

Legal Challenges of Mandatory Reporting of Child Abuse: Lessons from Abroad

Against Child Abuse Forum
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Outline

- I. Mandatory Reporting
- II. Hong Kong's Draft Bill: Key Features
- III. Comparison with the US, PRC and Taiwan
- IV. Challenges for Reporting/Not Reporting
- V. Lessons to Move Forward

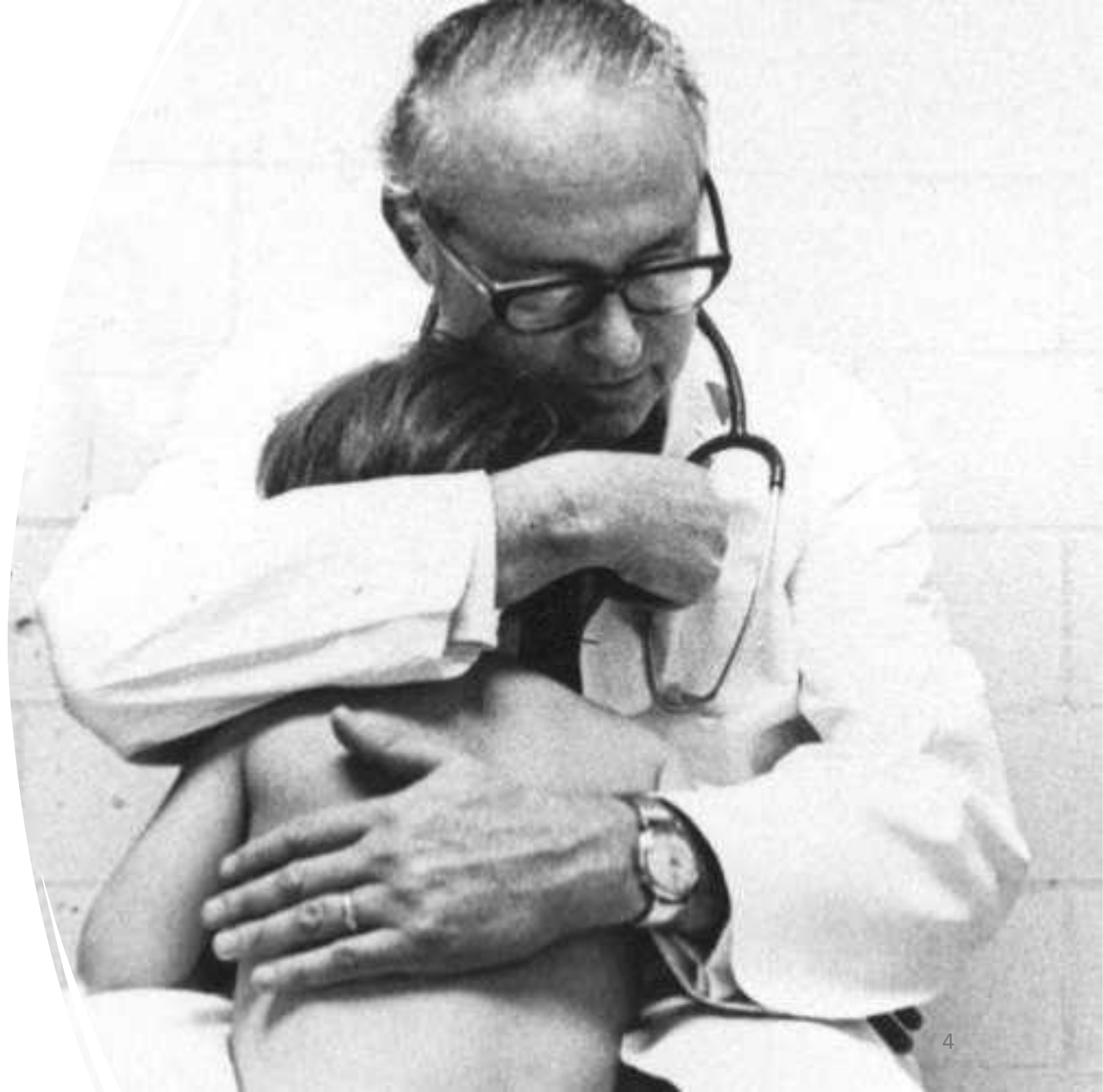


- How to make mandatory reporting > child protection effective?



I. Mandatory Reporting

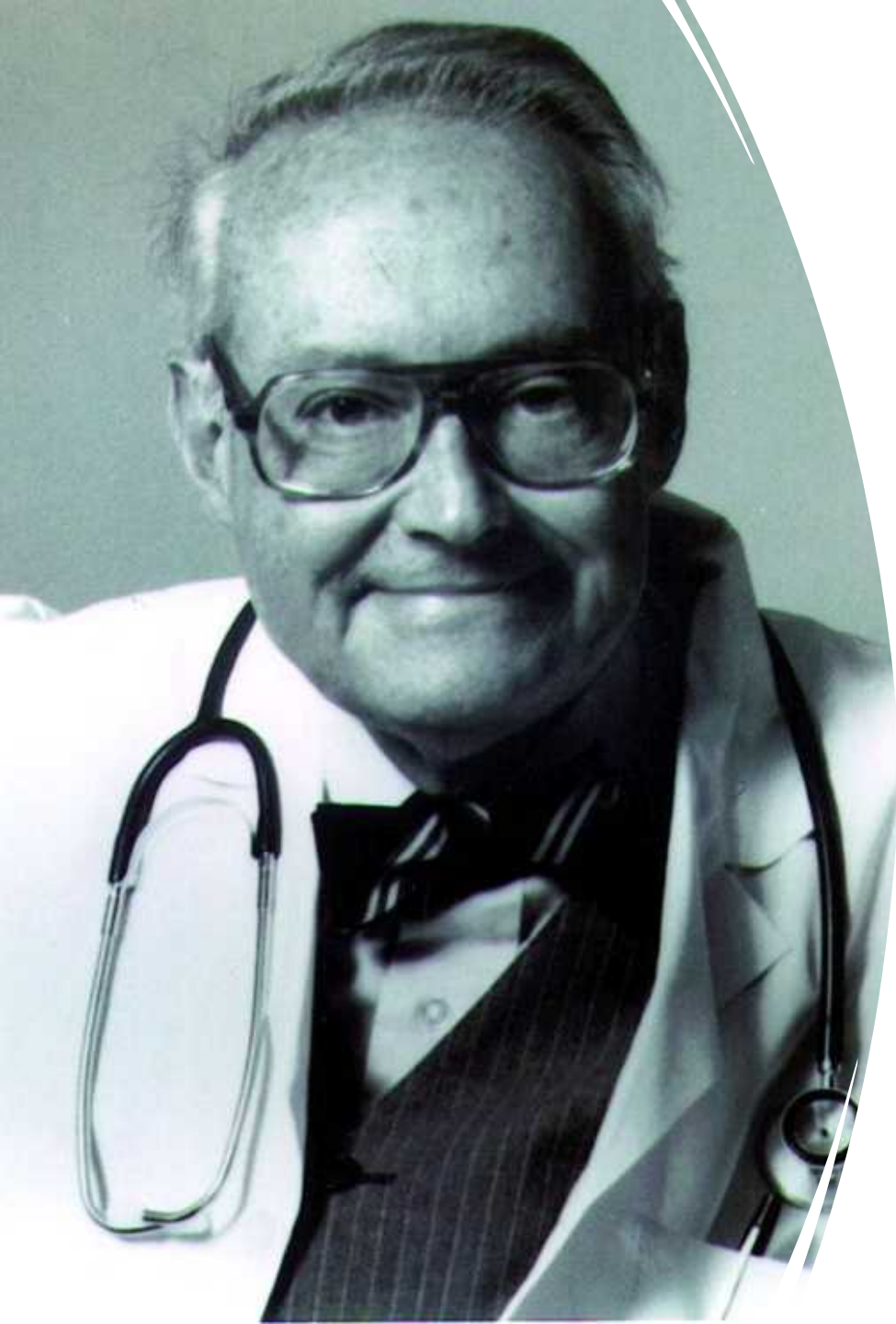
- Dr. C Henry Kempe:
- battered child syndrome (1962), Colorado, US



THE BATTERED-CHILD SYNDROME

受虐待兒童綜合症

“is a term used by us to characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent. The condition has also been described as “unrecognized trauma” by radiologists, orthopedists, pediatricians, and social service workers. It is a significant cause of childhood disability and death. Unfortunately, it is frequently not recognized or, if diagnosed, is inadequately handled by the physician because of hesitation to bring the case to the attention of the proper authorities. ”



“gaze aversion”

Appropriate management by doctors:

1. correct diagnosis
2. report wilful trauma to the police or authorities

Law

- Mandatory reporting laws exist in several other countries internationally,
- including the majority of countries in Europe, USA, Canada and Australia.



Jurisdiction	Law
US	Model Reporting Law (1962); Federal Child Abuse Prevention and Treatment Act (1974) CAPTA, rev. 1988, 2010, 2015, 2016
PRC	Law on Protection of Minors 未成年人保護法 (1991; rev. 2012, 2020); Opinions on Establishing a System for Compulsory Reporting of Cases against Minors. 关于建立侵害未成年人案件强制报告制度 的意见 (试行) 2020
Taiwan	Child Welfare Act (1973, repealed) 兒童福利法; Children and Youth Welfare Act (2003, repealed) 兒童及少年福利 法; Protection of Children and Youths Welfare and Rights Act (2011) 兒 童及少年福利與權益保障法

II. Features

1. Who is covered by the duty
2. What must be reported > what types of abuse/ types of reportable harm
3. Whom the report must be made to
4. When should the report be made
5. What are the sanctions for failing to report

Mandatory Reporting of Child Abuse Bill

《強制舉報虐待兒童 條例草案》

Gazetted 2 June 2023

- Legislative Council Brief, 31 May 2023
- Child: a person below the age of 18
- Perpetrator: ‘responsible person” 負責人:
has the custody, charge or care of the child

Who will be Covered by the Duty?

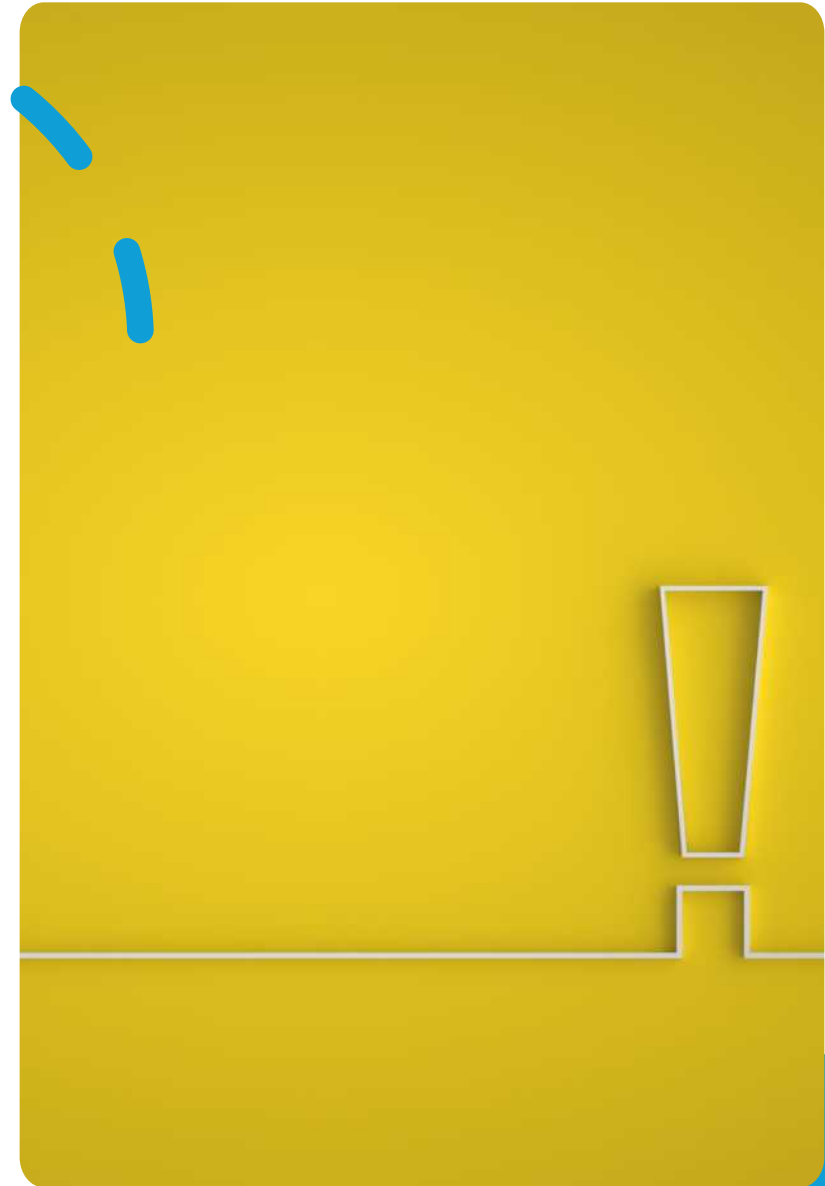
藥劑師	牙醫	牙齒衛生員	醫生	助產士
護士或登記護士	幼兒工作人員或主管	教員或准用教員 《教育條例》	寄宿學校的舍監	醫務化驗師
職業治療師	視光師	放射技師	物理治療師	脊醫
社會工作者	中醫或註冊中醫	職業訓練局 青年學院的教學人員 或院長	教員或校長，並在官立學校工作的人	兒童住宿照顧服務院舍的院長
聽力學家	臨牀心理學家	營養師	教育心理學家	言語治療師

What Must be Reported/Type of Abuse

- Clause 4
- during the course of work
- a reasonable ground to suspect that a child
- has been suffering or is at real risk of suffering serious harm
- Physical injury, sexual, psychological and neglect

Whom to report

- Clause 6
- Must be made in the form specified
- Must be submitted to an Authority in the way specified by the Director of Social Welfare under s. 14




When to report



Clause 4(1)



Must as soon as practicable
在切實可行的範圍內，
盡快舉報



Sanctions (clause 9)

- Fine at level 5: \$50,000
- Imprisonment for 3 months

III.

A Comparative Review



Who is a Child

HKSAR	Under 18
US	Under 18, except for sexual abuse (refers to state law)
PRC	Under 18
Taiwan	Under 18



Mandated Reporters

HKSAR	Education Sector Physicians and Health care workers Social Workers
US	Teachers, Social Workers Day-care providers Physicians and other health care workers Mental health professionals Medical examiners and coroners Law enforcement officers Clergy (California)
PRC	Any organization or individual, state organs, residents' committees, villagers' committees, schools, after-school training institutions, school bus operators, kindergartens & nurseries, hospitals & clinics, children's shelters, social work services, or other units in close contact with minors, operators of hotels
Taiwan	Medical professions Social Workers, educational personnel, day care personnel, preschool educators, police, judicial personnel, immigration personnel, household registration personnel, village officers or other providers of children and youth welfare on duty

HKSAR	Physical, sexual, psychological, neglect (TYPE OF ABUSE)
US	<p>Non-accidental physical injury</p> <p>Sexual exploitation or abuse, sex trafficking</p> <p>Failure to provide for basic needs</p> <p>Mental health or emotional mistreatment</p> <p>Denial of health care</p> <p>Abandonment or failure to supervise that has a negative impact on a child's well-being</p> <p>Parental alcohol or substance abuse</p>
PRC	<p>Physical and psychological harms in general and specifically:</p> <p>Genital injury</p> <p>Sexual assault and related pregnancy or miscarriage</p> <p>Physical injuries, malnourishment, unconsciousness, being anesthetized</p> <p>Disability or death due to abnormal reasons such as suicide, self-injury, poisoning, anaesthesia, beatings, etc.</p> <p>Abandonment; Human trafficking; Organized begging</p>
Taiwan	<p>Use drugs, illegal or controlled medicines or other material that are harmful to physical or mental health.</p> <p>To be waiters/waitresses in the places that involve gambling, sex and violence</p> <p>Improper maintenance or care of children and youth.</p> <p>Lack of required immediate medical treatment of children and youth.</p> <p>Children and youth who are abducted, kidnapped, sold, pledged, forced, or seduced to participate in abnormal behaviour or tasks.</p>

When to Report

HKSAR	As soon as practicable
US	Immediate for oral report, followed by written report in 72 hrs (Michigan) In 2 days (California)
PRC	Report immediately, the police must provide feedback to the reporter within 3 days
Taiwan	Must report within 24 hours, and the authorities must proceed the case within 24 hours

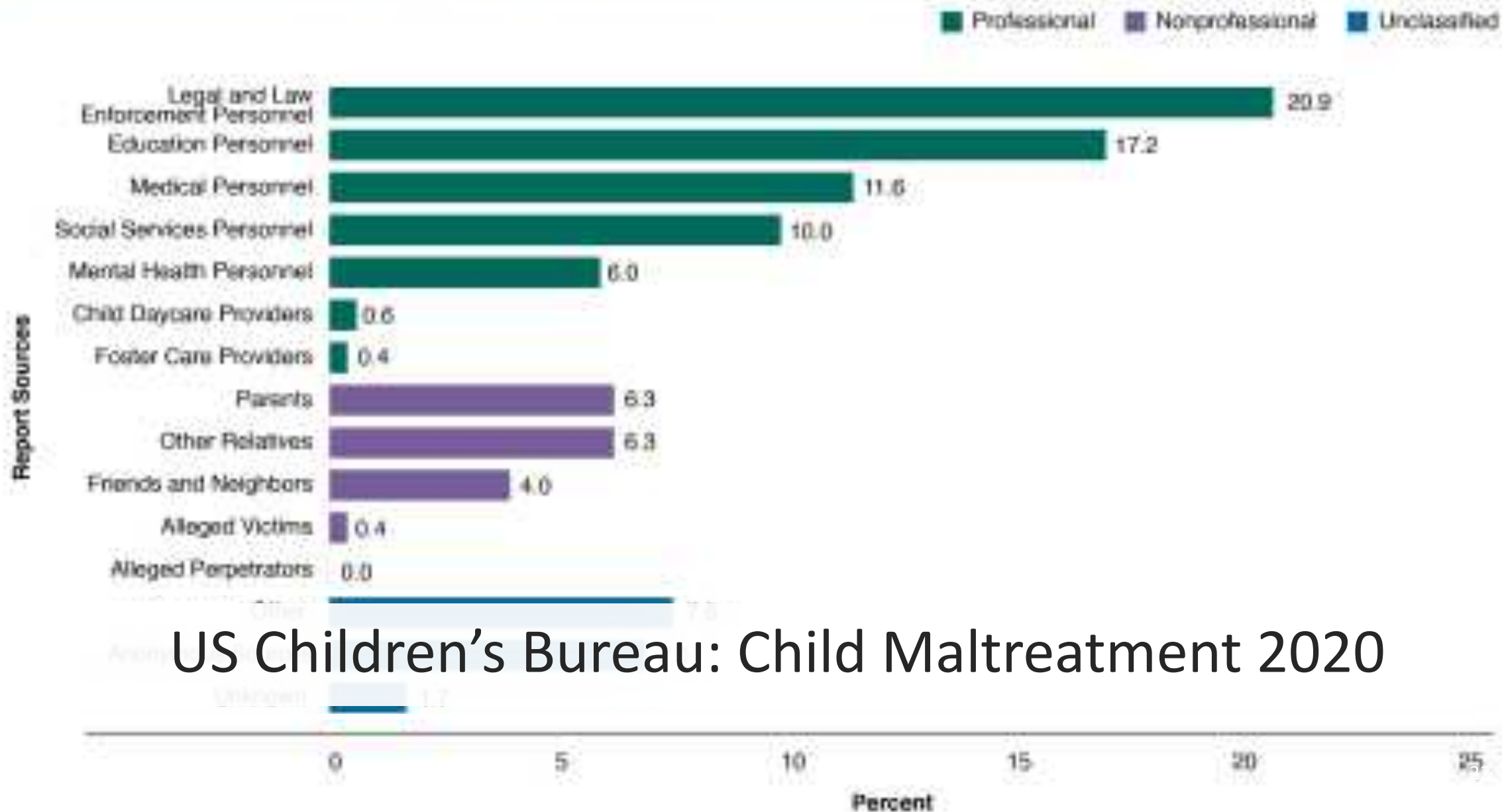


IV. CHALLENGES: What makes it effective?



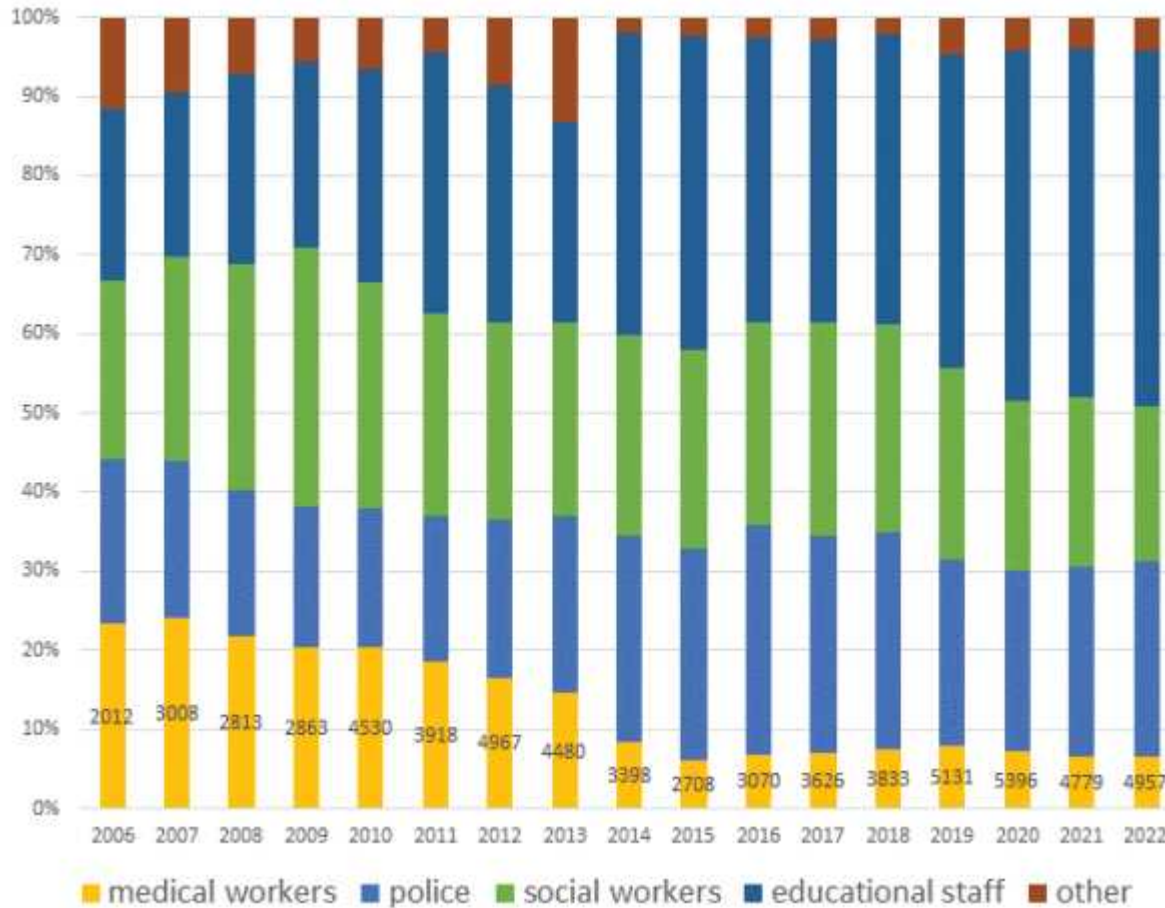
Exhibit 2–E Report Sources, 2020

Professionals submitted the majority of screened-in referrals (reports) that received an investigation or alternative response



US Children's Bureau: Child Maltreatment 2020

Child Protection Statistics in Taiwan 2011–2020



14 Dec 2023

Journal of CSWB
*Collaborating to Safeguard
Children in Taiwan: Systemic
Transformation*

Lanying Huang
Yi-Fen Lu
Yi-Chun Yu
Chuen-Jim Sheu
DOI: 10.35502/jcswb.334

中國侵害未成年人案件強制報告現狀調查研究2020 北京慈幼兒童福利研究中心 (Save the Children)

不報告的原因



Why not report

1. Professional identity: e.g teachers who held administrative position
2. Fear and belief:
 - a) Reporting may not help the child;
 - b) fear that children will be repeatedly mistreated after placement;
 - c) damage the relationship
 - d) Fear of retaliation e.g. emergency depart.
3. Culture and views: acceptance of CP
4. Training:
 - a) Low awareness of the law (PRC);
 - b) Social workers receive little help from other agencies in terms of risk assessment and family support (Taiwan)
5. Types of abuse: physical and sexual vs. emotional; young children vs. teenagers



Challenges : What Makes it Work

1. Scope and Coverage

- the range of responsible organizations or persons
- Different procedures for different levels of reports
- Different levels of intervention for different levels of reports/cases i.e. prevent vulnerable families from becoming abusive; abusers also need treatment

2. Types of violations

- Child neglect; psychological harm vs physical; sexual abuse
- Raise awareness and identification: trauma-informed training programmes for social workers, police, judge, prosecutors and medical professionals

3. Procedural

- Reporting channels: phone hotlines, apps, or websites for confidential reporting
- case verification; risk assessment, intervention, follow up

4. Implementation

- Child protection medical integrative centres in hospitals i.e. medical units in hospitals for screening (Taiwan, US)
- Special helpline for MR to the police department with specialized personnel (Qingdao City, PRC)
- inter-departmental coordination with medical professionals, education sector, social welfare unit and police
- Privacy, anonymity protection, safety measures

Welcome To The NSW Mandatory Reporter Guide

[Decision Tree](#)
[MRG](#)
[Next Steps](#)

To start the MRG, select the main decision tree that most closely matches the concern you have. If you have more than one concern, start with your most serious concern.

After selecting a decision tree, you will be asked a series of questions. Read the definition to complete your answer. At the end, you will receive a decision report outlining what to do next.

Need more help?

For guidance on which decision tree to use, many mandatory reporters find it useful to use the [Guide to selecting a decision tree](#)

Physical Abuse

You suspect a non-accidental injury or physical harm to a child/young person may have been caused by a parent/carer or other adult household member. You know of treatment of a child/young person by a parent/carer or other adult household member that may have caused or is likely to cause an injury or physical harm.

Neglect

Supervision; Shelter/Environment; Food; Hygiene/Clothing; Medical Care; Mental Health Care; Education - Not Enrolled; Education - Habitual Absence
 You suspect that a parent/carer is not adequately meeting a child's/young person's needs such as: supervision, shelter, medical care, hygiene/clothing, mental health care, schooling/education, nutrition, or other basic needs. A child/young person is a danger to self or others and parents/carers are not supervising or providing care.

Sexual Abuse

Child or Young Person; Problematic Sexual Behaviour Toward Others
 Sexual abuse is sexual activity or behaviour that is imposed, or is likely to be imposed, on a child/young person by another person. Select this decision tree if you are concerned/worried that a child/young person has been sexual abused or is at risk of sexual abuse; or a child/young person may be sexually harming another child/young person or a child/young person's behaviour, including sexualised behaviour, makes you worry that he/she may be a victim of sexual abuse.

Psychological Harm

A child/young person appears to be experiencing psychological/emotional distress and is a danger to self or others as a consequence of parent/carer behaviour. An underage marriage or similar union, where one of both partners is under 18 has occurred.

Danger to Self or Others

A child/young person is a danger to themselves or others, including suicidal or self-harming behaviours, and their parent/carer cannot be located; or the parent/carer may be contributing to their child/young person's state; or contributing to their child/young person's ability to access services?

Relinquishing Care

Parent/carer states they will not or cannot continue to provide care for a child under the age of 16 or a young person over 16 and they are unable to make an informed decision (temporarily or permanently). Child/young person is in voluntary care for longer than legislation allows.

Carer Concern

Substance Abuse; Mental Health; Domestic Violence
 A child/young person is significantly affected by parent/carer concerns such as substance abuse, mental health or domestic violence.

Unborn Child

You are concerned for the welfare of an unborn child at birth.

Australia (New South Wales) Mandatory Reporting Decision Tree



Key Takeaway

- Law: the need for mandatory reporting
 - a) concept of abuse
 - b) groups of mandatory reporters
 - c) time to report and time for authorities to respond
- Policy: Fundamental structural changes to child welfare:
 - prevention services, foster care, comprehensive co-ordinance services





Thank you