injury and serious bodily injury.**

**"Bodily injury"** Impairment of physical condition or substantial pain.

**"Serious bodily injury"** Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

It is also important to understand that your state's case law may have an impact on the legal definition of deadly weapon. Below is Pennsylvania's definition of a deadly weapon but case law supports that a fist or a pencil can constitute a deadly weapon as a result of the seriousness of the injuries inflicted.

**"Deadly weapon"** Any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.



## **5. Reach out to law enforcement, prosecutors and policy makers.**

Amending health care reporting statutes may help to enable law enforcement officials to more effectively intervene in crimes of domestic violence. Mandatory reporting by health care providers of minor injuries often does not provide the context or evidence needed for law enforcement officials to conduct a thorough investigation. Furthermore, if a report to law enforcement is made without victim consent, corroborating testimony may often be unavailable. Finally, law enforcement intervention without substantial evidence may aggravate the batterer further without leading to arrest. This may place the victim in additional jeopardy.

Taking action to amend your state reporting statute may create some strong feelings both pro and con from law enforcement, prosecutors and policy makers. It is important and can be very beneficial to talk with these officials prior to introducing amendments to the statute so that common ground and areas of agreement/disagreement, or the need to compromise, can be identified. It is important to be clear that the efforts to amend the reporting law is not an effort to stop the arrest or prosecution of batterers, but to give the victim of domestic violence some choice about what is safest for her when a report to law enforcement may actually make things worse.

Some law enforcement organizations to consider reaching out to include: district attorney associations, state police, chief of police associations, and sheriff associations.

Policy makers will also need education about this important issue, so consider talking with your governor's policy office or other appropriate leaders such as the chair(s) of the legislative committee(s) that would be the first to consider any amendments.

For two decades, Futures Without Violence and the National Health Resource Center on Domestic Violence through its publications, practices, educational programs, and outreach efforts, have promoted routine assessment for domestic violence and effective responses to victims in health care settings. During the past twenty years, there has been a growing recognition among health care professionals that domestic violence, also known as intimate partner violence, is a highly prevalent public health problem with devastating effects on individuals, families and communities. Most Americans are seen at some point by a health care provider, and the health care setting offers a critical opportunity for early identification and even the primary prevention of abuse. This window of opportunity can best serve victims and survivors through policies and laws that are trauma-informed and prioritize the safety of all individuals that experience abuse.

## RESEARCH BIBLIOGRAPHY ON MANDATORY REPORTING TO LAW ENFORCEMENT BY HEALTH CARE PROVIDERS

**Please note: all of the studies outlined below are available through Futures Without Violence's National Health Resource Center on Domestic Violence.**

For free technical assistance, and educational materials:

Visit: [www.futureswithoutviolence.org/health](http://www.futureswithoutviolence.org/health)

Call toll-free (Monday-Friday; 9am-5pm PST): 888-Rx-ABUSE (888-792-2873)

TTY: 800-595-4889

Email: [health@futureswithoutviolence.org](mailto:health@futureswithoutviolence.org)

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