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February 2008 – Updated February 2009

LL File No. 2009-001950

**DOMESTIC VIOLENCE AND
CHILD ABUSE REPORTING
REQUIREMENTS**

Belgium, Germany, Italy, Japan, South Korea, Turkey, and the United Kingdom (England and Wales).

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COMPARATIVE SUMMARY

DOMESTIC VIOLENCE AND CHILD ABUSE REPORTING REQUIREMENTS

The enclosed reports focus on domestic violence and child abuse reporting laws from a host of nations in which of the United States military has a significant troop presence. The countries included are Belgium, Germany, Italy, Japan, South Korea, Turkey, and the United Kingdom (England and Wales). There are bilateral status of forces agreements between the United States and the hosting countries, as a result of which the hosting countries' laws may not be applied. The law of the hosting country, however, provides a backdrop to the lives of the troops residing therein, and must be considered.

I. Reporting Requirements

A. Domestic Violence (Against Women)

Not many countries require domestic violence reporting. The United Kingdom guidelines from the General Medical Council state that medical professionals should disclose information promptly to an appropriate responsible person or statutory agency, even without the patient's consent, if they believe a patient is a victim of neglect or physical, sexual, or emotional abuse (England and Wales, at 4). Reports of domestic violence are usually made to the police (*Id.*). In South Korea, when medical practitioners and welfare facility personnel become aware of domestic violence, they are required to report it to the police or public prosecutor's office (unless there is a justifiable reason for not reporting it) if the violence reaches the level of criminal offense (South Korea, at 1). Neither country imposes a penalty for failing to report domestic violence (England and Wales, at 6; South Korea, at 3).

While there may be no specific legal requirement to report domestic violence, some countries have general provisions to support victims of violent crimes, or provisions which encourage the reporting of domestic violence. In Belgium, the Penal Code contains a provision setting forth a legal duty to help under specified conditions (Belgium, at 1-2). In Turkey, under the Criminal Code, any person who fails to notify the authorized bodies of the commission of an offense where it is still possible to limit its consequences is punished (Turkey, at 2). In Japan, a law encourages all persons to report domestic violence to a support center or the police (Japan, at 1).

B. Child Abuse

All countries require the reporting of child abuse in some manner. In Belgium, all communities (French, Flemish, and German) have provisions requiring individuals or committees involved in the protection of children to report mistreatment of and sexual offenses against children (Belgium, at 2-3). The German Community Decree provides for a maximum

jail term of six months and a fine for not reporting extremely urgent cases covered by the Decree (*Id.* at 4).

In Germany, a mandate is imposed on youth welfare agencies and their associates to involve the family courts if dangers to the well-being of the child cannot be avoided through other measures. To some extent, teachers may become criminally liable if they fail to protect children as required by school legislation (Germany, at 2).

In Italy, there is a legal obligation to report cases of suspected child abuse. This obligation applies to persons deemed public officials, such as teachers or social workers; to those whose function is to provide public services; and in particular to doctors and all health care workers (Italy, at 3). Reports of child abuse must be made to the penal court or local police and to the juvenile court. If a minor is abandoned, public functionaries, officials of a public agency, and those who carry out a service of public need must report to the state prosecutor of the juvenile court of the place where the minor is located (*Id.* at 4). Also, various regions of Italy have guidelines regarding the identification and reporting of child abuse cases to social service agencies or the judiciary (*Id.* at 4). There is a criminal penalty for failure to help an abandoned child. Anyone who, upon finding an abandoned or lost child of ten years old, fails to give immediate notice to the authorities is punished (*Id.* at 6).

In Japan, the reporting of child abuse is mandatory. Any person finding a child who needs protection must report it to the appropriate office. Reports of child abuse are made either directly or through an appointed child welfare worker, to a municipal or prefectural welfare agency or a child guidance center (Japan, at 1). There is no penalty for failure to report (*Id.* at 2).

In South Korea, child abuse must be reported by child care givers and teachers, in addition to medical practitioners and welfare facility personnel, to specialized agencies for child protection, or to the police or prosecutor's office (South Korea, at 2). There is no penalty for failure to report (*Id.* at 3).

In Turkey, when the victim is a child who has not yet attained the age of fifteen, the penalty under the Criminal Code for failure to notify the authorized bodies about the commission of an offense where it is still possible to limit its consequences is increased. (Turkey, at 2).

In the United Kingdom, there are also a number of broad duties given to bodies, professionals, and authorities to cooperate, share information, and ensure that arrangements are in place to safeguard and protect the welfare of children (England and Wales, at 1). Generally, child abuse suspicions are reported either to child social service offices or to the police (*Id.* at 4). There are no specific penalties for failing to report suspected incidents of child abuse (*Id.* at 6).

II. Defamation Concern

In some countries if a report of domestic violence or child abuse turns out to be without merit, the reporter may be subject to civil liability. In Belgium, Japan, and South Korea, however, intent to defame or negligence is an element of the tort of defamation (Belgium, at 3; Japan, at 2; and South Korea, at 3). Therefore, without intent or negligence, there is no

defamation when a report of child abuse turns out to be without merit. In addition, in South Korea, a law provides that reporters shall not be disadvantaged by reason of the act of reporting of domestic violence crimes (South Korea, at 3). In Japan, provisions which encourage or obligate people to make a report provide a justification against a defamation claim (Japan, at 2).

In England and Wales, under the General Medical Council guidelines, professionals are not be liable for any claims of defamation provided they do not act maliciously (England and Wales, at 5).

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DOMESTIC VIOLENCE AND CHILD ABUSE REPORTING REQUIREMENTS
BELGIUM

Executive Summary

There is no specific provision in Belgian law requiring the reporting of domestic violence at the federal level. There exists a general legal duty to help. A provision of the Penal Code allows professionals who are held to a legally binding obligation of confidentiality to set aside, under certain conditions, their duty of confidentiality in case of either mistreatment or sexual offenses committed against minors.

The protection of children is also part of the competences that have been transferred to the three communities: French, Flemish, and German. Each of them has provisions requiring that individuals or committees involved in the protection of children report mistreatment and sexual offenses.

I. Reporting Requirements

Belgium is a federal state with regions and communities. The communities (French, Flemish, and German) have their own rule-making bodies empowered to issue decrees within their territorial and subject matter competences. The protection of children is part of the competences that have been transferred to these communities. On the issue of domestic violence, communities are responsible for the elimination of factors leading to the violence, while punishment remains under the state competence. This report, therefore, addresses both federal and community reporting regulations.

A. Federal Law

It appears that there is no specific provision concerning the reporting of domestic violence. There is a general legal duty to help and a provision authorizing disclosure of confidential information in the case of minors.

1. Legal Duty to Help

The Penal Code contains a provision setting forth a legal duty of help under the following conditions: the victim must be in great danger, the person required to intervene

must have knowledge of the great danger either because he/she personally has ascertained this danger or because it has been described to him by the person(s) calling for help, and there is no serious danger to oneself or others in intervening.¹

In certain cases, the only way to bring help to a person in great danger is to report the situation to the authorities.

2. Disclosure of Confidential Information

A Law of November 28, 2000, on strengthening the protection of minors, added the following article to the Penal Code:²

Anyone who, by virtue of his profession, is privy to secrets and through this means is informed of the commission of an offense defined in articles 372 to 377, 392 to 394, 396 to 405ter, 409, 423, 425 or 426, committed on a minor may, without prejudice to the obligations imposed by article 422bis [legal duty to help], report the offense to the King prosecutor, on the condition that he/she has either examined the victim or has received the victim's confidence, that there exists a serious and immediate threat to the mental or physical integrity of the person concerned, and that he/she is not in a position to protect this integrity either alone or with the help of others.³

It should be noted that, from the language of the provision, the disclosure is not mandatory. It simply allows individuals who are normally held to a legally binding obligation of confidentiality to set aside, under certain conditions, their duty of confidentiality in case of either mistreatment or sexual offenses towards minors. There is currently a bill pending before the Belgian Senate that would extend the scope of this article to other categories of persons, including handicapped or vulnerable individuals such as pregnant women or senior citizens.⁴

B. Communities' Regulations on the Protection of Children

1. French Community

The French community regulation provides that any person whose profession or mission, even as a volunteer or as a part-time worker, is to contribute to the education; psychological, medical, and social guidance; help; protection; and supervision of infants or children must bring help and protection to children who are victims of mistreatment.

¹ CODE PENAL (C.PEN.) art. 422bis (Les Codes Larcier, 2008).

² *Id.* art. 458bis.

³ The criminal provisions listed in article 458bis cover sexual assaults, rape, murder, parricide, voluntary manslaughter, physical violence, genital mutilation, abandonment, deprivation of care, and kidnapping of minors.

⁴ Sénat de Belgique, Session Extraordinaire de 2007, 4-239/1, Proposition de loi étendant la protection pénale des personnes vulnérables contre la maltraitance et la malmenace [Draft Bill Extending the Criminal Protection of Vulnerable Persons Against Maltreatment], available at http://www.senatoren.be/www/?MIval=/index_senate%20&MENUID=12410&LANG=fr (last visited on Jan. 14, 2008).

This help must be aimed at either preventing or ending such mistreatment. Mistreatment is defined by the regulation as any type of physical violence, corporeal ill-treatment, sexual abuse, psychological violence, or grave (intentional or not) negligence that impairs the physical, psychological, and affective development of the child.⁵

The person notifies either one of the following organization or persons: the psychological, medical, and social center; the school health promotion service; one of the SOS children teams established by the regulation, the Children’s Councilor; or any other competent persons. He or she must only relay essential information to these individuals or organizations.⁶

2. Flemish Community

The Flemish regulation establishes youth committees each composed of twelve members chosen from individuals or members of organizations involved in the protection of children. One of the missions of these youth committees is “to bring to the knowledge of private organizations and public authorities the conditions and situations having an adverse impact on the physical integrity, psychological and social well-being and developments of minor, to prevent and remediate these conditions and situations.” The notification obligation is shared by the members of the committee.⁷

3. German Community

The German Community Decree requires that individuals contributing to the implementation of the decree, such as volunteers, Youth Council members, youth assistance department employees, etc., report the following offenses to the competent authorities: sexual assault, rape, murder, and physical violence.⁸ In addition, the youth assistance department must report extremely urgent cases directly to the King’s prosecutor.⁹

II. Civil Liability

The Civil Code imposes civil liability on a person for an act or omission that constitutes a “fault” and that causes harm to the plaintiff.¹⁰ Fault is used as a comprehensive term, covering intent as well as negligence. It is understood as a

⁵ Décret relatif à l’aide aux enfants victimes de maltraitance of May 12, 2004 [Decree on Assistance to Child Victims of Maltreatment], arts.1, 3(1), MONITEUR BELGE [Belgium’s Official Gazette], June 14, 2004, 44260.

⁶ *Id.* art 3(2).

⁷ Arrêté de l’Exécutif Flamand portant coordination des décrets relatifs à l’assistance spéciale à la jeunesse of Apr. 4, 1990 [Regulation of the Flemish Executive Coordinating Decrees on Special Assistance to the Youth], art. 4.3, MONITEUR BELGE, May 8, 1990, 8939.

⁸ Décret de la Communauté Germanophone concernant l’aide à la jeunesse of March 20, 1995 [Decree of the German Community on Assistance to the Youth], art.39, MONITEUR BELGE, Apr. 26, 1995, 11050.

⁹ *Id.* art. 20.1.

¹⁰ CODE CIVIL (C. CIV.) art. 1382 (Les Codes Larcier, 2008).

deviation from what a reasonable person ought to do in any particular circumstance. The Belgian *Cour de Cassation* (Supreme Court for Judicial Matters) held that:

Fault must be appreciated according to the criteria of a person reasonably careful and prudent, placed under the same conditions; in its appreciation, the judge may take as a reference the behavior of a person exercising the same function and having the same qualification that the one whose liability is at issue.¹¹

A person reporting child abuse/domestic violence in conformity with the law will not be held liable as a reasonable person would abide by the law. However, the fact that the law may require the reporting does not relieve those who report of their general obligation of prudence.

III. Penalties for Failure to Report

Failure to help when required and possible under Federal law is punishable by a maximum jail term of one year and a maximum fine of €2,500 (about US\$3,675). The German Community Decree provides for a maximum jail term of six months and a fine for not reporting extremely urgent cases covered by the Decree. It does not appear that there are any other penalties.

IV. Other Statutes

A. Physician's Duty to Report Criminal Offenses

A Royal Decree of May 31, 1885, requires that physicians called to treat a patient in instances that could lead to the opening of formal judicial investigations immediately notify the judicial authorities.¹²

B. Code of Criminal Procedure

The Code of Criminal Procedure provides that any legal authority, civil servant, or public officer who learns of the commission of a criminal offense while on duty must immediately report this offense to the King's prosecutor.¹³ The Code further provides that any person who witnesses a criminal offense against either public security or the life or property of an individual must report such offense to the King's prosecutor.¹⁴ There is no penalty attached to these provisions.

¹¹ *Id.*

¹² Arrêté Royal of May 31, 1885, art 20, MONITEUR BELGE, June 19, 1885. This Decree appears to still be in force as it has been cited in several government documents including, for example, the 2001 National Plan to Fight Violence Against Women, http://www.europrofem.org/contri/2_07_fr/fr-viol/34fr_vio.htm (last visited Jan. 14, 2009).

¹³ CODE D'INSTRUCTION CRIMINELLE art 29 (Les Codes Larcier, 2008).

¹⁴ *Id.* art. 30.

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DOMESTIC VIOLENCE AND CHILD ABUSE REPORTING REQUIREMENTS

GERMANY

Executive Summary

Germany has no specific statutory provisions that require the reporting of domestic violence or child abuse. However, some reporting requirements may exist for youth welfare offices and their affiliated child care professionals on the basis of protective provisions of the Social Code.

I. Criminal Law

Germany has a criminal provision that makes it a criminal offense to refrain from reporting certain planned crimes.¹ The list of offenses that must be reported, however, does not include sexual offenses or domestic violence.² In January 2003, a bill was introduced in parliament that would have included sexual abuse of children among the offenses that must be reported in order to prevent them, and this duty was to be imposed on anyone and, under some circumstances, even on physicians and attorneys.³ This bill, however, was strongly opposed by associations of child care professionals for being counter-productive and impractical, and in July 2003, the proposal was abandoned in a parliamentary committee hearing, with the consent of all the political parties.⁴

Throughout the last decade, various judicial decisions have attempted to forge criminal liability standards from general provisions of Title 8 of the Social Code,⁵ which deals with the functions of youth welfare offices and the professionals that are associated with them. These attempts have at times applied section 323 c of the Criminal Code⁶ that criminalizes the failure to render assistance in emergencies, and this criminal provision has at times also been used to

¹ Strafgesetzbuch (StGB), repromulgated Nov. 13, 1998, BUNDESGESETZBLATT [BGBl, official law gazette of the Federal Republic of Germany] I at 3322, as amended, § 138. The up-to-date German text of the Criminal Code is available at the Web site of the Federal Ministry of Finance at <http://www.gesetze-im-internet.de/stgb/index.html> (last visited Feb. 28, 2008).

² For a translation of German criminal provisions relating to child abuse, *see* ChildONEurope [European Network of National Observatories on Childhood], *Survey on Child Abuse, National Legislation on Rape and Other Forms of Sexual Abuse. Penalties and Aggravating Circumstances* (Oct. 2005), http://www.childoneurope.org/reserved/pdf/ChildAbuse_Penalties_and_Aggravating.pdf (last visited Feb. 20, 2008).

³ Gesetzesentwurf, Jan. 28, 2003, DEUTSCHER BUNDESTAG DRUCKSACHE [BT-Drucks, legislative document] 15/350.

⁴ Beschlussempfehlung und Bericht des Rechtsausschusses, July 1, 2003, BT-Drucks 15/1311.

⁵ Sozialgesetzbuch – Achtes Buch – Kinder- und Jugendhilfe [SGB 8], June 26, 1990, BGBl I at 3546, as amended by Gesetz, Dec. 14, 2006, BGBl I at 3134. The up-to-date text of the SGB 8 is available under this abbreviated title at the Federal Ministry of Justice Web site, at http://www.gesetze-im-internet.de/Teilliste_S.html (last visited Feb. 28, 2008).

⁶ A translation of StGB § 323 c is included in the *Attachment*.

establish civil liability for such omissions.⁷ No conclusive case law, however, has emerged on these issues.⁸

More tightly worded requirements on how youth welfare offices and child care professionals must protect children were enacted in 2006 by inserting section 8 a into Title 8 of the Social Code,⁹ and this provision aims at closing a formerly existing gap by spelling out the responsibilities of youth welfare offices and the child care professionals that are associated with them.¹⁰ The new provision has been in effect since January 1, 2007; however, to what extent it lends itself to establishing criminal liability has not as yet emerged in case law.

To some extent, teachers may also become criminally liable if they fail to protect children as required by school legislation.¹¹ The German Criminal Code provides in its section 13 that the failure to prevent a crime is a criminal offense, if the perpetrator is under a duty to prevent the result.¹² To date, however, case law has not established any conclusive standards.

II. Family Law

The only provisions in civil law that deal specifically with the prevention of sexual child abuse or domestic violence are sections 1666 and 1666 a of the Civil Code.¹³ These are relevant for the reporting of sexual child abuse, but they are of even greater value for domestic violence situations, because they deal with the removal of children from parental custody if this is necessary for their well-being.

Section 1666 of the Civil Code obligates the family courts to protect children from abuse and other dangers that may arise from the children's parents or from third parties. The family courts must act *ex officio* in such matters, often upon information of the youth welfare offices or third parties. It is generally stated in the legal literature that a duty to report the danger of abuse to the court exists for youth welfare offices and possibly those affiliated with them, whereas other third parties merely have a right to report.¹⁴

Section 1666 a of the Civil Code applies the principle of proportionality to court measures that would take a child away from his parents. The provision requires the court to

⁷ H. TRÖNDLE & T. FISCHER, STRAFGESETZBUCH 2094 (München, 2006).

⁸ R. Hefendehl, *Sozialarbeit im lähmenden Bann strafrechtlicher Risiken*, 53 RECHT DER JUGEND UND DES BILDUNGSWESENS [RdJB] 472 (2005).

⁹ SGB 8, § 8 a, as introduced by Gesetz, Dec. 14, 2006, BGBl I at 3134. A translation of this provision as prepared by the author is included in the *Attachment*.

¹⁰ W. Röchling, *Die Reform des SGB VIII durch das Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe*, 53 ZEITSCHRIFT FÜR DAS GESAMTE FAMILIENRECHT 161 (2006).

¹¹ For the State of Hesse, see *infra* note 17 and accompanying text.

¹² A translation of StGB, § 13 is included in the *Attachment*.

¹³ Bürgerliches Gesetzbuch, repromulgated Jan. 2, 2002, BGBl I at 42, as amended. A translation of §§ 1666 and 1666 a as prepared by the author is included in the *Attachment*. The German text of the up-to-date provisions as provided by the Federal Ministry of Justice is available on its website, at <http://bundesrecht.juris.de/bgb/index.html#BJNR001950896 BJNE163003377> (last visited Feb. 28, 2008).

¹⁴ J.V. STAUDINGER ET AL., KOMMENTAR ZUM BÜRGERLICHEN GESETZBUCH § 1666, note 208 (Berlin, 2004).

apply less intrusive measures before contemplating the separation of a child from those entrusted with his custody.

III. Social Law

Section 8 a of Title Eight of the Social Code¹⁵ imposes upon youth offices (the social welfare offices in charge of assisting children) the duty to evaluate risks to a child's well-being and to offer assistance to overcome any dangerous situation. Other governmental or private institutions that provide social work services for children and juveniles must also live up to these criteria and employ trained personnel and ask for professional assistance as required. If dangers cannot be avoided otherwise, the youth offices must inform the family courts, and the courts will take further action. The youth welfare offices may themselves undertake immediate coercive measures only in emergency situations. If needed in emergencies, youth offices may also involve the police or social or public health agencies.

IV. Educational Law

Teachers may be required to report child abuse and domestic violence on the basis of educational legislation. In the state of Hesse, for instance, section 3, paragraph 9 of the School Act¹⁶ states that the school is required to promote the well-being of the students and to protect them from physical and mental injury. These requirements may be described in more detail in internal regulations, and similar laws may exist in other German states.¹⁷ These very general rules may become a basis for criminal or civil liability of teachers, as well as for sanctions of the laws governing civil servants.¹⁸

IV. Non-Legal Standards

Instead of relying on legal provisions to describe the conditions under which potential child abuse must be reported, the German practice orients itself by non-legal sources such as a Handbook on the Role of the Social Services in Protecting the Welfare of Children that is available in an Internet version.¹⁹ Although this Handbook and other similar sources are voluminous, they are nevertheless generally worded and leave much room for interpretation.

V. Conclusion

The only specific statutory requirement for reporting child abuse or domestic violence is the mandate imposed on youth welfare agencies and their associates to involve the family courts if dangers to the well-being of the child cannot be avoided through other measures. The

¹⁵ A translation of SGB 8, § 8 as prepared by the author is included in the *Attachment*.

¹⁶ Hessisches Schulgesetz, repromulgated June 14, 2005, GESETZ - UND VERORDNUNGSBLATT FÜR DAS LAND HESSE [official law gazette of the State of Hesse] I at 202, as amended. The updated German text of this law is available at http://www.kultusministerium.hessen.de/irj/HKM_Internet?rid=HKM_15/HKM_Internet/nav/374/3743019a-8cc6-1811-f3ef-ef91921321b2%26_ic_uCon=72920bec-b224-d901-be59-2697ccf4e69f.htm&uid=3743019a-8cc6-1811-f3ef-ef91921321b2 (last visited Feb. 28, 2008).

¹⁷ W. Bott, *Die Garantienstellung der Lehrkräfte*, RdJB 506 (2005).

¹⁸ *Id.* See also *supra* note 12 and accompanying text.

¹⁹ H. KINDLER ET AL., HANDBUCH KINDESWOHLGEFÄHRDUNG, http://213.133.108.158/asd/ASD_Inhalt.htm#2.1 (last visited Feb. 25, 2008). This book is written in German and is more than 900 pages long.

reporting requirements for other child care professionals, such as teachers, are even less specified in legislation and depend, therefore, on judicial evaluations of the circumstances of each case. To date, no conclusive case law has developed.

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Addendum

There has been no change in the law or other significant development since February, 2008.

On October 31, 2008, Germany enacted an Act Transposing the European Council framework Decision on combating the sexual exploitation of children and child pornography (Gesetz, BUNDESGESETZBLATT I at 2149) that became effective on November 5, 2008. This Act reforms the criminal provisions relating to the sexual exploitation of children. This Act, however, does not introduce any reporting requirements.

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DOMESTIC VIOLENCE AND CHILD ABUSE REPORTING REQUIREMENTS

ITALY*

Executive Summary

Under the laws of the Republic of Italy, there does not appear to be a mandatory reporting requirement for domestic violence, but there is an obligation on the part of public officials or those who work in public services to report cases of suspected child abuse. Reports of domestic violence are to be made to the local police and reports of child abuse go to the police or penal court and to the juvenile court. Detailed measures for reporting child abuse are apparently set forth in regional guidelines; this report uses those of Lombardy as an example. While there do not appear to be specific provisions in Italian law that impose civil liability for failure to report child abuse or that give some measure of immunity from civil liability to those obliged to report, compensation might be called for under a general provision of the Civil Code on compensation for “unjust damage” due to intentional or unintentional acts. Similarly, there does not appear to be a specific penalty under the Criminal Code for failure to report domestic violence or abuse, but there is a general provision on failing to help a person in danger for which the perpetrator can be sentenced to one year of imprisonment or a fine of up to about \$3,800.

I. Introduction

The Parliament of the Republic of Italy has adopted a number of laws relevant to domestic violence, child abuse,¹ and sexual violence, all of which are included in the Code of the Family and of Minors. These include, for example, the 2001 Measures Against Violence in Family Relations;² the 1997 Provisions for the Promotion of Rights and Opportunities for

* The Law Library of Congress does not have a Foreign Law Specialist for Italy. Paraphrasing of the provisions of laws cited in the report should be considered rough equivalents of the original Italian. Unfortunately, English translations of the Italian legislation are not at present available in the Law Library of Congress collection.

¹ For a definition of child abuse in the European context, see CHILDONEUROPE SECRETARIAT, REVIEW ON NATIONAL SYSTEMS OF STATISTICS AND REGISTRATION ON CHILD ABUSE 9 (Jan. 2007), available at <http://www.childoneurope.org/activities/issues.htm#abuse> (under “Working Issues” then “Abuse”) (last visited Jan. 16, 2009). The definition is that given in 1999 by the World Health Organization Consultation on Child Abuse Prevention.

² Misure contro la violenza nelle relazioni familiari, Law N. 154 of Apr. 4, 2001, Italian Parliament website, available at <http://www.parlamento.it/leggi/011541.htm> (last visited Jan. 13, 2009) (unofficial source); FERNANDO BOCCHINI, CODICE DELLA FAMIGLIA E DEI MINORI 801-803 (Dott. A. Giuffrè Editore – Milano, 2007) (unofficial source).

Children and Adolescents;³ the 1983 (as amended in 2001) Regulation [*Disciplina*] on Adoption and Foster Care of Minors;⁴ the 1996 Rules Against Sexual Violence;⁵ the 2006 Provisions Concerning the Prevention and Prohibition of the Practice of Female Genital Mutilation;⁶ and the 1998 Rules Law Against the Exploitation from Prostitution, Pornography, and Sexual Tourism to the Detriment of Minors as a New Form of Enslavement.⁷ Various regions of Italy have also issued guidelines that deal more specifically with the reporting of incidents of child abuse.

II. Reporting Requirements in Federal Legislation

There is apparently no mandatory reporting requirement under Italian law for reporting of domestic violence involving women. Women who are victims of violence file complaints with the police. According to the report on Italy in a 2003 UNESCO report on violence against women, female victims of violence have been more willing to cooperate with the police since the entry of more women into the Italian police force, and “[s]pecial investigation services and training to social and health workers have been organised to respond more adequately to the women who denounce sexual violence” in the police stations.⁸ Significant features of Italy’s sexual violence legislation are that it characterizes violence against women as a crime against personal liberty, in contrast to provisions formerly in place that had classified rape as crimes against morality, and provides for the separation of the accused (rather than the victim) from the household.⁹ In addition, it unifies rape and sexual assault into a single offense of sexual

³ Disposizioni per la promozione di diritti e di opportunità per l’infanzia e l’adolescenza, Law N. 285 of Aug. 28, 1997, Italian Parliament website, <http://www.parlamento.it/leggi/972851.htm> (last visited Jan. 13, 2009); CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 1094-1099.

⁴ Disciplina dell’adozione e dell’affidamento dei minori,, Law N. 184 of May 4, 1983, as amended by Law N. 149 of Mar. 28, 2001, Modifiche alla legge 4 maggio 1983, n. 184, recante «Disciplina dell’adozione e dell’affidamento dei minori», nonché al titolo VIII del libro primo del codice civile, Italian Parliament website, <http://www.parlamento.it/leggi/011491.htm> (last visited Jan. 13, 2009); CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 366-392 (2007).

⁵ Norme contro la violenza sessuale, Law N. 66 of Feb. 15, 1996, as amended by Law N. 269 of Aug. 3, 1998 [see *bekiw* fb, 7], Arcidonna website, http://www.arcidonna.org/indexweb/arcidonna_acc/html/modules.php?op=modload&name=News&file=article&sid=230 (last visited Jan. 13, 2009) (unofficial source); CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 1675-1676 (2007).

⁶ Disposizioni concernenti la prevenzione e il divieto delle pratiche di mutilazione genitale femminile, Law N. 7 of Jan. 9, 2006, Italian Parliament website, <http://www.parlamento.it/leggi/eelenium.htm> (last visited Jan. 13, 2009) (use the calendar for the year 2006 at the left side of the page to search for the document); CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 1106-1108.

⁷ Norme contro lo sfruttamento della prostituzione, della pornografia, del turismo sessuale in danno di minori, quali nuove forme di riduzione in schiavitù, Law N. 269 of Aug. 3, 1998, Italian Parliament website, available at <http://www.parlamento.it/leggi/eelenium.htm> (last visited Jan. 13, 2009) (use the calendar for the year 1998 at the left side of the page to search for the document); CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 1393-1399.

⁸ Commission on Human Rights, United Nations Economic and Social Council, *Italy*, in INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN, ADDENDUM 1: INTERNATIONAL, REGIONAL AND NATIONAL DEVELOPMENTS IN THE AREA OF VIOLENCE AGAINST WOMEN, 1994-2003, paras. 1687-1696, at 305 (Feb. 27, 2003), E/CN.4/2003/75/Add.1, available at [http://www.unhcr.ch/Huridocda/Huridocda.nsf/0/a9c6321593428acfc1256cef0038513e/\\$FILE/G0311304.doc](http://www.unhcr.ch/Huridocda/Huridocda.nsf/0/a9c6321593428acfc1256cef0038513e/$FILE/G0311304.doc).

⁹ Art. 1, Misure contro la violenza nelle relazioni familiari, Law N. 154 of Apr. 4, 2001, Italian Parliament

violence, prosecutable when a woman files irrevocable charges or without the woman's filing of a complaint if the act is associated with other crimes, such as gang rape or if the victim is under age, disabled, or "a person subjected to authority."¹⁰

There is a legal obligation under Italian law to report cases of suspected child abuse, including: sexual abuse; sexual commercial exploitation; abandonment in the form of psychological ill-treatment, emotional neglect, physical neglect, or witnessing violence, although in these cases it "depends on the interpretation of the law by juvenile and penal judges"; physical ill-treatment, and sexual exploitation through trafficking.¹¹ This obligation applies to persons deemed public officials, such as teachers or social workers; to those whose function is to provide public services (e.g., third-party organizations that have agreements with municipalities); and in particular to doctors and all health care workers.¹² This obligation may derive from article 403 of the Civil Code, which provides for the intervention of the public authority in the aid of a minor when the minor is morally or materially abandoned or is raised in an unhealthy or dangerous environment or by a person who is unable to provide for the minor's upbringing due to neglect, immorality, ignorance, or other reasons.¹³ In such cases, the public authority, through child protection agencies, is to place the child in a safe location until it is possible to provide for the child's protection in a definitive manner.

In addition, the Provisions for the Promotion of Rights and Opportunities for Children and Adolescents include a list of types of actions for support services to take in order to prevent or assist young persons in cases of sexual abuse or exploitation, abandonment, mistreatment, and violence (article 4).¹⁴ Among these are preventive actions in situations of crisis or psycho-social risk. Moreover, article 9, of the Regulation on Adoption and Foster Care of Minors stipulates

website, available at <http://www.parlamento.it/leggi/011541.htm> (last visited Jan. 13, 2009) (use the calendar for the year 2001 at the left side of the page to search for the document); CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 801.

¹⁰ Italy, *supra* note 8, at 304.

¹¹ ChildONEurope Secretariat, Italy: *Qualitative Questionnaire on National Systems of Statistics and Registration on Child Abuse*, http://www.childoneurope.org/reserved/pdf/questionnaire_abuse/Italy_questionnaire_abuse.pdf (last visited Jan. 13, 2009). For the various forms of abandonment listed, whether the ill treatment or neglect is child abuse "depends on the interpretation of law by juvenile and penal judges," according to the Italian response to the questionnaire.

¹² *Id.*

¹³ Art. 403, in Title XI: On Affiliation and Foster Care, of Book I: The Person and the Family, Codice Civile, in GIORGIO CIAN & ALBERTO TRABUCCHI, COMMENTARIO BREVE AL CODICE CIVILE 456 (Padova, CEDAM, 2004, 7th ed.); see also CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 208. The Civil Code was approved by a Royal Decree issued on Mar. 16, 1942, No. 262. Article 2, paragraph 1, of Title I: On Physical Persons of Book I provides that the age of majority is reached upon attainment of a person's eighteenth year. For purposes of work, however, persons younger than 18 may be able to exercise the right to engage in certain forms of labor (*cf.* art. 2, ¶2).

¹⁴ CISMAI [Coordinamento Italiano dei Servizi contro il Maltrattamento e l'Abuso all' Infanzia] [Italian Coordination of Public and Private Services Against Child Abuse], *Contribution to UN Study on Violence Against Children: Italy's Situation*, http://www.cismai.org/argomenti/vita_del_coordinamento/anno2006/Contribution_StudyViolenceAgainst_Children.pdf (last visited Jan. 13, 2009). See also Disposizioni per la promozione di diritti e di opportunità per l'infanzia e l'adolescenza, Law N. 285 of Aug. 28, 1997, Italian Parliament website, <http://www.parlamento.it/leggi/972851.htm> (last visited Jan. 13, 2009).

that anyone has the power to inform the public authorities of circumstances of the abandonment of a minor. Public functionaries, officials of a public agency, and those who carry out a service of public need must, as soon as possible, report to the state prosecutor of the juvenile court of the place where the minor is located about the conditions of every child in a situation of abandonment that come to the attention of the appropriate office.¹⁵

Reports of child abuse must be made to the penal court (or local police) and to the juvenile court.¹⁶ Articles 330 and 333 of the Civil Code provide, moreover, that if a parent infringes upon or neglects his or her duties towards the child or misuses parental power to the child's detriment, some or all of the parental authority may be taken away and a judge may restrict or discontinue the parent-child relationship. The judge also has the authority to appoint another legal representative for the child and order that the child be removed to a different environment. While these orders are typically issued by a juvenile court at the request of a state prosecutor, in emergencies the Court may, in the child's interest, make interim orders *ex officio*.¹⁷

III. Reporting Requirements in Regions: The Example of Lombardy

Various regions of Italy have guidelines on the identification and reporting of child abuse cases to social service agencies or the judiciary.¹⁸ One example of these regional guidelines is that of Lombardy.¹⁹ Subsection 2.2, "required actions," under section 2, "organizational

¹⁵ Art. 9 (1) 1, Disciplina dell'adozione e dell'affidamento dei minori, Law N. 184 of May 4, 1983, as amended by Law N. 149 of Mar. 28, 2001, Modifiche alla legge 4 maggio 1983, n. 184, recante «Disciplina dell'adozione e dell'affidamento dei minori», nonché al titolo VIII del libro primo del codice civile, Italian Parliament website, <http://www.parlamento.it/leggi/eletenum.htm> (last visited Jan. 13, 2009) (search under March 2001 in calendar listing at left-hand side of page); CODICE DELLA FAMIGLIA E DEI MINORI, *supra* note 2, at 370. Abandonment is said to occur "when parents or relatives take no moral or practical care of a child and shall be proved and declared by the judge (Juvenile Court) through ad hoc civil proceedings. ... In all cases of child's abuse or exploitation a major role is played by local Social Services which are appointed by the Juvenile Court for support and control in the child's interest." *The Protection of Children Against Sex Abuse*, at 2, <http://www.minori.it/news/appuntamenti/yokohama/ mingiustizia.pdf> (last visited Jan. 13, 2009). The article is undated but appears, based on its content, to have been written in 2001 or 2002.

¹⁶ *Italy: Qualitative Questionnaire on National Systems of Statistics and Registration on Child Abuse*, *supra* note 11, at 5.

¹⁷ *The Protection of Children Against Sex Abuse*, *supra* note 15, at 1.

¹⁸ The legislative power of the regions to issue such guidelines is based on Framework Law 845 on Professional Training of Dec. 21, 1978; Decree Law 112/98, under article 138(1), delegates to the regions tasks of planning training and actions and promotional activities related to those tasks. In addition, Framework Law 328 of Nov. 8, 2000, covers the creation of an integrated system of social actions and services, and provides that the regions are to carry out "tasks of programming, coordination and guidance in social actions, as well as monitoring their implementation at [the] territorial level." Department of Social Affairs & National Childhood and Adolescence Monitoring Center, *Italy: Guideline Document for Training Relating to Child Abuse and Mistreatment*, Apr. 6, 2001, at 14, available at http://www.minori.it/cd/cd_lucca_2003/4/4.3.3_en.pdf.

¹⁹ Linee guida per il riordino e l'orientamento dei servizi dedicate alla tutela dei minori vittime di violenza, 3 BOLLETTINO UFFICIALE DELLA REGIONE LOMBARDIA [Official Gazette of the Lombardy Region] (Jan. 17, 2005) (D.g.r. 23 dicembre 2004 – n. 7/20100) [in Italian], available at http://www.famiglia.regione.lombardia.it/min/min_nrm/20100.pdf (unofficial source). Paragraph 1 of subsection 2.2.3 cites to article 9 of Law No. 184 of 1983, Disciplina dell'adozione e dell'affidamento dei minori, *supra* note 15. Lombardy is the most densely

methodology,” covers identification of signs of malaise in the child’s environment; notification [segnalazione, “signaling”] of the authorities; lodging of a complaint (*denuncia*) by means of a crime notice (*notizia di reato*); protection; evaluation; and therapeutic treatment and support.

The part on notification indicates that, once it has been determined that the child is at risk or in danger because of the negative behavior of the adults who are in charge of his education and protection, the *operatori* (“operators,” or persons concerned) must notify the juvenile bench (*Magistratura Minorile*), which is the institution in charge of the protection of minors. Furthermore, the Guidelines state, notification is an act of individual responsibility binding upon a functionary. The notification must provide analytical information, report the prejudicial condition, and distinguish between facts and information gathered directly or through third parties.

In situations where the behavior constitutes an actionable offense (e.g., serious mistreatment, sexual abuse), functionaries and public service officers are duty bound to lodge a complaint with the Regular Public Prosecutor’s Office (*Procura della Repubblica presso il Tribunale Ordinario*) as well as with the public prosecutor’s office affiliated with the Juvenile Court (*Procura della Repubblica presso il Tribunale per i Minorenni*).

The “Guideline Document for Training and Relating to Child Abuse and Mistreatment” (2001) refers to the role of Provincial Committees for Public Administration (established under Law N. 203 of July 12, 1991) in addressing such matters. In addition, Circular 070100 (Oct. 3, 2000) assigns the Provincial Committees certain tasks in connection with strategies to prevent abuse and sexual violence against juveniles, which include: “monitoring instances of mistreatment, abuse, and sexual exploitation that can be found at the time of reporting the crime ... and links with the organs of the magistracy (Prosecution Services of juvenile and ordinary courts), so as to collect the data on the phenomenon in unitary fashion” as well as “[m]apping resources present on [sic] the territory (number of social and health workers involved, specialist private and public sectors in being [sic], etc.) *inter alia* to promote organic and unitary collection of data, in association with the National Childhood and Adolescence Documentation and Analysis Center.”²⁰

IV. Civil Liability

There does not appear to be a specific provision in Italian law that imposes civil liability for failure to report child abuse, or that specifically gives some level of immunity to those obliged to report it. Nevertheless, for some time judges and legal writers in Italy have apparently generally recognized that “culpable omission can give rise to an obligation to compensate, even where there has been no breach of a duty expressly laid down by law.”²¹ Article 2043 of the Civil Code, on compensation for illicit behavior, stipulates that any intentional or non-intentional

populated region of Italy; its main city is Milan.

²⁰ Department of Social Affairs & National Childhood and Adolescence Monitoring Center, *Italy: Guideline Document for Training Relating to Child Abuse and Mistreatment*, Apr. 6, 2001, at 15, available at http://www.minori.it/cd/cd_lucca_2003/4/4.3.3_en.pdf.

²¹ *Liability for One’s Own Act*, INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW, XI: Torts, ch. 2 s.83, 38 (André Tunc chief ed., 1983).

act that causes “unjust damage” to another person obligates the perpetrator to compensate the damage. Extensive commentary on the provision sets forth a large number of the types of harm for which compensation might be due.²²

V. Penalty for Failure to Help

The crime of failing to help a person in danger is punishable under article 593 of the Criminal Code, on “Omissione di soccorso.”²³ Paragraph 1 of the article states that anyone who, upon finding an abandoned or lost underage boy of ten years old, or another person unable to provide for himself, due to mental or physical illness or to old age or other causes, fails to give immediate notice to the authorities is punished with imprisonment for one year or a maximum fine of €2,500 (about US\$3,800).²⁴

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²² COMMENTARIO BREVE AL CODICE CIVILE, *supra* note 13, at 2020-2039.

²³ *Liability for One’s Own Act*, *supra* note 21.

²⁴ Art. 593, Codice penale [Criminal Code], adopted by Decree No. 1398 of October 19, 1930, as last amended by Decree No. 92 of May 23, 2008, Altalex online database (in Italian) (unofficial source), <http://www.altalex.com/index.php?idnot=36774> (last visited Jan. 13, 2009).

LAW LIBRARY OF CONGRESS

DOMESTIC VIOLENCE & CHILD ABUSE REPORTING REQUIREMENTS

JAPAN

Executive Summary

Reporting of spousal physical violence is encouraged. Child abuse reporting is mandatory though there is no penalty for not reporting. Reports of domestic violence and child abuse will likely not constitute defamation even if the report turns out to be without merit.

1. Who is Required to Report Domestic Violence/Child Abuse?

In spousal abuse cases, reporting is not mandatory. The Spousal Abuse Prevention and Victims Protection Law encourages anyone who finds a person who is physically abused by his/her spouse to report it to a Spousal Violence Counseling and Support Center or police officer.¹ Physicians or other medical personnel may report abuse when he or she, in the course of his or her medical business, finds a person who is observed as being injured or sick resulting from spousal physical violence.² Other medical personnel include dentists, health care coordinators, nurses, and midwives. Physicians or other medical personnel are required to consider the victims' wishes if the victims do not want a report filed.³

In child abuse cases, reporting is mandatory. Under the Child Welfare Law, anyone who finds a child who needs protection must report it to an appropriate office.⁴ A child who needs protection is defined in the law as a child who does not have parents or others taking care of him or her, or who has parents or others taking care of him or her, but they are inappropriate to do so.⁵ The Child Abuse Prevention Law enhances the reporting obligation for an abused child.⁶ Under the Child Abuse Prevention Law, anyone who finds a child who is observed to be abused is obligated to report the case with all due haste to an appropriate office.⁷ The Child Abuse Prevention Law obligates the following organizations and people to strive to find child abuse at

¹ Haigūsha karano bōryoku no bōshi oyobi higaisha no hogo ni kansuru hōritsu [Law Concerning Prevention of Spousal Abuse and Protection of Victims], Law No. 31 of 2001, *as amended by* Law No. 64 of 2004, art. 6, para. 1.

² *Id.* art. 6, para. 2.

³ *Id.*

⁴ Jidō fukushi hō [Child Welfare Law], Law No. 164 of 1947, *as amended*, art. 25.

⁵ *Id.* art. 6-3.

⁶ Jidō gyakutai no bōshi tō ni kansuru hōritsu [Child Abuse Prevention Law], Law No. 82 of 2000, *as amended*.

⁷ *Id.* art. 6.

an early stage: schools, welfare facilities, hospitals, and other child welfare organizations, as well as teachers, staff members of welfare facilities, doctors, public health nurses, lawyers, and other child welfare professionals.⁸

2. To What Authority Does a Report Need to be Made?

In spousal violence cases, reports are to be made to a Spousal Violence Counseling and Support Center or police officer.⁹ In child abuse cases, reports of child abuse are made, either directly or through an appointed child welfare worker, to a municipal or prefectural welfare agency or a child guidance center.¹⁰

3. Civil Liability for Reporting

Under Japanese law, intent or negligence is an element of tort, necessary for liability in the tort of defamation.¹¹ Therefore, to make a reporter of domestic violence or child abuse responsible for a defamation claim, the claimant must prove the intent or negligence of the reporter. The lack of merit of the report is not enough to make the reporter liable.

In addition, the provisions of laws which encourage or obligate people to make a report work as justification against a defamation claim. If a law requires a person to do something, that person cannot be liable for the act because he did so in accordance with law.¹² Especially in the case of child abuse, the law obliges anyone who only “suspects”, abuse to report it. There is no requirement that the person “believes” or “knows,” child abuse occurred before being required to report it. Only a person who made an intentionally false report can be liable for defamation in a child abuse report case.

4. Penalty for Failure to Report

There is no penalty for failure to report domestic violence or child abuse.

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⁸ *Id.* art. 5, para. 1.

⁹ Spousal Abuse Prevention and Victims Protection Law, Law No. 31 of 2001, *as amended by* Law No. 64 of 2004, art. 6, paras. 1 and 2.

¹⁰ Child Welfare Law, Law No. 164 of 1947, *as amended*, art. 25, para. 1; and Child Abuse Prevention Law, Law No. 82 of 2000, *as amended*, art. 6, para. 1.

¹¹ Minpō [Civil Code], Law No. 89 of 1896, *as amended*, arts. 709 and 710.

¹² Mamoru Tokumoto, §720 in CHŪSHAKU MINPŌ [CIVIL CODE COMMENTARY], (Ichirō Kato, et al. eds. 1964).

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DOMESTIC VIOLENCE & CHILD ABUSE REPORTING REQUIREMENTS

SOUTH KOREA

Executive Summary

Medical practitioners and welfare facility personnel are required to report domestic violence crimes to the police or public prosecutor's office. Child abuse must be reported by child care givers and teachers, in addition to medical practitioners and welfare facility personnel, to a specialized agency for child protection, or to the police or prosecutor's office. Reports of domestic violence crimes and child abuse will likely not constitute defamation even if the report turns out to be without merit. There is no penalty for failure to report.

I. Who Is Required to Report Domestic Violence/Child Abuse?

The Reporting of domestic violence crimes is required under the Special Act for the Punishment of Domestic Violence.¹ Such crimes are defined under the law.² Basically, violent acts which amount to a criminal offense under the Criminal Code are subject to reporting under the Special Act. The following persons must report domestic violence crimes against children to the police or prosecutor's office (unless there is a justifiable reason for not reporting) when they become aware of domestic violence crimes in the performance of his or her duties:

- the director or employee of an institution responsible for the education and protection of children;
- the medical personnel or director of a medical institution; or
- the director or employee of a welfare facility for children.³

Also, the counselor or director of the following facilities must report the crimes immediately when they become aware of domestic violence crimes through consultations with the victim or his or her legal representative:

- a child counseling center;
- a domestic violence counseling Center / protective facility; or

¹ Special Act for the Punishment of Domestic Violence, Act. No. 5436 (Dec. 13, 1997), art. 4.

² *Id.* art. 2, para. 3.

³ *Id.* art. 4, para. 2.

- a sexual assault injury consultation center / protective facility.⁴

The Special Act for the Punishment of Domestic Violence provides that any person who becomes aware of domestic violence crimes may report them to police or prosecutor's offices, though they are not obligated to do so.⁵

The Child Welfare Law obligates the following persons to report child abuse to a specialized agency for child protection, or to the police or prosecutor's office:

- teachers;
- medical professionals;
- child welfare facility head or employees;
- employees of a welfare facility for the disabled;
- persons who care for young children in a nursery or kindergarten;
- lecturers and staff of a private teaching institute;
- members of a first-aid squad; and,
- a head or employees of counseling centers for victims of sexual traffic or domestic violence, among others.⁶

The Child Welfare Act also has a provision that states anyone may report child abuse.⁷

2. To What Authority Does a Report Need to Be Made?

A report of domestic violence crimes needs to be made to the police or prosecutor's office.⁸ A child abuse report needs to be made to a specialized agency for child protection, or the police or prosecutor's office.⁹

⁴ *Id.* art. 4, para. 3.

⁵ *Id.* art. 4, para. 1.

⁶ Child Welfare Act, Act. No. 6151 (Jan. 12, 2000), *as amended by* Act. No. 806 (Sep. 27, 2006), art. 26, para. 2, *translated in* Statutes of the Republic of Korea, vol. 17, 831-832 (supp. 38) (1997).

⁷ *Id.* art. 26, para. 1.

⁸ Special Act for the Punishment of Domestic Violence, Act. No. 5436 (Dec. 13, 1997), art. 4.

⁹ Child Welfare Act, Act. No. 6151 (Jan. 12, 2000), *as amended by* Act. No. 806 (Sep. 27, 2006), art. 26.

3. Civil Liability for Reporting

Under Korean law, intent or negligence is an element of tort. Defamation is a form of tort in Korea.¹⁰ Therefore, to make a reporter of domestic violence or child abuse responsible for a defamation claim, the claimant must prove the intent or negligence of the reporter. The lack of merit of the report is not enough to make the reporter liable for defamation. In cases of reporters of domestic violence crimes under the Special Act for the Punishment of Domestic Violence, the Act protects reporters of abuse. The Act provides that such reporters shall not be disadvantaged by reason of the act of reporting.¹¹ The Child Welfare Act does not have such a provision, but protects the reporter by keeping his or her identity secret.¹²

4. Penalty for Failure to Report

There is no penalty for failure to report domestic violence or child abuse.

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¹⁰ Civil Act, Act No. 471 (Feb. 22, 1958), *as amended by* Act. No. 7765 (Dec. 29, 2005), arts. 750 and 751, *translated in* Statutes of the Republic of Korea, vol. 3, 133 (1997).

¹¹ Special Act for the Punishment of Domestic Violence, Act. No. 5436 (Dec. 13, 1997), art. 4, para. 4.

¹² Child Welfare Act, Act. No. 6151 (Jan. 12, 2000), *as amended by* Act. No. 806 (Sep. 27, 2006), art. 26, para. 3.

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DOMESTIC VIOLENCE & CHILD ABUSE REPORTING REQUIREMENTS

TURKEY

Turkey enacted a law on domestic violence in 1998¹ (copy in English attached)². This legislation provides that if a spouse, child, or other family member is subject to abuse and if notification is made either by the victim or by the public prosecutor, a Justice of the Peace can pass one or more measures, including ordering the accused spouse not to use violence or threats against anyone in the household, to leave the shared home, or to surrender weapons.³ The law does not include any provision specifically requiring such a notification to be made, by anyone.

A new Criminal Code was adopted by Turkey on September 26, 2004 (Law No. 5237, 2004); the new Code was amended December 19, 2006.⁴ An English translation of the amendment is not available at present, but the 2004 text has been translated. The Criminal Code contains provisions in two articles that are relevant to the question of whether people are required to report crimes in general, which would include domestic or child abuse offenses:

Article 98-(1) Any person who fails to render assistance to an old, disabled or injured person at the extent of his ability, or fails to notify the concerned authorities in time, is punished with imprisonment up to one year or punitive fine.

(2) In case of death of a person due to failure in rendering assistance or notification of concerned authorities, the person responsible is sentenced to imprisonment from one year to three years.⁵

This article could presumably apply in a situation in which a family member had been injured by abuse.

The other article specifically concerns the duty to report offenses. The following clauses are found in a section titled "Failure in Notification of an Offense":

¹ Law No. 4320, on Protection of the Family, January 1998. English translation available from the Women's Learning Partnership (unofficial source), available at <http://www.learningpartnership.org/resources/legislation/nationallaw/turkey>.

² Please note that the Law Library does not at present have a Turkish legal specialist, and the information in this report is provided based on the available English-language materials.

³ *Id.* clause 1.

⁴ Referenced in the International Labour Organization database, NATLEX, at http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=TUR&p_classification=01.04&p_origin=COUNTRY&p_sortby=SO RTBY_COUNTRY (last visited December 29, 2008).

⁵ Penal Code from Legislationline website, <http://legislationline.org/documents/section/criminal-codes/country/50> (last visited December 29, 2008) (unofficial source).

Article 277-(1) Any person who fails to notify the authorized bodies about an offense at the very instant is punished with imprisonment up to one year.

(2) Any person who fails to notify the authorized bodies about commission of an offense where it is still possible to limit its consequences, is punished with imprisonment according to the provisions of above subsection.

(3) In case the victim happens to be a child not yet attained the age of fifteen, or a person lacking capacity to protect himself/herself due to corporal or spiritual disability or pregnancy, the punishment to be imposed according to above subsections are increased by one half.⁶

Thus the Penal Code specifically imposes additional punishment on those who neglect to notify authorities about offenses against children, the disabled, and pregnant women.

Awareness of the need to address the problem of child abuse has led in the last few years to doctors taking the initiative to report cases and study the problem. The descriptions in available journal articles of such cases do not refer to any duty to report.⁷

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⁶ *Id.*

⁷ See, for example, R. Oral, et. al., Child Abuse in Turkey: an Experience in Overcoming Denial and a Description of 50 Cases, 25 CHILD ABUSE & NEGLECT 279-289 (Feb. 2001) & Fatma Yucel Beyaztas, et. al, Child Physical Abuse: A Five Case Report, 4 MIDDLE EAST JOURNAL OF FAMILY MEDICINE (March 2006), available at <http://www.mejfm.com/journal/March 2006/childabuse.htm>.

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DOMESTIC VIOLENCE AND CHILD ABUSE REPORTING REQUIREMENTS
ENGLAND AND WALES

Executive Summary

There are limited child abuse and domestic violence reporting requirements in England and Wales. A number of professional individuals and organizations have reporting duties. In addition, their duty of care may require them to report and share information with government agencies. Reports of domestic violence are usually made to the police; child abuse suspicions are generally reported either to child social services offices or to the police. There is no blanket immunity for those reporting abuse. Scotland and Northern Ireland have separate laws governing these areas.

I. Individuals Required to Report Child Abuse/Domestic Violence

There are limited statutory reporting requirements in existence in England and Wales, and there are currently no mandatory reporting requirements *per se* for professional individuals or organizations to report child abuse or domestic violence to authorities. The focus of reporting child abuse and domestic violence in England and Wales is on sharing information among appropriate agencies and bodies.

There are a number of broad duties given to bodies, professionals, and authorities to cooperate, share information, and ensure that arrangements are in place to safeguard and protect the welfare of children.¹ Additionally, professionals have a duty of care to act for the children that they are treating.² Generally, the Human Rights Act 1998,³ which incorporated the European Convention on Human Rights into the national law of England and Wales, has been

interpreted to confer positive obligations on public authorities to take reasonable action within their powers (which would include information sharing) to safeguard the Convention rights of children. These rights include the right to life (Article 2), the right

¹ This term is defined in statutory guidance as, “The process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully.” HM Government, *Working Together to Safeguard Children*, 2006, at 27, available at <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>.

² Department of Children, Schools and Families (DCSF), *Statement on the Duties of Doctors and Other Professionals in Investigations of Child Abuse*, http://www.rcslt.org/news/Joint_Statement_07.pdf (last visited Jan. 26, 2009).

³ Human Rights Act 1998, c. 42, ACTS OF THE UK PARLIAMENT AND EXPLANATORY NOTES, available at <http://www.legislation.gov.uk/acts/acts1998a> (official source).

not to be subjected to torture or inhuman or degrading treatment (Article 3) and the right to liberty and security (Article 5).⁴

The Children Act 2004 places a duty on specified authorities and professionals⁵ to cooperate to protect children from harm and neglect and to ensure their social and economic well being.⁶ The Children Act 2004 also imposes a duty on a number of bodies to put arrangements in place to ensure that they “discharge their functions having regard to the need to safeguard and promote the welfare of children.”⁷ This duty requires authorities to have arrangements in place that ensure and statutory guidance provides that

5:10 all staff in contact with children understand what to do and the most effective ways of sharing information if they believe a child and family may require targeted or specialist services in order to achieve their optimal outcomes; all staff in contact with children understand what to do and when to share information if they believe that a child may be in need, including those children suffering or at risk of significant harm.⁸

This provision mirrors that of the Education Act 2002, which places a duty on Local Education Authorities (LEA) and governing bodies of public schools to ensure arrangements are in place to safeguard and promote the welfare of children.⁹ Local authorities also have a duty to “safeguard and promote the welfare of children within their area who are in need” under the Children Act 1989.¹⁰

⁴ HM Government, *Information Sharing: Further Guidance on Legal Issues*, 2006, ¶ 2.1, available at <http://www.everychildmatters.gov.uk/files/71FA9E846D96219F025C49392A60B2C8.pdf>.

⁵ The authorities are: a children’s services authority in England; district council, which is not such an authority; a Strategic Health Authority; a Special Health Authority, so far as exercising functions in relation to England, designated by order made by the Secretary of State for the purposes of this section; Primary Care Trust; an NHS trust, all or most of whose hospitals, establishments, and facilities are situated in England; an NHS foundation trust; the police authority and chief officer of police for a police area in England; the British Transport Police Authority, so far as exercising functions in relation to England; a local probation board for an area in England; a youth offending team for an area in England; the governor of a prison or secure training centre in England (or, in the case of a contracted out prison or secure training centre, its director); any person to the extent that he is providing services under section 114 of the Learning and Skills Act 2000 (c. 21). Children Act 2004, c. 31, § 11, available at the website of the Office of Public Sector Information, http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_3 (official source).

⁶ *Id.* c. 31, § 10, available at http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_3#pt2-pb1-11g10 (official source).

⁷ *Id.* c. 31, § 11 (2), available at http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_3#pt2-pb1-11g11 (official source).

⁸ *Working Together to Safeguard Children*, *supra* note 1.

⁹ Education Act 2002, c. 32, § 175, http://www.legislation.gov.uk/acts/acts2002/pdf/ukpga_20020032_en.pdf (official source). This section also requires LEA’s and governing bodies to follow statutory guidance, which is currently provided for in Safeguarding Children in Education (DfES 2004). This guidance “reflects the principles contained within the United Nations Convention on the Rights of the Child, ratified by the UK Government in 1991. It takes into account the European Convention of Human Rights, in particular Articles 6 and 8.” HM Government, *Working Together to Safeguard Children*, 2006, available at <http://www.everychildmatters.gov.uk/files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf>.

¹⁰ Children Act 1989, c. 41, § 17, ACTS OF THE UK PARLIAMENT AND EXPLANATORY NOTES, available at http://www.legislation.gov.uk/acts/acts1989/Ukpga_19890041_en_1 (official source).

The Health Act 1999 introduced an explicit duty of co-operation between bodies within the National Health Service.¹¹ This duty covers the Health Authorities, National Health Service trusts, and Primary Care Trusts and requires that they cooperate to advance the health and welfare of the people of England and Wales.¹² There is a common law duty of confidentiality between medical practitioners and their patients in England and Wales. This duty can, however, be overridden if there is an overriding public interest to disclose the information,¹³ which can occur where a “failure to disclose information would put the patient, or someone else, at risk of death or serious harm.”¹⁴ Case law has provided that medical professionals owe their first duty to the child they are treating and that there is no competing duty of care to the child’s parents or guardians to not make negligent allegations of child abuse.¹⁵ The court has held that “in principle the appropriate level of protection for a parent suspected of abusing a child is that clinical and other investigations must be conducted in good faith.”¹⁶

The government has produced extensive statutory guidance on a number of items that professionals should consider before sharing information about suspected cases of child abuse. Prior to sharing information about an identifiable individual, professionals should consider whether:

- there is a legitimate purpose for sharing the information;
- the information is confidential;¹⁷
- there has been consent to share the information;
- there is a statutory obligation or court order to share the information;
- there is sufficient public interest to share the information.¹⁸

¹¹ Health Act 1999, c. 8, § 26, available at http://www.opsi.gov.uk/acts/acts1999/ukpga_19990008_en_4#pt1-pb5-11g25 (official source).

¹² *Id.*, c. 8, § 27, available at http://www.opsi.gov.uk/acts/acts1999/ukpga_19990008_en_4#pt1-pb5-11g26 (official source), amending the National Health Service Act 1977, c. 49, § 22, available at <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&Year=1977&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=2254451&ActiveTextDocId=2254492&filesize=21744> (unofficial source).

¹³ *X v. Y* [1998] 2 All ER 648; & General Medical Council, *Confidentiality: Protecting and Providing Information*, Arp. 2004, available at <http://www.gmc-uk.org/guidance/current/library/confidentiality.asp>.

¹⁴ General Medical Council, *Reporting Gun Shot Wounds Guidance for Doctors in Accident and Emergency Departments*, 2003, available at http://www.gmc-uk.org/guidance/current/library/reporting_gunshot_wounds.asp.

¹⁵ *D v. East Berkshire Community Health NHS Trust; MAK v. Dewsbury Healthcare NHS Trust; RK v. Oldham NHS Trust* [2005] UKHL 23, ¶ 90, available at <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east-1.htm> (official source).

¹⁶ *Id.*

¹⁷ In cases where sharing confidential information is not authorized, it can be lawfully shared if it can be justified as being in the public interest. The public interest test requires the professional to balance whether the “public interest in maintaining confidence in confidentiality and how a risk of significant harm to a child or serious harm to an adult increases the public interest in sharing.” HM Government, *Information Sharing: Practitioners’ Guide*, 2006, available at <http://www.everychildmatters.gov.uk/files/ACB1BA35C20D4C42A1FE6F9133A7C614.pdf>.

¹⁸ *Id.* at 19.

Once these issues have been considered, a balancing test should be conducted to determine whether the information should be shared, with the welfare of the child being the paramount consideration in this test.

For medical professionals, guidelines from the General Medical Council (GMC) state that if they believe a patient is a victim of neglect or physical, sexual, or emotional abuse, they should disclose information promptly to an appropriate responsible person or statutory agency, even without the patient's consent, if the disclosure is believed to be in the patient's best interests.¹⁹ The guidelines further provide that disclosure of information without a patient's consent may be justified in the public interest if not disclosing the information exposes the patient or others to the risk of death or serious harm.²⁰ The guidance provides the example of a situation where disclosure would be in the public interest if it will "assist in the prevention, detection or prosecution of a serious crime, especially crimes against the person, such as abuse of children."²¹

II. Authority to Which the Report Should be Made

There is no authority specified in statute to which reports of suspected child abuse should be made. Generally, information concerning the abuse of children is reported to the children's social care services or the police, who can then take action to safeguard and protect the welfare of the child.²² Cases of suspected domestic violence are typically reported to the police, which normally have a dedicated unit for this type of situation.

Once children's social care services, which are normally provided through local authorities, are notified of a child that is suffering, or is likely to suffer, significant harm, they have a duty to make all enquiries that are "necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare."²³

III. Immunity from Civil Liability.

There is no blanket immunity for professionals when sharing information about child abuse or domestic violence. Whenever a professional wishes to report a case of suspected child abuse, they must consider any restrictions on disclosing information. The main restrictions are currently the common law duty of confidence, the Human Rights Act 1998, and the Data Protection Act 1998. There is extensive guidance to aid professionals in determining when a

¹⁹ General Medical Council, *Confidentiality: Protecting and Providing Information*, 2004, ¶ 29, available at <http://www.gmc-uk.org/guidance/current/library/confidentiality.asp>; and General Medical Council, *0-18 Years: Guidance for All Doctors*, 2007, ¶ 61, available at http://www.gmc-uk.org/guidance/ethical_guidance/children_guidance/56_63_child_protection.asp.

²⁰ General Medical Council, *Confidentiality: Protecting and Providing Information*, 2004, ¶ 27, available at <http://www.gmc-uk.org/guidance/current/library/confidentiality.asp>.

²¹ *Id.*

²² *Information Sharing: Practitioners' Guide*, *supra* note 17.

²³ Children Act 1989, c. 41, § 47, ACTS OF THE UK PARLIAMENT AND EXPLANATORY NOTES, available at http://www.legislation.gov.uk/acts/acts1989/Ukpga_19890041_en_1 (official source).

report should be made.²⁴ The government has also made a statement in light of several high profile cases in which doctors have been prosecuted for making negligent allegations of child abuse.²⁵ The statement notes that it intends to:

reduce a growing perception that child protection work is professionally risky and to bolster the involvement of the medical profession. It seeks to assure health professionals that provided they act within the boundaries of their professional and legal framework and exercise reasonable skill and care, they will have the weight of the law behind them in the event of any future legal challenge (although it cannot guarantee immunity from proceedings).²⁶

Thus, provided professionals act within the limits of their profession and the law, act in good faith, and with reasonable care and skill, they should be safe in any negligence proceedings brought against them. The GMC²⁷ provides that medical professionals will be able to justify disclosing information, “even if it turns out to be groundless, if you have done so honestly, promptly, on the basis of reasonable belief, and through the appropriate channels.”²⁸ Provided professionals do not act maliciously, they should not be liable for any claims of defamation.²⁹

The GMC states that that doctors owe their duty of care to the children they are treating. In one of the cases that prompted the statement, the court held:

A doctor is obliged to act in the best interests of his patient. In these cases the child is his patient. The doctor is charged with the protection of the child, not with the protection of the parent. The best interests of a child and his parent normally march hand-in-hand. But when considering whether something does not feel ‘quite right’ a doctor must be able to act single-mindedly in the interests of the child. He ought not to have at the back of his mind an awareness that if his doubts about intentional injury or sexual abuse prove unfounded he may be exposed to claims by a distressed parent ... The well-being of innumerable children up and down the land depends crucially on doctors and social workers concerned with their safety being subjected by the law to but a single duty: that of safeguarding the child’s own welfare.³⁰

²⁴ HM Government, *What to Do If You’re Worried a Child Is Being Abused*, 2006, available at <http://www.everychildmatters.gov.uk/files/34C39F24E7EF47FBA9139FA01C7B0370.pdf>.

²⁵ See, for example, *D v. East Berkshire Community Health NHS Trust*; *MAK v. Dewsbury Healthcare NHS Trust*; *RK v. Oldham NHS Trust* [2005] UKHL 23, available at <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east-1.htm> (official source).

²⁶ Department of Children, Schools and Families (DCSF), *Statement on the Duties of Doctors and Other Professionals in Investigations of Child Abuse*, http://www.rcslt.org/news/Joint_Statement_07.pdf (last visited Jan. 26, 2009).

²⁷ The General Medical Council registers doctors practicing medicine in the UK.

²⁸ *0-18 Years: Guidance for All Doctors*, 2007, *supra* note 19, at ¶ 60.

²⁹ *Statement on the Duties of Doctors and Other Professionals in Investigations of Child Abuse*, *supra* note 26.

³⁰ *D v. East Berkshire Community Health NHS Trust*; *MAK v. Dewsbury Healthcare NHS Trust*; *RK v. Oldham NHS Trust* [2005] UKHL 23, ¶¶ 85 & 138, available at <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east-1.htm> (official source).

IV. Penalties for Failing to Report

As there are no mandatory reporting requirements, there are no specific penalties for failing to report suspected incidents of child abuse or domestic violence. Guidelines provided by the GMC state that if a medical professional believes that a patient is a victim of domestic abuse and does not feel that disclosing the information is appropriate, they must be prepared to justify their decision.³¹ Doctors may be “struck off” the GMC register if their fitness to practice is impaired, which could be due to criteria including misconduct; a criminal conviction; or because of deficient performance.³² An example of sanctions from the GMC can be seen in a recent case. In 2008 a pediatric doctor’s license was suspended by the GMC for failing to notice injuries in a seventeen-month-old toddler that included a broken back and eight broken ribs during a medical appointment two days before the boy was killed.³³ The suspension means that the doctor can no longer practice medicine and is pending a complete investigation by the GMC.

V. Other Mandatory Reporting Standards

Other than the Road Traffic Act 1988,³⁴ which requires doctors to report information to police if they have treated a person they believe has committed an offence under this Act, there are no statutory requirements for doctors to report injuries caused by criminal conduct.

As noted above, medical professionals can disclose information that would otherwise be confidential if it is in the public interest, such as in cases where it will “assist in the prevention, detection or prosecution of a serious crime, especially crimes against the person, such as abuse of children.”³⁵

Guidance from the GMC provides that doctors should report gun shot wounds to the police, but without initially revealing identifiable information about the patient.³⁶ Once the police are there, if the patient is unconscious and unable to give consent to talk to the police, or refuses to consent to talk to the police, information can still be disclosed if:

there are grounds for believing that this is the public interest ... disclosures in the public interest are justified where: A failure to disclose information would put the patient, or

³¹ *Confidentiality: Protecting and Providing Information*, 2004, *supra* note 13, at ¶ 29.

³² GMC, *A Guide for Referred Doctors*, http://www.gmc-uk.org/concerns/doctors_under_investigation/a_guide_for_referred_doctors.asp#3 (last visited Jan. 26, 2009).

³³ BBC News, *Doctor Suspended in Baby P Probe*, Nov. 28, 2008, <http://news.bbc.co.uk/1/hi/england/london/7752231.stm>. See also GMC List of Registered Medical Practitioners, available at <http://www.gmc-uk.org/register/search/index.asp#> (last visited Jan. 26, 2009).

³⁴ Road Traffic Act 1988, c. 52 § 172, ACTS OF THE UK PARLIAMENT AND EXPLANATORY NOTES, available at http://www.legislation.gov.uk/acts/acts1988/pdf/ukpga_19880053_en.pdf (official version); & *Hunter v. Mann* [1974] QB 767.

³⁵ *Confidentiality: Protecting and Providing Information*, 2004, *supra* note 13, at ¶ 27.

³⁶ General Medical Council, *Reporting Gun Shot Wounds Guidance for Doctors in Accident and Emergency Departments*, 2003, available at http://www.gmc-uk.org/guidance/current/library/reporting_gunshot_wounds.asp.

someone else, at risk of death or serious harm; [or] A disclosure may assist in the prevention, detection or prosecution of a serious crime.³⁷

VI. Information Sharing Databases

In late January 2009, the government launched a £224 million (\$313.6 million) database called *ContactPoint*,³⁸ which provides doctors, social workers, and police with the contact information of every child under the age of eighteen in the UK and the contact information of any agency that is working with the child. It aims to allow individuals working with the child to ascertain whether other agencies have been in contact with the child to prevent them from slipping between the gaps of agencies. The database has been criticized by a number of groups that express concerns regarding the vetting process for individuals that have access to the database and regulation of the use of the database.³⁹

VII. Concluding Remarks

Despite the emphasis placed on information sharing and inter-agency cooperation, failings continue to arise. In 2008, the death of a seventeen month old baby, referred to in the media as “Baby P,” sparked outrage across the nation. The baby died at the hands of his mother, her live-in boyfriend and a lodger after sustaining over fifty injuries, including a broken back and eight broken ribs. The family had been visited over sixty times by authorities and the baby had been seen by a doctor, who failed to pick up on his injuries including a broken back, only two days prior to his death. This was the second high-profile child death for the council involved, and bore a striking resemblance to a case in which it was accused of “blinding incompetence”⁴⁰ in 2000 when eight year old Victoria Climbié was killed by her guardian. This occurred despite concerns of abuse and neglect being brought to the attention of the police, social services department of the council, and the National Health Service, and resulted in the first tripartite independent statutory public inquiry and a number of recommendations that were brought into effect by the Children Act 2004.⁴¹

³⁷ *Id.*

³⁸ Legislation enabling the creation of the database is found in the Children Act 2004, § 12 and the framework is provided for in The Children Act 2004 Information Database (England) Regulations 2007, SI 2182/2007. See also Every Child Matters, *ContactPoint*, <http://www.everychildmatters.gov.uk/deliveringservices/contactpoint/about/> (last visited Jan. 26, 2009).

³⁹ Jessica Shepherd, *New children’s database faces criticism*, GUARDIAN (London), Jan. 26, 2009, <http://www.guardian.co.uk/society/2009/jan/26/childrens-database-contactpoint>.

⁴⁰ Terri Judd, *Police told to track down social worker as her council obstructs landmark inquiry*, INDEPENDENT (London), Dec. 4, 2001, <http://www.independent.co.uk/news/uk/crime/police-told-to-track-down-social-worker-as-her-council-obstructs-landmark-inquiry-619025.html>.

⁴¹ See also the Victoria Climbié Inquiry, available at <http://www.victoria-climbié-inquiry.org.uk/> (last visited Jan. 26, 2009).

Soon after the Baby P case the government and the opposition clashed over the handling of the case and in November 2008 an independent inquiry was ordered, to be undertaken by Lord Laming, who also chaired the inquiry into the death of Victoria Climbié.⁴² The results of this inquiry are expected in 2009.

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⁴² BBC News, *Angry leaders clash over Baby P*, Nov. 12, 2008, http://news.bbc.co.uk/1/hi/uk_politics/7724541.stm.