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## **The Attorney As Mandatory Reporter**

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## **The Attorney As Mandatory Reporter**

Hypothetical 1: Attorney X is meeting with John and Jane Doe to go over some estate planning matters. During the course of their meeting, attorney X learns that John and Jane Doe have recently completed marital counseling. Jane Doe discloses that approximately nine months earlier, during an argument with her husband, their 11-year-old son intervened. As a result, he was inadvertently injured by her husband. This injury resulted in a trip to the hospital and stitches. The hospital did not question the injury. Mr. Doe indicates that this incident caused him to seek counseling, and that the family has been in counseling since that time.

Hypothetical 2: Attorney X is meeting with Jane Smith regarding her wish to divorce from John Smith. Mr. and Mrs. Smith have three young daughters. Mrs. Smith indicates that Mr. Smith is physically abusive to her and her daughters. She also indicates that her oldest daughter, aged 11, told Mrs. Smith that Mr. Smith was touching her in her “private places.”

Under Texas law, does attorney X have a duty to report the alleged child abuse described in hypothetical 1, hypothetical 2, neither, or both? This article will examine an attorney’s duty to report suspected child abuse and neglect in Texas by reviewing the history of reporting laws, the law in other states and the law in Texas. It will also address the attorney client privilege and how it is affected by the Texas reporting law.

## General Overview of Reporting Laws

Child abuse is a problem of national concern.<sup>1</sup> Statistics indicate that past instances of child abuse and neglect, absent intervention, are predictors that future abuse is likely to occur.<sup>2</sup> During the time period from September 1, 2011, through August 31, 2012, there were 74,258 confirmed allegations of child abuse and neglect in Texas.<sup>3</sup> These allegations ranged from child abandonment,<sup>4</sup> emotional abuse,<sup>5</sup> medical neglect,<sup>6</sup> and neglectful supervision,<sup>7</sup> to physical abuse,<sup>8</sup> physical neglect,<sup>9</sup> refusal to accept parental responsibility,<sup>10</sup> and sexual abuse.<sup>11</sup>

The first model child abuse and neglect laws were developed by the Children's Bureau of the United States Department of Health, Education and Welfare in 1963.<sup>12</sup> By 1967, all fifty states had some type of reporting requirement.<sup>13</sup> To encourage individuals to report, every state has a statute which grants some type of civil and criminal immunity to those who report suspected child abuse and neglect in good faith.<sup>14</sup>

Child abuse reporting statutes currently exist in all fifty states.<sup>15</sup> Many states impose mandatory reporting requirements on various professionals (without listing attorneys among those professionals), and allow for permissive reporting by any other person or individual.<sup>16</sup> Massachusetts' statute simply provides that "any person" *may* report suspected abuse and neglect,<sup>17</sup> while Indiana, Utah and Wyoming *require* "any person" to report suspected abuse and neglect. (Emphasis added).<sup>18</sup> Eleven states require both various professionals (without specific mention of attorneys), and any other person to report suspected child abuse.<sup>19</sup> Wisconsin lists various professionals as mandatory

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