



An Advocate's Guide to Mandatory Reporting



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An Advocate's Guide to Mandatory Reporting

I. Summary

When are advocates mandated reporters of child abuse?

- A. Advocates whose **professions or job roles** are listed in the mandated reporter statute are mandated reporters of child abuse. This includes but is not limited to advocates who are licensed social workers or licensed teachers, nurses, emergency medical personnel or police.
- B. If you are an unlicensed teacher or social worker you are only mandated if you are **working as a teacher or social worker**.
- C. Advocates that are sexual violence educators are not mandatory reporters themselves, but must have an employee of the school present in the room during the provision of all instruction or information presented.
- D. Programs receiving any **financial compensation** for any **school based education or advocacy work** in schools may be employees or contractors of the school and be subject to this statute.
- E. Advocates who work in programs that have a **contract with AHS** are also mandated reporters of child abuse.
- F. Advocates who are not mandatory reporters or who have information that is not required by law to be reported are still bound by Crises Worker Privilege and the Violence Against Women Act. (See Appendix A).

What is considered child abuse or neglect that must be reported by mandated reporters?

- A. **Where there is reasonable suspicion that there has been child abuse or neglect from a person responsible for the child's welfare.**
- B. **Where there is reasonable suspicion of sexual abuse of a minor by anyone.**
- C. **Sexual activity** if one person is under 16 and the other is 18 or older (even if it resembles 'consensual sexual activity') **EXCEPT** if both teens are between the ages of 15 – 18 and the sexual activity is consensual.
- D. **Sexual activity** between two people who are minors **IF** there is a substantial difference in age, size, status or developmental level such that it could impact the consensual nature of the activity, or if you believe it needs to be reported for some other reason (i.e.: age of the children, nature of the acts, perception that one or both children have been harmed, etc.).

What is not considered child abuse or neglect under the law?

- A. **Teen dating violence** unless sexual abuse is involved;
- B. **Consensual sexual activity** between teens aged 15-18;
- C. **Consensual sexual activity between people sixteen and older;**
- D. **Consensual sexual activity** between minors unless there is a substantial difference in age, size, status or developmental level such that it impacts the consensual nature of the activity; and
- E. **Children exposed to domestic violence** unless at serious physical risk of harm or there is a reasonable belief child abuse or neglect is present.

How & when is a report made?

- A. **Lay the groundwork with DCF before making a report by building relationships with DCF staff.**
- B. **How do I make a child abuse or neglect report?** Reports of child abuse and neglect should be made to Department for Children and Families, Family Services Division Centralized Intake: 1-800-649-5285 (24/7).
- C. **How much time do I have to make a report?** According to the statute, if an individual is a mandated reporter, it is their individual responsibility to report within 24 hours.

D. Who is responsible for making the report? The mandatory reporter must make the report. It is not the responsibility of the program, the director of the program, or that person's supervisor.¹

E. When do Release of Information forms need to be used?

i. Generally

If an advocate is not a mandated reporter, before any information is shared about the victim/survivor with anyone outside of the agency, federal law requires a written release of information form signed by the victim/survivor.

Even if an advocate IS a mandated reporter, it is always best to work with victim/survivors to get release of information forms signed whenever possible.

ii. Minors and Releases

Minors who are receiving services that don't require parental consent may sign their own release of information with or without their parent.

Minors receiving services requiring the consent of a parent or guardian must sign the release themselves, where appropriate, along with their non-abusive parent or guardian.

How do we keep advocacy central when talking with adult, child, and youth survivors about making a child abuse report?

- A.** Inform victim/survivor of your program's confidentiality policy, Crisis Worker Privilege, and reporting mandates before services.
- B.** Let all victims/survivors, especially teen survivors, know that they do not have to give their names or identifying details of their stories.
- C.** Understand your organization's protocols regarding child abuse reporting.
- D.** Support all victim/survivors in a way that respects their privacy and information and allows for as much decision making as possible while being transparent about your mandates.
- E.** Access the DCF Domestic Violence/Sexual Violence Unit as a resource for both domestic and sexual violence.
- F.** If you are not a mandated reporter but feel concerned about a child's safety and compelled to report child abuse, check in with your supervisor to talk through the situation.
- G.** If you are working with victim/survivor parents, help them report the abuse themselves or make the report in their presence.

What happens after a report is made?

A. What determines the acceptance of a report?

A supervisor evaluates each report to decide whether to accept it for intervention. According to Vermont law, a report is accepted if it alleges that:

A person responsible for the child's welfare:

¹ Previously, a mandated reporter could "cause a report to be made" but that section has now been deleted.

- i. Harmed or is harming the child by physical injury, neglect, emotional maltreatment, or abandonment; or
- ii. Placed the child at significant risk of serious physical harm.

Anyone:

- i. Sexually abused a child; or
- ii. Placed a child at significant risk of sexual abuse.

B. What happens after a report is accepted?

For each accepted report, the supervisor then determines the appropriate child safety intervention response. This may include the following:

- i. **An assessment** results in DCF offering support services.
- ii. **An investigation** results in DCF making a determination of **substantiated** or **unsubstantiated** abuse.

The language of the mandated reporting statute could be interpreted in a myriad of ways. The Network has taken direction from professionals in the field, and this guide represents our best understanding of how the law would be interpreted by the State's Attorneys and the Vermont courts. Ultimately, it will be the State's Attorneys who would charge an individual if they felt someone had failed in their duty to report and then the Vermont courts would agree or disagree with that interpretation.

II. WHO: Determining when advocates are mandated reporters and what that means

1. Who is mandated to report child abuse in Vermont?

33 V.S.A. § 4913

(a) A mandated reporter is any:

(1) health care provider, including any:

(A) physician, surgeon, osteopath, chiropractor, or physician assistant licensed, certified, or registered under the provisions of Title 26;

(B) resident physician;

(C) intern;

(D) hospital administrator in any hospital in this State;

(F) registered nurse;

(G) licensed practical nurse;

(H) medical examiner;

(I) emergency medical personnel as defined in 24 V.S.A. § 2651;

(J) dentist;

(k) psychologist;

(L) pharmacist;

(2) individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services, including any:

(A) school superintendent;

(B) headmaster of an approved or recognized independent school as defined in 16 V.S.A. § 11;

- (C) school teacher;
- (D) student teacher;
- (E) school librarian;
- (F) school principal;
- (G) school guidance counselor;
- (3) child care worker;
- (4) mental health professional;
- (5) social worker;
- (6) probation officer;
- (7) employee, contractor, and grantee of the Agency of Human Services who have contact with clients;
- (8) police officer;
- (9) camp owner;
- (10) camp administrator;
- (11) camp counselor; or
- (12) member of the clergy.

(b) As used in subsection (a) of this section, “camp” includes any residential or nonresidential recreational program.

(c) Any mandated reporter who reasonably suspects abuse or neglect of a child shall report in accordance with the provisions of section 4914 of this title within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed.²

² “An abused or neglected child” means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect. 33 V.S.A. §4912(1). Sexual abuse also includes “the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child.” 33 V.S.A. §4912(15). For further information regarding abuse and neglect, see the definitions section of child abuse statutes in

2. What does this mean for advocates?

A. Advocates who are mandated reporters: If an advocate falls into one of the professions or job roles listed in the statute above in #1, then DCF considers the advocate a mandated reporter of child abuse or neglect. The statute also states that individuals who are mandated to report are protected from retaliation from their employer as a result of reporting. 33 V.S.A. 4913(e)(2). Most programs have a clear protocol about how to make a report which includes working closely with a supervisor or program Director. (See Appendix C. for sample mandated child abuse reporting policy / protocol language).

B. Advocates working in schools:

i. Sexual violence prevention educators in schools

In the amendments to Act 1 in 2012, the Vermont legislature specifically addressed mandatory reporting for individuals that enter school for the purpose of educating students on how to recognize and prevent sexual abuse and sexual violence, including developmentally appropriate instruction about promoting healthy and respectful relationships, developing and maintaining effective communication with trusted adults, recognizing sexually offending behaviors and gaining awareness of available school and community resources. Advocates that are sexual violence educators are not mandatory reporters themselves. However, an employee of the school (all of whom are mandated reporters) must be in the room during the provision of all instruction or information presented. 16 V.S.A. § 131.

ii. When programs receive payment from schools

By law, a person or entity that is “employed... or contracted and paid” by the school to provide student services is also a mandated reporter as set out in the mandatory reporting statute above. 33 V.S.A. §4913(a)(2). Programs receiving financial compensation for any school-based education or advocacy work in schools, may be employees or contractors, and thus mandatory reporters.

C. Advocates working for programs with AHS contracts

Listed in #1 above, among those named as mandated reporters, are “any employee, contractor, and grantee of the agency of human services who have contact with clients.” 33 V.S.A. §4913(7). Thus, it is the interpretation of the Network that under the mandated reporting statute listed above, those advocates working for programs with contracts with AHS and who have contact with clients are mandated reporters.³

Appendix B. See also Wood V. Eddy, 833 A.2d 1243 (2003) (holding that the Vermont definition of child abuse excludes harm done to children where it is part of a parent’s discipline method and is not “malicious” and “cruel”). See also In Re GT, 758 A.2d 301 (2000) (holding that minors may not be convicted of sexual assault merely based on the age of the parties involved).

³ The language contained in many program contracts with AHS reads under provision 9, “Reporting Abuse, Neglect, or Exploitation: Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused . . . shall make a report. . .”

3. What does it mean to belong to a profession or have a certain role?

DCF interprets the mandated reporting language in terms of “profession” and “job role”.

If a person falls into the category of mandated reporter by “profession,” such as a licensed teacher, licensed social worker or emergency medical worker, then DCF considers that person to be a mandated reporter 24/7, regardless of whether they are currently working as a teacher or social worker.

However, if you are an unlicensed teacher or social worker, you are only mandated if you are working as a teacher or social worker.

In contrast, a person who is employed at a school (such as a cook) is mandated to report only because of their current job role. If they leave their job at the school (and become a cook at a restaurant, for example) that person is no longer considered “mandated.” For the same reason, those that once were camp counselors but are no longer camp counselors are not now mandated reporters.

4. Does the child abuse reporting statute override crisis worker privilege?⁴

Yes, according to the Attorney General’s office, if someone is on the list of mandated reporters, they are mandated to report child abuse. 33 V.S.A. §4913(h).

This is based on subsection (h):

The contracts state that it is only persons who are “in the performance of services connected with this agreement” who would be affected by the mandated reporting laws under the contract. However, a statute does supersede a contract or a rule. Thus, advocates working for programs with AHS contracts are still mandatory reporters for child abuse because the statute still applies.

Obviously, the implications for violating a contract are different than violating a statute. The implications for violating a contract are likely only that you may lose the contract. The implications for violating a statute are that one may incur civil liability or possibly criminal sanctions. Whether or not you have a contract with more narrow mandatory reporting obligations, the statutory obligations still remain.

⁴ See Appendix A for the Crisis Worker Privilege statute.

(h) Except as provided in subsection (i) of this section⁵, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

The office of the Attorney General interprets this to mean that, if an individual is a mandatory reporter as set forth in 33 V.S.A. 4913(a), this individual is required by law to report what they reasonably suspect to be child abuse and neglect, without regard to any privilege that may otherwise apply to their circumstances. **So, for “crisis workers” who are mandated reporters, the mandate to report child maltreatment to DCF trumps the requirements of the Victim and Crisis Worker Privilege statute.**

5. Who is responsible for reporting?

According to the statute, if an individual is a mandated reporter, it is their individual responsibility to report themselves any qualifying child abuse or neglect. It is not the responsibility of the program, the director of the program, or that person’s supervisor. 33 V.S.A. 4913(c). Previously, a mandated reporter could “cause a report to be made” but that section has now been deleted.

6. Can an advocate report child abuse if she is not a mandated reporter?

Yes – with permission and a signed release.

Victim/survivor parents and teen survivors often want DCF to know about child abuse and may look to advocates for help in getting this information reported. However, advocates are bound by Crisis Worker Privilege. Thus, advocates who are not

⁵ Subsection (h) applies to clergy, who are mandatory reporters except in the following instance:

(h) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

- (1) made to a member of the clergy acting in his or her capacity as a spiritual advisor;
- (2) intended by the parties to be confidential at the time the communication is made;
- (3) intended by the communicant to be an act of contrition or a matter of conscience; and
- (4) required to be confidential by religious law, doctrine, or tenet.

33 V.S.A. §4913(h)

The exception to mandatory reporting as set out in 33 V.S.A. §4913(h) is the clergy when acting in their capacity as such, as set out above. Please note that subsection 33 V.S.A. 4913(i) also clarifies that when Section (h) does not apply, a member of the clergy is “required to report on the basis of that information even though he or she may have also received a report of the abuse or neglect about the same person or incident in the manner described in subsection (h) of this section.”

mandated reporters can report child abuse only with a release of information form signed by the individual about whom the report is made.

However, if a minor needs the permission of a parent or guardian to receive program services, both the child and the non-abusive parent or guardian must sign the release form. 42 USC §13925(b)ii.

III. WHAT and WHEN should a mandated reporter report?

1. What is considered child abuse or neglect that must be reported?

- A. **Where there is reasonable suspicion⁶ that there has been child abuse⁷ or neglect from a person responsible for the child's welfare.**
- B. **Where there is reasonable suspicion that there has been sexual abuse of a minor by anyone.**
- C. **Sexual activity** if one person is under 16 and the other is 18 or older (even if it resembles 'consensual sexual activity') **EXCEPT** if both teens are between the ages of 15 – 18 and the sexual activity is consensual.
- D. **Sexual activity** between two people who are minors **IF** there is a substantial difference in age, size, status or developmental level such that it impacts the consensual nature of the activity, or if you believe it needs to be reported for some other reason (i.e. age of the children, nature of the acts, perception that one or both children have been harmed, etc.).

⁶ This was changed in 2015 from “reasonably believes” to “reasonably suspects”.

⁷ “‘An abused or neglected child’ means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An ‘abused or neglected child’ also means a child who is sexually abused or at substantial risk of sexual abuse by any person, and a child who has died as a result of child abuse or neglect.” 33 V.S.A. §4912(1). For further information regarding abuse and neglect, see the definitions section of child abuse statutes in Appendix B

See also *Wood V. Eddy*, supra (holding that the Vermont definition of child abuse excludes harm done to children where it is part of a parent's discipline method and is not “malicious” and “cruel”).

See also *In Re GT*, supra (2000) (holding that minors may not be convicted of sexual assault merely based on the age of the parties involved).

2. What is NOT considered Child Abuse or Neglect?

- A. **Teen dating violence** except when there is sexual abuse involved. *However, there may be situations where a report would be accepted* for 'risk of harm' if parents did not intervene to protect their child from a substantial risk of harm from teen dating violence;
- B. **Consensual sexual activity** between teens aged 15-18;
- C. **Consensual sexual activity between people sixteen and older;**
- D. **Consensual sexual activity** between minors unless there is a substantial difference in age, size, status or developmental level such that it impacts the consensual nature of the activity⁸; and
- E. **Children exposed to domestic violence** unless at serious physical risk of harm or there is a reasonable belief that child abuse or neglect is present.

3. Are children exposed to batterers/domestic violence considered "abused"?

In Vermont, exposure to domestic violence does not constitute child abuse in and of itself. A report based on exposure to domestic violence may be accepted if there is significant risk of serious physical harm to a child due to domestic violence.

Whether or not a particular situation is child abuse is determined by:

- A. Past history of substantiation(s) or conviction(s) or reported history of child maltreatment.
- B. Criminal history of domestic-violence related crimes.
- C. Proximity of the children to the domestic violence as well as the nature of the violence or crime; including when a child physically intervenes in a domestic assault or is forced to participate in a domestic assault.
- D. Use of weapons or objects that could cause harm in the presence of children in the context of domestic violence. Issues related to who is the dominant aggressor and whether the person is acting in self-defense will be taken into consideration as part of the case determination.

⁸ See *In Re GT*, supra (holding that minors may not be convicted of sexual assault merely based on the age of the parties involved)

- E. In the context of domestic violence, presence of direct threats (including verbal threats) of serious bodily injury or death to or regarding the child or other children of the family or in the household.

The division shall consider a report valid, regardless of the above issues, when:

- A. There is a death of a parent or caretaker as a result of domestic violence and the child was reported to have been in the home or on the property when the incident occurred, regardless of the child’s exact location; and/or
- B. A gun is discharged inside a home when the child(ren) are also in the home regardless of where the child(ren) are physically in the home.

4. How do I know the difference between child abuse and parenting challenges?

There are a lot of parenting behaviors that could be harmful to children but are not considered child abuse under Vermont law. In order to help distinguish between abuse and neglect and challenged parenting:

- A. Consult the child abuse statutory language and the cases listed in the footnotes below for child abuse and neglect definitions.⁹
- B. Consult with colleagues and parenting experts to think through and understand parenting challenges.
- C. Advocates may also call the child abuse line (or DV/SV Unit Staff in their area) and discuss generalities of the situation, without disclosing the victim/survivor’s identifying information, to find out if the situation meets DCF criteria for child abuse or neglect.

5. What about abuse and neglect of *vulnerable adults*?

⁹ “An abused or neglected child’ means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An ‘abused or neglected child’ also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.” 33 V.S.A. §4912(2). For further information regarding abuse and neglect, see the definitions section of child abuse statutes in Appendix B

See also Wood V. Eddy, *supra* (holding that the Vermont definition of child abuse excludes harm done to children where it is part of a parent’s discipline method and is not “malicious” and “cruel”).

See also In Re GT, *supra* (holding that minors may not be convicted of sexual assault merely based on the age of the parties involved).

Vermont law specifically exempts mandated reporters who are crises workers from the mandate to report abuse, neglect or exploitation of vulnerable adults, as legally defined, to Adult Protective Services (APS). See 33 VSA §6903(a). Vermont law also dictates that Victim and Crisis Worker Privilege is held by the survivor. 12 V.S.A. 1614. Thus, a program may sign a contract with AHS that states they must report abuse of vulnerable adults, but the program is not able to take away the Victim and Crisis Worker Privilege held by the victim. Crisis workers, therefore, should not report abuse, neglect or exploitation of vulnerable adults they may encounter in the course of their work without a release.

IV. HOW and WHEN is a report made?

1. How can we lay the groundwork with DCF *before* making a report?

- A. **Build relationships with DCF staff.** This strengthens your advocacy when you are working with a family that is involved with DCF.
- B. **Meet with DCF staff** and get to know each other.
- C. **Cross-train with DCF staff** so you understand their practices and protocols and they understand yours.

2. How do I make a child abuse or neglect report?

Reports of child abuse and neglect should be made to Department for Children and Families, Family Services Division Centralized Intake: 1-800-649-5285 (available 24 hours / day, 7 days / week).

3. What information should be included in a report?

Include only information that is relevant to the child abuse or neglect you are reporting.

4. How much time do I have to make a child abuse report?

According to the statute, if an individual is a mandated reporter, it is their individual responsibility to report within 24 hours. 33 V.S.A. §4913.

5. Who is responsible for making the report?

The mandated reporter must make the report themselves. It is not the responsibility of the program, the director of the program, or that person's supervisor. 33 V.S.A. §4913(c).¹⁰

6. When do I need to use *Release of Information* forms?

¹⁰ Previously, a mandatory reporter could "cause a report to be made," but that section was deleted from the statute during the 2015 Legislative Session.

- A. Generally:** If you are not a mandated reporter, before you may share any information about the victim/survivor with anyone outside of your agency, federal law requires a written release of information form signed by the victim/survivor.

The form must be time-limited and specific. Advocates should explain to victim/survivors what information will be released and the possible consequences of signing the release form.

Notably, even if you are a mandated reporter, it is always best to work with victim/survivors to get release of information forms signed.

B. Minors and releases

- i. Minors who are receiving services that don't require parental consent may sign their own release of information with or without their parent.
- ii. Minors receiving services requiring the consent of a parent or guardian must sign the release themselves, where appropriate, along with their non-abusive parent or guardian.

7. What can I say to someone to explain our program's confidentiality and reporting policies and Crisis Worker Privilege before they tell me their story?

Victim/survivor parents and teen survivors often welcome the opportunity to get help reporting child abuse to DCF. However, people may have big questions or concerns about DCF involvement and what might happen if a report is made.

If you are a mandated reporter, inform victim/survivor parents and children/youth you work with about your obligation to report child abuse before services begin (at the beginning of hotline calls, support groups, one-on-one meetings, etc.)

It is important, especially for teens who may be calling or reaching out for support around a sexual assault, that victim/survivors know that **they do not have to give their names or identifying details of their stories.**

Here is some practical language that advocates can use to address this:

Before we start talking, let me take a minute to tell you (or "remind you" if the person has called before) about your right to Crisis Worker Privilege and our program's confidentiality policies. I want you to know that at [organization], we keep anything you tell us strictly confidential within [organization] and won't share any information about you with anyone outside of [organization] unless you ask

us to and sign a written release. You have the right to keep your information private. The only exception is that I am/we are required to report child abuse to the Department for Children and Families. This means that if you give your full name or other identifying information and I hear that you (or a child if caller is an adult) have been hurt by someone, I may have to report what you tell me to DCF (the child protection agency in Vermont).

You can further explain why there are mandated reporters (to help provide protection for children and youth, etc.).

*There are certain people/professionals who are required to report child abuse to DCF including teachers, doctors, and social workers. DCF is the agency in Vermont that receives concerns about child abuse and then investigates them to help provide safety and protection for you/the child. **Do you have any questions about confidentiality?***

You can further explain what making a report would entail and what might result (especially if you know you've already gotten reportable information from the caller).

Before moving forward, be sure to say something about the person remaining anonymous.

You are welcome to remain anonymous and not give your name or identifying information.

8. How do I keep advocacy central when talking to adult and child/youth victim/survivors about making a child abuse report?

- A. Inform victims/survivors of Crisis Worker Privilege and your program's confidentiality policies and reporting mandates before services begin.**
- B. Let all victims/survivors, especially teen survivors, know that they do not have to give their names or identifying details of the story.**
- C. Understand your organization's protocols regarding child abuse reporting.**

Do you know who on staff is and isn't mandated to report child abuse? Do you have a protocol to confer with a supervisor or other staff before making a report?

Do you have a protocol regarding informing victim/survivor parents and children/youth about your mandates? (See Appendix C. for sample Mandatory Reporting policy / protocol language).

Whenever possible, talk directly with people about the need to report child abuse before the report is made. Answer their questions, explaining that this practice is to ensure safety and wellbeing for children, and describing reporting process if appropriate.

- D. Support all victim/survivors in a way that respects their privacy and information and allows for as much decision making as possible while being transparent about your mandates.**
- E. Access the DCF Domestic Violence/Sexual Violence Unit as a resource for both domestic and sexual violence.**
- F. If you are not a mandated reporter but feel concerned about a child's safety and compelled to report child abuse, check in with your supervisor to talk through the situation.** Options may include:
 - i. Explaining your concerns to the victim/survivor parent and/or child/youth;
 - ii. Getting a properly signed release of information form after full discussion with the parent and (as appropriate) the minor receiving services. Note: if a minor needs the permission of a parent or guardian to receive program services, both the child and the non-abusive parent or guardian must sign the release form. 42 USC §13925(b).; and
 - iii. Answering questions, explain the reporting process if appropriate.
- G. If victim/survivor parents or teens want to report child abuse or neglect, support them to report the abuse themselves. Or make the report yourself in their presence.** Even when a teen or victim/survivor parent wants a report to be made, it may be more helpful for an advocate to make the report. It might be problematic, for instance, for victim/survivors to make a report if they are concerned about their own safety or how it might impact a court action like custody a case.

9. How can I best support youth survivors and non-abusive parents throughout the process?

- A.** Understand and explain what you know about DCF investigation and assessment processes, positive resources and supports that they offer to individuals and families, and outcomes that are possible.

- B. Help parents plan how to talk to their children about what may happen in a way that minimizes fear and trauma.
- C. Help parents anticipate how the report, investigation or assessment, and intervention may impact them and their children's safety.
- D. Anticipate perpetrators' responses to DCF intervention.
- E. Safety plan/develop a course of action with parents and their children regarding their whereabouts during the first few days of investigation or assessment.
- F. Talk about and consider safety related to obtaining relief from abuse orders, emergency custody orders, etc.
- G. If reports are about a parent who is a victim/survivor of either domestic or sexual violence:
 - i. Validate parenting challenges.
 - ii. Help them understand their children's experience.
 - iii. Help both the victim/survivor and parent anticipate the potential outcomes and consequences of various courses of action.
- H. **Support victim/survivors to take safety precautions with DCF social workers:**
 - i. Ensure that the victim/survivors' physical locations or addresses are **NOT** relayed to the abusers. Ask for clarification about when and if this information would be released to abusers.
 - ii. Ask DCF social workers to let victim/survivors know whenever abusers will be contacted (provide safe contact information for case workers to use to contact victim/survivors).
 - iii. Make sure DCF social workers know victim/survivor parents' and their efforts to create and support safety for their children.
 - iv. In cases of DV, help DCF social workers to be informed about the dynamics of DV, how batterers parent, safety concerns, etc.
 - v. Support survivors and do safety planning throughout the process (intake call, assessment or investigation, family meetings, court hearings, etc.).

10. What resources within DCF can I access for support?

The DCF Domestic Violence/ Sexual Violence Unit Coordinator and/or DV/SV Unit staff members are available for additional advocacy and support for families who are experiencing situations where domestic violence and child abuse overlap **as well as sexual violence related cases**. They provide consultation to DCF District offices in difficult DV/SV/Child Abuse related situations.

11. How do I access the DV/SV Unit at DCF?

For current staff and contact information for the SV/SV unit, follow this link:

http://dcf.vermont.gov/fsd/DV_unit

12. How does DCF and the legal system work together?

Notably, while DCF's role in reporting and preventing abuse is significant, ultimately the State's Attorneys interpret mandated reporting law and who is required to be a mandated reporter. Thus, after consulting with many parties, this guide is our best interpretation of the mandated reporting statute. **State's Attorneys and Vermont courts** will make definitive decisions, and in the future the resulting case law will be a helpful guide for advocates to understand mandated reporting in Vermont.

V. WHAT NEXT: What happens after a report is made?

(Excerpted from *How to Report Suspected Child Abuse & Neglect*: http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/Reporting_Child_Abuse.pdf and *Child Safety Interventions A Parent's Guide to Investigations & Assessments*: http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/Guide_to_CSI.pdf)

1. What happens when I call?

A social worker will:

- A. Question you about your concerns;
- B. Ask for any details you know about the child (e.g., the child's name, date of birth, home address, school/child care provider, and parents' names);
- C. Record the information you provide;
- D. Ask you to complete a written report; and
- E. In some cases, ask you to gather more information.

2. What determines acceptance of a report?

A supervisor evaluates each report to decide whether to accept it for intervention. According to Vermont law, a report is accepted if it alleges that:

A person responsible for the child's welfare:

- i. Harmed or is harming the child by physical injury, neglect, emotional maltreatment, or abandonment; or
- ii. Placed the child at significant risk of serious physical harm.

Anyone:

- i. Sexually abused a child; or
- ii. Placed a child at significant risk of sexual abuse.

3. What happens after a report is accepted?

For each accepted report, the supervisor determines the appropriate child safety intervention response:

An ASSESSMENT results in DCF offering support services.

An INVESTIGATION results in DCF making a determination of **substantiated** or **unsubstantiated** abuse.

	Assessment Track	Investigation Track
When?	<ol style="list-style-type: none"> 1. An accepted report is not required by law or policy to be investigated; 2. There is no immediate threat to the child’s safety or well-being; and 3. The family may benefit from services. 	<ol style="list-style-type: none"> 1. A child has been sexually abused; 2. The acts or omissions of <i>a person responsible for a child’s welfare</i> resulted in a child’s death; or 3. <i>A person responsible for a child’s welfare</i>: <ul style="list-style-type: none"> • Abandoned a child; • Maliciously punished a child; • Physically abused a child under 3; • Physically abused a non-verbal or non-ambulatory child of any age; or • Allowed a child to be exposed to methamphetamine production.
Results	<ul style="list-style-type: none"> • No formal determination of whether abuse or neglect occurred. • DCF may offer referrals to community-based services. • DCF may maintain an “open case”. • DCF may open an investigation at any time if they believe it is appropriate. 	<ul style="list-style-type: none"> • A formal determination of whether reported abuse or neglect occurred • The report is substantiated or unsubstantiated • Under Due Process, the grievant can request a review of the investigation prior to having their name entered onto the registry. • Information about persons substantiated for child abuse or neglect is entered into the Vermont Child Protection Registry

4. What information may be shared with me as a reporter?

If you are a mandated reporter, DCF may share the following with you:

- A. Whether your report was accepted for investigation or assessment;
- B. If an investigation was conducted, whether it was substantiated; and
- C. If an assessment was conducted, whether a need for services was found.

Note that while parents or legal caretakers who make child abuse reports are also entitled to this information from DCF, other non-mandated reporters are not.

Additional Questions? If you have any questions or concerns about mandatory reporting, please feel free to contact us at the Network. (802-223-1302)

Appendix A

Confidentiality Statutes

12 V.S.A. § 1614. Victim/survivor and crisis worker privilege

(a)(1) "Crisis worker" means an employee or volunteer who:

(A) provides direct services to victim/survivors of abuse or sexual assault for a domestic violence program or sexual assault crisis program incorporated or organized for the purpose of providing assistance, counseling or support services;

(B) has undergone 20 hours of training;

(C) works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program; and

(D) is certified by the director of the program.

(2) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of services to the victim/survivor or those reasonably necessary for the transmission of the communication.

(b) A victim/survivor receiving direct services from a crisis worker has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim/survivor to the crisis worker, including any record made in the course of providing support, counseling or assistance to the victim/survivor. The crisis worker shall be presumed to have authority to claim the privilege but only on behalf of the victim/survivor.

The U.S. Violence Against Women and Department of Justice Reauthorization Act of 2013, Subsection (b) of section 4002 (42 U.S.C. 13925(b):

NONDISCLOSURE OF CONFIDENTIAL OR PRIVATE INFORMATION.—

“(A) IN GENERAL.—In order to ensure the safety of adult, youth, and child victim/survivors of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

“(B) NONDISCLOSURE.—Subject to subparagraphs (C) and (D), grantees and subgrantees shall not —

(i) disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected; or

(ii) disclose, reveal, or release individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case legal incapacity, a court-appointed guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

If a minor or person with a legally appointed guardian is permitted by law to receive services without a parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

“(C) RELEASE.—If release of information described in subparagraph (B) is compelled by statutory or court mandate—

“(i) grantees and subgrantees shall make reasonable attempts to provide notice to victim/survivors affected by the disclosure of information; &

“(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

“(D) INFORMATION SHARING.—(i) Grantees and subgrantees may share—

(I) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements; ‘

(II) court-generated information and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes; and

“(III) law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes. “

(ii) In no circumstances may—

“(I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required to provide a consent to release his or her personally identifying

information as a condition of eligibility for the services provided by the grantee or subgrantee;

“(II) any personally identifying information be shared in order to comply with Federal, tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, tribal, or State grant program.”;

(E) STATUTORILY MANDATED REPORTS OF ABUSE OR NEGLECT.—Nothing in this section prohibits a grantee or subgrantee from reporting suspected abuse or neglect, as those terms are defined and specifically mandated by the State or tribe involved.”; and

(F) OVERSIGHT — Nothing in this paragraph shall prevent the Attorney General from disclosing grant activities authorized in this Act to the chairman and ranking members of the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate exercising Congressional oversight authority. All disclosures shall protect confidentiality and omit personally identifying information, including location information about individuals.

(G) CONFIDENTIALITY ASSESSMENT AND ASSURANCES — Grantees and subgrantees must document their compliance with the confidentiality and privacy provisions required under this section."

Appendix B

Child Abuse Statues

33 V.S.A. §4912 Definitions used in the Mandatory Reporting Law

As used in this subchapter:

(1) An “abused or neglected child” means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.

(2) “Assessment” means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family, and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.

(3) “Child” means an individual under the age of majority.

(4) “Child Protection Registry” means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

(5) “Emotional maltreatment” means a pattern of malicious behavior which results in impaired psychological growth and development.

(6) “Harm” can occur by:

(A) Physical injury or emotional maltreatment;

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. For the purposes of this subchapter, “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under state law.

Notwithstanding that a child might be found to be without proper parental care under chapter 55 of Title 33, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone; or

(C) Abandonment of the child.

(7) "Investigation" means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.

(8) "Member of the clergy" means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(9) "Multidisciplinary team" means a group of professionals, paraprofessionals, and other appropriate individuals impaneled by the Commissioner under this chapter for the purpose of assisting in the identification and review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families, and promoting child abuse prevention.

(10) "Person responsible for a child's welfare" includes the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person."

(11) "Physical injury" means death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

(12) "Redacted investigation file" means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in section 4913 of this title.

(13) "Registry record" means an entry in the Child Protection Registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(14) "Risk of harm" means a significant danger that a child will suffer serious harm by other than accidental means, which harm would be likely to cause physical injury, or sexual abuse, including as a result of:

(A) a single egregious act that has caused the child to be at significant risk of serious physical injury;

(B) the production or preproduction of methamphetamines when a child is actually present;

(C) failing to provide supervision or care appropriate for the child's age or development and, as a result, the child is at significant risk of serious physical injury;

(D) failing to provide supervision or care appropriate for the child's age or development due to use of illegal substances, or misuse of prescription drugs or alcohol;

(E) failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and

(F) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.

(15) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child, including:

(A) incest;

(B) prostitution;

(C) rape;

(D) sodomy;

(E) lewd and lascivious conduct involving a child;

(F) aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child;

(G) viewing, possessing, or transmitting child pornography, with the exclusion of the exchange of images between mutually consenting minors, including the minor whose image is exchanged;

(H) human trafficking;

(I) sexual assault;

(J) voyeurism;

(K) luring a child; or

(L) obscenity.

(16) "Substantiated report" means that the commissioner or the commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

33 V.S.A. §4913 -Reporting suspected child abuse and neglect; remedial action

(a) A mandated reporter is any:

(1) health care provider, including any:

(A) physician, surgeon, osteopath, chiropractor, or physician assistant licensed, certified, or registered under the provisions of Title 26;

(B) resident physician;

(C) intern;

(D) hospital administrator in any hospital in this State;

(F) registered nurse;

(G) licensed practical nurse;

(H) medical examiner;

(I) emergency medical personnel as defined in 24 V.S.A. § 2651;

(J) dentist;

(k) psychologist;

(L) pharmacist;

(2) individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services, including any:

(A) school superintendent;

(B) headmaster of an approved or recognized independent school as defined in 16 V.S.A. § 11;

(C) school teacher;

(D) student teacher;

(E) school librarian;

(F) school principal;

(G) school guidance counselor;

(3) child care worker;

(4) mental health professional;

(5) social worker;

(6) probation officer;

(7) employee, contractor, and grantee of the Agency of Human Services who have contact with clients;

(8) police officer;

(9) camp owner;

(10) camp administrator;

(11) camp counselor; or

(12) member of the clergy.

(b) As used in subsection (a) of this section, “camp” includes any residential or nonresidential recreational program.

(c) Any mandated reporter who reasonably suspects abuse or neglect of a child shall report in accordance with the provisions of section 4914 of this title within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed.

(d)(1) The commissioner shall inform the person who made the report under subsection (a) of this section:

(A) whether the report was accepted as a valid allegation of abuse or neglect;

(B) whether an assessment was conducted and, if so, whether a need for services was found; and

(C) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

(2) Upon request, the Commissioner shall provide relevant information contained in the case records concerning a person's report to a person who:

(A) made the report under subsection (a) of this section; and

(B) is engaged in an ongoing working relationship with the child or family who is the subject of the report.

(3) Any information disclosed under subdivision (2) of this subsection shall not be disseminated by the mandated reporter requesting the information. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(4) In providing information under subdivision (2) of this subsection, the Department may withhold:

(A) information that could compromise the safety of the reporter or the child or family who is subject of the report; or

(B) specific details that could cause the child to experience significant mental or emotional stress.

(2) An employer or supervisor shall not discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.

(e) The name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential unless:

(1) the person making the report specifically allows disclosure;

(2) a Human Services Board proceeding or a judicial proceeding results therefrom;

(3) a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the Department to make the name of the reporter available; or

(4) a review has been requested pursuant to section 4916a of this title, and the Department has determined that identifying information can be provided without compromising the safety of the reporter or the persons mentioned in the report.

(f)(1) A person who violates subsection (a) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

(g) Except as provided in subsection (h) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(h) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

(1) made to a member of the clergy acting in his or her capacity as spiritual advisor;

(2) intended by the parties to be confidential at the time the communication is made;

(3) intended by the communicant to be an act of contrition or a matter of conscience; and

(4) required to be confidential by religious law, doctrine, or tenet.

(i) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection (h) of this section, he or she is required to report on the basis of that information even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection (h) of this section.

Appendix C

Sample Child Abuse Reporting Policy/Protocol for Mandated Reporters

Sample Policy Statement:

Our organization has a strong commitment to the safety and health of both adult and child victim/survivors. Inherent to the struggle to end violence against women is the struggle to end violence against children. While we acknowledge the strong relationship and co-occurrence of domestic violence, sexual violence and child abuse, we also acknowledge the historical disempowerment by systems of both adult and child victim/survivors. In view of these connections, we have developed a policy which strives to respect families' individual situations and hold safety and empowerment of both adults and children as paramount.

Sample Policy:

Because _____ is an Agency of Human Services sub-grantee, advocates are mandated reporters of child abuse and neglect.

OR

Given the list of professionals obligated by law to report child abuse, _____ may have mandated reporters of child abuse and neglect on staff at any given time. This may include staff who are licensed teachers, licensed Social Worker, medical professionals, or current foster parents.

Mandated reporters will report to the Vermont Department for Children and Families in instances of child physical abuse, sexual abuse, and neglect after seeking supervision and within 24 hours of gaining knowledge of the incident. This report will be made only after efforts have been made to involve the parent/client in the reporting process.

Sample Reporting Protocol:

- If a mandated advocate has a reasonable suspicion that child abuse and/or neglect has occurred, the advocate will contact a supervisor as soon as possible to consult and seek guidance.
- If a supervisor is unavailable, the advocate will attempt to seek support and guidance from two other advocates.
- If there is uncertainty about whether a situation is reportable as child abuse, a call can be placed to the local DCF DV/SV Specialist. Without revealing identifying information about the family, the concerns can be described and the DV Specialist can help determine if the situation is reportable.
- If deemed appropriate, the advocate will make a report within 24 hours of acquiring the information regarding suspected child abuse or neglect.
- Every effort will be made to inform the parent/client of the decision to report child abuse and to include her in the process. This effort will be made **before** calling DCF with an official report.
 - Prior to making the report, staff will provide adequate time to discuss the issue with the parent/client in a non-judgmental manner, ask questions, provide information about the process, answer questions, and support the her in whatever way possible.
 - If a report is required, staff will work with the parent/client, if possible, to determine who will make the report.
 - Staff will provide information regarding possible implications for the following situations: self-reporting, reporting a partner, or the program making the report.
 - If the parent/client does not want to self-report, or report her partner, the agency staff will make the report.
 - If the victim/survivor decides to make the report, staff will support her in whatever way possible.