
**IN THE
SUPREME COURT OF MISSOURI**

No. SC85582

STATE OF MISSOURI,

Appellant,

v.

LESLIE A. BROWN,

Respondent.

**Brief of Attorney General of Missouri as Amicus Curiae
in Support of Appellant, State of Missouri**

Respectfully submitted,

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Interest of Amicus

“The child welfare policy of this state is what is in the best interests of the child.”
Section 1.092, RSMo 2000. Missouri’s statutory pronouncement on child welfare is consonant with the United States Supreme Court’s long-held view that the state, as a sovereign, has an interest in protecting children from abuse and neglect. *See, e.g.,* Ginsberg v. New York, 390 U.S. 629, 639-641, 88 S.Ct. 1274, 1280-1281, 20 L.Ed.2d 195 (1968). The Attorney General represents the Department of Social Services, and the Department has an interest in the continued validity of § 210.115, RSMo Cum. Supp. 2003, and §210.120, RSMo 2000, Missouri’s mandatory reporter law, given the Department’s mission, which includes protecting children from abuse and neglect. Moreover, as the state’s chief law enforcement officer, the Attorney General has an interest in insuring that the laws of Missouri that protect children, like Missouri’s mandatory reporter law, retain their viability in the face of constitutional challenge.

Argument

Introduction

The Greene County Circuit Court found that § 210.120, RSMo 2000, Missouri's mandatory reporter law (hereinafter "mandatory reporter law"), which requires various health care and other professionals to report suspicions of child abuse, was unconstitutionally vague (LF 24-27). In so doing, the court interposed an additional layer of analysis, beyond constitutional scrutiny, of its own devise; the circuit court

also used the analysis of how would one advise a client of what is required to be in compliance of the statutes. In other words, how could a reasonable person know or even advise someone how to comply with the statutes.

(LF 27). The circuit court's constitutional consideration, however, is thin at best, and its second level of "analysis" turns the obvious public policy rationale behind the mandatory reporter law on its head. Further, its ruling is against the weight of authority of other states that have considered and rejected similar challenges to their mandatory reporter laws.

Background

Manifestly, child abuse exacts a heavy toll on its victims, and the Dominic James case, from which the instant case emanates, is a prime and tragic example of that. *See* <http://springfield.news-leader.com/specialreports/dominicjames> (last visited February 18,

2004). So, too, child abuse exacts societal costs. For example, children who sustain abusive head trauma (Shaken Baby Syndrome) and survive can suffer long term consequences, including physical disabilities, blindness, speech disabilities, seizures, and learning disabilities. *Preventing Child Deaths In Missouri*, The Missouri Child Fatality Review Program Annual Report for 2002, 52 (December 2003) (available from the Department of Social Services, State Technical Assistance Team). And, as in the case of Dominic James, some of these children die. In Missouri, in 2002, 10 children died from Shaken Baby Syndrome inflicted at the hands of a parent or caregiver. *Id.*

Indeed, child abuse often occurs at the hands of a parent or caregiver. By statute, Missouri specifically defines “abuse” as non-accidental injury inflicted “by those responsible for a child’s care, custody, and control.” Section 210.110(1), RSMo 2000. Federal law is in accord; “Child abuse and neglect” involves acts or omissions on the part of a “parent or caretaker.” 42 U.S.C.A. §5106g(2). And, where parents or other caretakers are involved, abuse tends to occur where that ostensible parenting or caretaking is taking place – in the home. Robin A. Rosencrantz, Note, *Rejecting ‘Hear No Evil Speak No Evil’: Expanding the Attorney’s Role in Child Abuse Reporting*, 8 GEO. J. LEGAL ETHICS 327, 336 (1995) (hereinafter “Rosencrantz”).

Mandatory reporter laws represent an important conduit to bring child abuse and neglect cases to the attention of social service and other agencies that might intervene before those who would abuse children cause further or irreparable injury, or death. *See*

Kathryn M. Krause, *Child Abuse and Neglect Reporting Legislation in Missouri*, 42 MO. L. REV. 207, 225 (1977) (hereinafter “Krause”) (noting preventative nature of mandatory reporting laws and how they “ideally hope to *prevent* a serious case of abuse from arising by being notified of cases of abuse early” (emphasis in original)). Perhaps not surprisingly, therefore, all 50 states and the District of Columbia have mandatory reporter laws. Danny R. Veilleux, Annotation, *Validity, Construction, and Application of State Statute Requiring Doctor or Other Person to Report Child Abuse*, 73 ALR 4TH 782, 789 (1989) (hereinafter “Veilleux”); *see also*, National Clearinghouse on Child Abuse and Neglect Information, *Child Abuse and Neglect Statutes-at-a-Glance: Mandatory Reporters of Child Abuse and Neglect* (February 2002), available at <http://www.calib.com/nccanch/pubs/sag/manda.pdf> (hereinafter “Statutes-at-a-Glance”). The federal government has endorsed mandatory reporting by way of financial incentives to the states: in order to qualify for federal grants under the Child Abuse Prevention and Treatment Act of 1974, states were required to have mandatory reporting provisions and procedures in place. *See* Krause at 216 (noting that Missouri’s reporting law changed with “the advent of Federal legislation with its promise of grants to states who complied with the federal statutory requirements”); *see also* 42 U.S.C.A. §5103(b)(2)(B)§352.400,

RSMo §210.109, RSMo §210.183, RSMo 210.110,¹ but shall also include abuse inflicted by any other person.

Section 210.120, RSMo 2000, requires medical staff who are mandated reporters to

¹ Pursuant to Section 210.110(1), RSMo 2000, “abuse” is ordinarily defined as “any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child’s care, custody, and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse.” Though respondent suggested, in her motion to dismiss on grounds of alleged unconstitutionality, that the term “abuse” was vague because it “require[d] a huge amount of mental process on the part of the health care provider in addressing these issues” (LF 22), the circuit court did not appear to rest its decision on any alleged vagueness of the defined term “abuse.”

² In all pertinent respects, §210.115, RSMo 2000 and §§210.115, RSMo Cum Supp. 2003, are the same; the former references “Christian Science Practitioner” among the list of mandated reporters, while the latter substitutes “minister as provided by section 352.400, RSMo.” The Circuit Court’s order declaring §§210.115 and 210.120 unconstitutional is dated September 9, 2003, so we use the 2003 version of the statute here.

immediately notify the physician in charge or his designee who shall then take or cause to be taken color photographs of physical trauma and shall, if medically indicated, cause to be performed radiologic examination of the child who is the subject of a report, costs of which shall be paid by the division. Reproductions of such color photographs and/or radiologic reports shall be sent to the division as soon as possible.

Section 210.165, RSMo 2000, provides that, “[a]ny person violating any provision of sections 210.110 to

The Greene County Circuit Court may stand alone in its censure of Missouri’s “reasonable cause to suspect” language; every state appellate court that has considered void for vagueness challenges to mandatory reporter statutes on this basis has held that such statutes pass constitutional muster.

For example, in *State v. Hurd*, 400 S.W.2d 42 (Wis. App. 1986), the defendant, the administrator of a ranch and school, failed to report instances of sexual abuse. *State v. Hurd*, 400 N.W.2d at 44. On appeal, Hurd argued that Wisconsin’s mandatory reporter law was unconstitutionally vague. *Id.* In particular, Hurd asserted, among other things, “that the statute’s undefined phrase, ‘reasonable cause to suspect’ [was] ambiguous and

vague” and “fails to notify a person of ordinary intelligence of the conduct required by the statute.” *Id.*, quoting W.S.A., §48.981.

The Wisconsin court rejected Hurd’s protestations. It noted that a reasonableness standard is employed in numerous other statutory contexts. *Id.* at 45. It also indicated that “suspicion” “is a non-technical term commonly understood by the general populace. It is not a term of art that requires legal expertise to comprehend its meaning.” *Id.*

In Minnesota, likewise, enumerated mandatory reporters “who know or ha[ve] reason to believe a child is being neglected or physically or sexually abused” must report. Minn.Stat. §626.556 subd. 3(a) (1986), *as quoted in State v. Grover*, 437 N.W.2d at 62 . In *State v. Grover*, 437 N.W.2d at 61. Grover challenged Minnesota’s mandatory reporter statute as unconstitutionally vague and overbroad. *Id.* In particular, Grover argued that the phrases “reason to believe” and “physically or sexually abused” were uncertain and could lead to arbitrary enforcement. *State v. Grover*, 437 N.W.2d at 63, quoting Minn. Stat. §609.53, subd. 1 (1986). The Minnesota Supreme Court also noted that, in a mandatory reporter context, those who should have “reason to believe” are, in fact, better situated to have “reason to believe” than would be the average person:

If the phrase know or reason to know or believe is clear,
definite, plain and unambiguous enough by which we expect

Fagin³ and his ilk to govern their conduct, it seems sufficiently clear and definite to provide a standard for the governance of the conduct of an educator or other professional.

People v. Cavaiani, 432 N.W.2d 409 (Mich. App. 1988)*People v. Cavaiani*, 432 N.W.2d at 413. The Michigan court found that the argument had no merit:

We find that the words “reasonable cause to suspect” speak for themselves and provide fair notice of the conduct expected in reporting suspected child abuse.

Id.

The Michigan court also rejected Cavaiani’s theory that he might simply have dismissed the victim’s allegations as untrue in the exercise of his professional judgment:

While defendant is free to decide that the victim’s allegations are untrue for purposes of rendering professional treatment, he is not free to arrogate to himself the right to foreclose the possibility of a legal investigation by the state. The state has

³ The character Fagin appears in the Charles Dickens novel, *Oliver Twist*. He runs a school for thieves and receives and sells stolen goods.

different interests, and its sovereignty is offended by child abuse.

Id.

Finally, in *White v. State*, 50 S.W.3d 31 (Tex. App. 2001), the Texas appellate court upheld that state's mandatory reporting law, which requires reporting by any person, not just enumerated professionals. *See id.*, 50 S.W.3d at 46-47, *citing* Veilleux; *see also* Statutes-at-a-Glance; V.T.C.A., Family Code §261.101(a)-(c), §261.102. In *White v. State*, 50 S.W.3d at 36-37. White argued, among other things, that the Texas statute was vague because it applied, as noted, to both professionals and lay persons, and "because the statute's requirements that a person report if she 'has cause to believe' that a child's physical or mental welfare 'has been or may be adversely affected' are too indefinite." *White v. State*, 50 S.W.3d at 47. It also rejected White's claim that the statute was vague because it speaks only of "cause to believe" versus the "reasonable cause" or "reasonable suspicion" standards used in other states (like Missouri). *Id.* The court looked first to the dictionary definition of "cause," which means "sufficient reason." *Id.*, *citing* MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, 182 (10th ed. 1993). It also noted that White was a certified peace officer and a licensed vocational nurse; under these circumstances, the statute as applied gave White fair notice of prohibited conduct. *Morris v. State*, 833 S.W.2d 624 (Tex. App. 1992)

This Court has recently set forth the standards by which a statute may be reviewed as against a void for vagueness challenge:

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. *State v. Mahan*, 971 S.W.2d 307, 312 (Mo. banc 1998). The void for vagueness doctrine ensures that laws give fair and adequate notice of proscribed conduct and protects against arbitrary and discriminatory enforcement. *Id.* The test in enforcing the doctrine is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *State v. Schleiermacher*, 924 S.W.2d 269, 276 (Mo. banc 1996). However, neither absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague. *State v. Duggar*, 806 S.W.2d 407, 408 (Mo. banc 1991). Moreover, it is well established that “if the law is susceptible of any reasonable and practical construction which will support it, it will be held valid, and ... the courts must endeavor, by every rule of construction, to

give it effect.” *Id.* (quoting from *City of St. Louis v. Brune*, 520 S.W.2d 12, 16-17 (Mo. 1975)).

Harjoe v. Herz Financial, 108 S.W.3d 653, 655 (Mo. banc 2003), *quoting* *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957-958 (Mo. banc 1999). Barring implication of First Amendment freedoms, none of which are involved here,

“it is not necessary to determine if a situation could be imagined in which the language used might be vague or confusing.” Rather, the language is to be evaluated by “applying it to the facts at hand.”

State v. Young, 695 S.W.2d 882 (Mo. banc 1985)*State v. Hatton*, 918 S.W.2d 790 (Mo. banc 1996)*Harjoe v. Herz Financial*, 108 S.W.3d at 655, *quoting* *State v. Hatton*, 918 S.W.2d at 793, *quoting* *State v. Errington*, 355 S.W.2d 952, 955 (Mo. banc 1962). Thus, while

[i]t is true that appellate courts strictly construe criminal statutes against the state and resolve any ambiguities in favor of the defendant in a criminal case...this rule of strict construction does not require a reviewing court to dispense with common sense or to ignore an evident statutory purpose.

State v. Silvey, 980 S.W.2d 103, 107 (Mo.App., S.D. 1998).

Viewed under these standards, and in light of the decisions of every other state that has considered similar challenges to mandatory reporter laws, Missouri's law passes constitutional muster. "Reasonable cause to suspect," as used in the Missouri statute, is susceptible to understanding by ordinary persons. Indeed, nurses, like respondent, have specialized training and should not find "know or have reason to believe" or, in Missouri parlance, "reasonable cause to suspect," to be unduly oblique. *See Choe v. Axelrod*, 141 A.D.2d 235 (N.Y. App. 1988)

As noted, Missouri's child welfare policy "is what is in the best interests of the child." Section *Walters v. Walters*, 113 S.W.3d 214 (Mo.App., S.D. 2003)*Young v. Young*, 14 S.W.3d 261 (Mo.App., W.D. 2000)*In the Interest of K.K.M.*, 647 S.W.2d 886 (Mo.App., E.D. 1983)*J.A.D. v. F.J.D. III*, 978 S.W.2d 336 (Mo. banc 1998)§211.447.5, RSMo 2000§211.477.1, RSMo Cum. Supp. 2003*In the Interest of M.D.R.*, 2004 WL 64070 (Mo. banc 2004)*In the Interest of N.R.W.*, 112 S.W.3d 465 (Mo.App., W.D. 2003)§211.011, RSMo, 2000*In re T.N.H.*, 70 S.W.3d 2 (Mo.App., E.D. 2002)211.011, RSMo 2000, and *Piedimonte v. Nissen*, 817 S.W.2d 260, 267 (Mo.App., W.D. 1991) (considering the "State's obligation as 'parens patriae' to protect the child physically present within its jurisdiction, as well as our State's policy of serving the best interests of the child."); *In the Interest of C.L.M.*, 625 S.W.2d 613, 616 (Mo. banc 1981), *citing* § 211.011, RSMo 1978, and *In re Dimmitt*, 560 S.W.2d 368, 372 (Mo.App., K.C.D. 1977); *Sandra and Danny L. v. Jackson County Juvenile Court*, 544 S.W.2d 330, 333 (Mo.App.,

K.C.D. 1976); *In re A.A.*, 533 S.W.2d 681, 684 (Mo.App., K.C.D. 1976); and *In re Ayres*, 513 S.W.2d 731, 735 (Mo.App., St.L.D. 1974) (“The purpose of the juvenile law expressed in § *Parham v. J.R.*, 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979)*Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)*Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)*Ginsberg v. State of New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968) (“The well-being of children is of course a subject within the State’s constitutional power to regulate”); *Prince v. Massachusetts*, 321 U.S. 158, 165, 64 S.Ct. 438, 441, 88 L.Ed. 645 (1944) (noting the “interests of society to protect the welfare of children” so that they are “safeguarded from abuses and given opportunities for growth into free and independent . . . citizens”).

Mandatory reporter laws allow states, like Missouri, to better effectuate that important interest in the welfare of children. Child abuse statutes, including Missouri’s mandatory reporter law, are “designed to encourage the reporting of suspected child abuse to the Missouri Division of Family Services.” *Nelson v. Freeman*, 537 F.Supp. 602, 605-606 (W.D. Mo. 1982), *citing Bradley v. Ray*, 904 S.W.2d 302 (Mo.App., W.D. 1995)*Shurn v. Monteleone*, 769 S.W.2d 188 (Mo.App., E.D. 1989)H.R.Rep. No. 685, 93rd Cong., 2d Sess. (1974)1974 U.S.C.C.A.N. 2763Krause at 216 (noting that the federal law “adopted the proposition that a statutory scheme designed to find cases should provide some kind of help when the cases are found.”).

Missouri's mandatory reporter law requires that kind of "followup," and it attempts to insure that children who are suspected of being abused have a chance to receive intervention and treatment. *See* Paulsen, *The Legal Framework For Child Protection*,

66 COLUM.L.REV. 679 (1966)*Bradley v. Ray*, 904 S.W.2d at 310, *citing* Drinan, *Saving Our Children*, 26 LOY.U.CHI.L.J. 137, 143 (1995). The National Clearinghouse on Child Abuse and Neglect Information (hereinafter "National Clearinghouse") reports that in 2001,

3 million referrals concerning the welfare of approximately 5 million children were made to CPS [child protective services] agencies throughout the United States.

National Clearinghouse, *Child Maltreatment 2001: Summary of Key Findings* (April 2003), available at <http://nccanch.acf.hhs.gov/pubs/factsheets/canstats.pdf>.

"Approximately 903,000 children were found to be victims of child maltreatment." *Id.*

This equates to a rate of victimization of 12.4 per 1,000 children in the population. *Id.*

"Overall, the rate of victimization is inversely related to the age of the child." *Id.*

"Child fatalities are the most tragic consequence of maltreatment." *Id.* Precise numbers are hard to come by, due to varying state reporting requirements and definitions of abuse and neglect, among other things, but the National Clearinghouse also reports that in 2001, an estimated 1,300 children died from abuse or neglect inflicted at the hands

of a parent or primary caregiver. *Id.*, see also National Clearinghouse, *Child Abuse and Neglect Fatalities: Statistics and Interventions* (August 2003), available at <http://nccanch.acf.hhs.gov/pubs/factsheets/fatality.pdf>. Just as young children are most likely to be victimized, so, too, children age 5 and younger “are the most frequent victims of child fatalities” due, in part, to their “dependency, small size, and inability to defend themselves.” *Id.*; see also Rosencrantz at 336. Deliberate shaking resulting in head trauma, the primary cause of inflicted injury child deaths in the United States, is often triggered by frustration or anger, which, in turn often arises when a young child will not stop crying, with feeding difficulties, or with toilet training problems. National Clearinghouse, *Child Maltreatment 2001: Summary of Key Findings* (April 2003). Undoubtedly, mandatory reporting laws, like Missouri’s, and the penalties for failing to

⁴ “A report is screened in if there is sufficient information to suggest an investigation is warranted.” National Clearinghouse on Child Abuse and Neglect Information,

How Does the Child Welfare System Work?

(September 2003), available at

<http://nccanch.acf.hhs.gov/pubs/factsheets/cpswork.pdf> National Clearinghouse, *How Does the Child Welfare System Work?* (September 2003), available at <http://nccanch.acf.hhs.gov/pubs/factsheets/cpswork.pdf>.

report, prodded many of those professionals to make such reports where they might otherwise have declined to do so. See National Clearinghouse on Child Abuse and Neglect Information,

Prevention Pays: The Costs of Not Preventing Child Abuse

and Neglect (February 2003 (republished)), available at

<http://nccanch.acf.hhs.gov/pubs/prevenres/pays.pdf>. Widom, C.S. (1992). *The*

Cycle of Violence. Washington, D.C.:

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In the Wake of

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Clearinghouse, *Prevention Pays: The Costs of Not Preventing Child Abuse and Neglect* (February 2003 (republished)).

In tight budgetary times like these, the economic costs of not preventing child abuse and neglect, and of not reporting or being required to report it in the first instance, become particularly acute. But the physical and emotional costs of abuse and neglect to Missouri's children are always too high. Missouri's mandatory reporter law represents a way to help reduce the costs – financial and otherwise – and given the absence of any constitutional imperative whatsoever suggesting that Missouri's mandatory reporter law cannot stand, it must be upheld.

Conclusion

In view of the foregoing, this Court should reverse the order of the Greene County Circuit Court finding Sections 210.120 to be unconstitutional and hold that those statutory sections, Missouri's mandatory reporter law, are not unconstitutionally void for vagueness.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 20th day of February, 2004, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 6,040 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

Cheryl Caponegro Nield