

# Rethinking the Mandatory Reporting Landscape in Relation to Child Abuse and Neglect Concerns: A Singapore Perspective

## I. INTRODUCTION

1. When does discipline enacted in the name of parenting morph into abuse?<sup>1</sup> This question has been under increasing scrutiny alongside heightened awareness of child abuse and neglect (“CAN”) issues in Singapore. After the spike in CAN cases during the Covid-19 pandemic, the number of cases investigated for serious CAN concerns “remained high” in 2022.<sup>2</sup> A recently released study also highlighted the persistence of an increasing number of “less serious child abuses cases”.<sup>3</sup>
2. As various jurisdictions become increasingly cognisant of the grave impact of CAN, legislative reforms have marched forward in lockstep to ensure greater protection for children and young persons.<sup>4</sup> Although much progress has been advanced in the realm of CAN-related protections in Singapore, there remain lacunae in this legal landscape – particularly with regards to the lack of mandatory reporting requirements for CAN cases.
3. More specifically, this paper posits that the mandatory reporting obligations under s 424 of the Criminal Procedure Code 2010 (“CPC”)<sup>5</sup> and s 6 of the Children and Young Persons Act 1993 (“CYPA”)<sup>6</sup> are inadequate in serving as an effective impetus for individuals to report suspected and actual cases of CAN.
4. Therefore, this paper seeks to examine whether a transformation in the mandatory reporting landscape is necessary to encourage both professionals and members of the public to play a more proactive role in the detection and prevention of CAN.
5. To fully accentuate the merits of a mandatory reporting regime, a structured analysis of Singapore’s unique legal and socio-cultural background must be undertaken. As such, this article will first begin by exploring the background of child protection in Singapore and laying out the existing gaps in our legal system. This will be followed by an examination of the viability of mandatory reporting in Singapore. Next, a proposal for a mandatory reporting scheme will be explained in detail. Finally, the potential implications of these amendments will be presented.

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<sup>1</sup> Chan Wing Cheong, “Corporal punishment of Children by parents: Is it discipline or violence and abuse?” (2018) 30 SAclJ 545 at p 550.

<sup>2</sup> Theresa Tan, “Number of child abuse cases investigated remained high in 2022: MSF”, *The Straits Times* (13 November 2024) < <https://www.straitstimes.com/singapore/number-of-child-abuse-cases-investigated-remained-high-in-2022-msf> > [accessed 20 January 2025].

<sup>3</sup> Theresa Tan, “Less serious child abuse cases in Singapore on the rise: Inaugural report on family violence”, *The Straits Times* (13 November 2024) < <https://www.straitstimes.com/singapore/less-serious-child-abuse-cases-in-singapore-on-the-rise-inaugural-report-on-family-violence> > [accessed 17 January 2025].

<sup>4</sup> See: Part IV below.

<sup>5</sup> Criminal Procedure Code 2010 (2020 Rev Ed) s 424.

<sup>6</sup> Children and Young Persons Act 1993 (2020 Rev Ed) s 6.

## II. BACKGROUND

### A. Child protection in Singapore

6. CAN cases in Singapore are managed by a comprehensive system comprising multiple agencies and professionals.<sup>7</sup> The Child Protective Service (“CPS”), operating under the Ministry of Social and Family Development (“MSF”), acts as the lead agency helming CAN cases. Other stakeholders in this ecosystem include social service agencies (“SSA”),<sup>8</sup> schools and hospitals. To identify possible instances of CAN, guidelines such as the Sector Specific Screening Guide (“SSSG”) and Child Abuse Reporting Guide (“CARG”) are used.<sup>9</sup>
7. An example of the case management life cycle follows. In the event of a suspected CAN case at the emergency department of a hospital, a police report is made and further investigations will be conducted. In hospitals such as KK Women’s and Children’s Hospital, a dedicated multidisciplinary Suspected Child Abuse and Neglect team will get involved in assessing child safety.<sup>10</sup> Where needed, the medical social worker will make a referral to CPS, a child protection specialist centre (“CPSC”) or a family service centre for further follow-up with the family.<sup>11</sup>
8. Alternatively, reports could be made by the school or by members of the public. Reports of suspected CAN are usually made through the National Anti-Violence and Sexual Harassment Helpline.<sup>12</sup>
9. From the case management life cycle, it is evident that different agencies and individuals play important roles in ensuring the timely reporting of suspected and actual CAN. As such, the legislative reforms proposed in this article perform the function of tightening these processes and concretising the legal responsibilities of various stakeholders.

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<sup>7</sup> Terrence Goh, “Forum: Multi-agency partnership in place to protect children from abuse” *The Straits Times* (1 August 2024) <<https://www.straitstimes.com/opinion/forum/forum-multi-agency-partnership-in-place-to-protect-children-from-abuse>> [accessed 21 January 2025].

<sup>8</sup> Terrence Goh, “Forum: Multi-agency partnership in place to protect children from abuse” *The Straits Times* (1 August 2024) <<https://www.straitstimes.com/opinion/forum/forum-multi-agency-partnership-in-place-to-protect-children-from-abuse>> [accessed 21 January 2025].

<sup>9</sup> Singapore uses the Structured Decision Making (“SDM”) Model in assessing CAN cases. The SDM model includes the SSSG and CARG. See Ministry of Social and Family Development Singapore, “Child Abuse Reporting Guide July 2020” *MSF* (2020) <[https://iltms.ssi.gov.sg/fileupload/lms/asset/Zip/b328222f-9f6b-4f4e-afe8-d83e06ae71c4/E-CARGSCORM/story\\_content/external\\_files/Singapore\\_CARG\\_Jul\\_2020.pdf](https://iltms.ssi.gov.sg/fileupload/lms/asset/Zip/b328222f-9f6b-4f4e-afe8-d83e06ae71c4/E-CARGSCORM/story_content/external_files/Singapore_CARG_Jul_2020.pdf)>. [accessed 21 January 2024].

<sup>10</sup> Suki Lor, “Spare the rod... the belt, the slap, the kick!” *Singapore Health MCI* [Singapore, Singapore] (November 2019) at p 3.

<sup>11</sup> Ministry of Social and Family Development Singapore, “Child Abuse Reporting Guide July 2020” *MSF* (2020) <[https://iltms.ssi.gov.sg/fileupload/lms/asset/Zip/b328222f-9f6b-4f4e-afe8-d83e06ae71c4/E-CARGSCORM/story\\_content/external\\_files/Singapore\\_CARG\\_Jul\\_2020.pdf](https://iltms.ssi.gov.sg/fileupload/lms/asset/Zip/b328222f-9f6b-4f4e-afe8-d83e06ae71c4/E-CARGSCORM/story_content/external_files/Singapore_CARG_Jul_2020.pdf)>. [accessed 21 January 2024].

<sup>12</sup> Ministry of Social and Family Development Singapore, “Break the Silence” *MSF* (2024) <<https://www.msf.gov.sg/what-we-do/break-the-silence>> [accessed 20 January 2025].

## **B. Existing laws that pertain to the reporting of CAN**

10. Under s 6(3) of the CYPA, read in conjunction with s 6(4) of the CYPA, ill-treatment of children and young persons (“CYP”) includes physical abuse, sexual abuse, emotional abuse, and neglect.<sup>13</sup> It also comprises “exploitations that result in actual or potential harm to a child’s health, development or dignity”.<sup>14</sup>
11. Reporting obligations are quintessential to the child protection regime, especially given the vulnerability and immaturity of children which may cripple their willingness or ability to seek assistance from the authorities when abuse is inflicted on them.<sup>15</sup> As such, we turn to the two pieces of legislation that relate to reporting duties.
12. The CPC will be analysed first as it expressly provides for general reporting obligations. Thereafter, the relationship between the CYPA and reporting laws will be explored.

### ***a. Criminal Procedure Code 2010***

13. Under s 424 of the CPC, everyone has a duty to report certain crimes of a “more egregious” nature.<sup>16</sup> This category encompasses a wide range of arrestable offences found in the Penal Code 1871 (“PC”), from murder to fraud.<sup>17</sup>
14. The abridged version of the provision is reproduced below:<sup>18</sup>

#### *Duty to give information of certain matters*

*424. Every person aware of the commission of or the intention of any other person to commit any arrestable offence punishable under Chapters 6, 7, 8, 12 and 16 of the Penal Code 1871 or under any of the following sections of the Penal Code 1871:*

*Sections 161, ..., and 506,*

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<sup>13</sup> Children and Young Persons Act 1993 s 6(3), Children and Young Persons Act 1993 s 6(4); Note: for purposes of this paper, “ill-treatment of CYPs” and “CAN” will be used interchangeably.

<sup>14</sup> Rathna N. Koman, “Small and safe” (2017) 8 Beijing Law Review 551 at p 552; with reference to Children and Young Persons Act 1993.

<sup>15</sup> Rathna N. Koman, “Small and safe” (2017) 8 Beijing Law Review 551 at p 555 and 557; with reference to Children and Young Persons Act 1993.

<sup>16</sup> Criminal Procedure Code 2010 s 424; Eugene Thuraisingam LLP, “Is It An Offence To Not Report Crime?” (2024) <<https://thuraisingam.com/news-mentions/is-it-an-offence-to-not-report-crime>> [accessed on 16 January 2024].

<sup>17</sup> Eugene Thuraisingam LLP, “Is It An Offence To Not Report Crime?” *Eugene Thuraisingam LLP* (2024) <<https://thuraisingam.com/news-mentions/is-it-an-offence-to-not-report-crime>> [accessed on 16 January 2024].

<sup>18</sup> Criminal Procedure Code 2010 s 424 – abridged version in main text. Full list of relevant sections is as follows: Sections 161, 162, 163, 164, 170, 171, 211, 212, 216, 216A, 226, 270, 281, 285, 286, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 399, 400, 401, 402, 427, 435, 436, 437, 438, 440, 442, 449, 450, 451, 452, 453, 459, 460, 489A, 489B, 489C, 489D and 506 of the Penal Code 1871.

*must, in the absence of reasonable excuse, the burden of proving which lies upon the person so aware, immediately give information to the officer in charge of the nearest police station or to a police officer of the commission or intention.*

15. In particular, s 424 of the CPC covers offences under Chapter 16 of the PC, which relates to “offences affecting the human body”.<sup>19</sup> Arrestable offences under this chapter include the infliction of grievous hurt, rape and other forms of sexual assault,<sup>20</sup> regardless of the victim’s age. As such, physical and sexual abuse of children would necessarily fall within this category as well.
16. However, it is noteworthy that certain offences such as the act of causing hurt *simpliciter* is not in itself an arrestable offence.<sup>21</sup> Only more severe forms of physical abuse will trigger a duty to report the crime.<sup>22</sup> This gives rise to ambiguity and a potential roadblock in the enforceability of s 424 of the CPC against witnesses who fail to report certain acts of CAN.
17. Additionally, s 424 of the CPC is not CAN-specific; the section does not compel the public to report emotional abuse or child neglect. These forms of CAN are not accounted for in the PC and therefore do not constitute arrestable offences under the First Schedule of the CPC. This is a jarring loophole given that cases of emotional abuse and neglect account for about 40% of CPS-managed cases.<sup>23</sup> Section 424 of the CPC is therefore not the most suitable safeguard as it does not provide adequate protection in the realm of CAN concerns, especially in relation to less severe forms of physical abuse, emotional abuse and neglect.
18. The efficacy of s 424 of the CPC, in relation to the cases of CAN that fall under this provision, will be explored. We will first explore the mechanism of s 424, before diving into its efficacy in compelling the public to report cases of suspected or actual CAN.
19. Reported case law detailing the operation and applicability of s 424 of the CPC is scarce. Court judgments that have ventured into s 424 of the CPC terrain had primarily addressed its applicability in relation to the now-defunct s 377A of the PC.<sup>24</sup> Given their irrelevance to CAN concerns, these cases will not be discussed here.

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<sup>19</sup> Penal Code 1871 (2020 Rev Ed) Chapter 16.

<sup>20</sup> Penal Code 1871 (2020 Rev Ed) Chapter 16.

<sup>21</sup> See: Criminal Procedure Code 2010, First Schedule, Chapter 3 (Punishments).

<sup>22</sup> See for eg., the offence of causing grievous hurt, which falls under s 322 and s 325 of the Penal Code 1871 (2020 Rev Ed).

<sup>23</sup> Ministry of Social and Family Development, “Domestic Violence Trends Report September 2024” (2024) <[https://www.msf.gov.sg/docs/default-source/researchdata/domesticviolencetrendsreport\\_2024.pdf?sfvrsn=7798229a\\_5](https://www.msf.gov.sg/docs/default-source/researchdata/domesticviolencetrendsreport_2024.pdf?sfvrsn=7798229a_5)> [accessed 20 January 2025] at p 11.

<sup>24</sup> See for eg., *Ong Ming Johnson v Attorney-General and other matters* [2020] SGHC 63; *Tan Seng Kee v Attorney-General and other appeals* [2022] SGCA 16.

20. Section 424 of the CPC has also been discussed in news publications.<sup>25</sup> In these publications, discussions focused on reporting obligations pertaining to the discovery of sexual assault.<sup>26</sup> However, they provide insights on when the duty is generally triggered, and what consequences could follow.
21. Firstly, Ministry of Home Affairs (“MHA”) has confirmed that consent is not required from victims before lodging a police report.<sup>27</sup> The MHA’s position, albeit extra-judicial, shows clear support for the proposition that the duty to report under s 424 of the CPC arises upon discovery of the commission or intention to commit any of the specified crimes. The lack of consent should not be a barrier to the making of a report.
22. Secondly, there is no bright line rule on how the offender of s 424 of the CPC would be penalised. In 2009, a teenage victim of sexual assault confided in a sector leader of a Catholic religious order.<sup>28</sup> However, the victim was unwilling to lodge a police report. The sector leader therefore abstained from doing so.<sup>29</sup> When the offender was eventually arrested in 2022, the sector leader was merely issued a police advisory reiterating his legal duty to report certain crimes.<sup>30</sup> No fine or jail term was imposed. It is unclear whether time had cured the offence, or if this was simply an act of prosecutorial discretion given the lack of express penalty provisions stipulated for the contravention of s 424 of the CPC.
23. Regardless, it is noteworthy that a failure to report a crime where necessary could kickstart a domino effect, triggering other sections of the PC. Although no reported case

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<sup>25</sup> Samuel Devaraj and Jean Lau, “Police issue advisory to man for not reporting sex crime by S’pore Catholic order member”, *The Straits Times* (7 May 2022) <<https://www.straitstimes.com/singapore/courts-crime/police-issued-advisory-against-man-64-in-spore-catholic-sex-abuse-case-for-not-reporting-crime>> [accessed 20 January 2024]; Justin Ong, “Civil duty to file police report against ex-lecturer, even if alleged victims did not: NUS”, *Today Online* (23 October 2020) <<https://www.todayonline.com/singapore/civil-duty-make-make-police-report-against-ex-lecturer-even-if-alleged-victims-did-not-nus>> [accessed 20 January 2024].

<sup>26</sup> Samuel Devaraj and Jean Lau, “Police issue advisory to man for not reporting sex crime by S’pore Catholic order member”, *The Straits Times* (7 May 2022) <<https://www.straitstimes.com/singapore/courts-crime/police-issued-advisory-against-man-64-in-spore-catholic-sex-abuse-case-for-not-reporting-crime>> [accessed 20 January 2024]; Justin Ong, “Civil duty to file police report against ex-lecturer, even if alleged victims did not: NUS”, *Today Online* (23 October 2020) <<https://www.todayonline.com/singapore/civil-duty-make-make-police-report-against-ex-lecturer-even-if-alleged-victims-did-not-nus>> [accessed 20 January 2024].

<sup>27</sup> Lu Xinyi, “Forum: No legal requirement for victim’s consent to lodge police report” *The Straits Times* (11 November 2020) <<https://www.straitstimes.com/opinion/forum/forum-no-legal-requirement-for-victims-consent-to-lodge-police-report>> [accessed on 3 February 2024].

<sup>28</sup> Samuel Devaraj and Jean Lau, “Police issue advisory to man for not reporting sex crime by S’pore Catholic order member”, *The Straits Times* (7 May 2022) <<https://www.straitstimes.com/singapore/courts-crime/police-issued-advisory-against-man-64-in-spore-catholic-sex-abuse-case-for-not-reporting-crime>> [accessed 20 January 2024].

<sup>29</sup> Samuel Devaraj and Jean Lau, “Police issue advisory to man for not reporting sex crime by S’pore Catholic order member”, *The Straits Times* (7 May 2022) <<https://www.straitstimes.com/singapore/courts-crime/police-issued-advisory-against-man-64-in-spore-catholic-sex-abuse-case-for-not-reporting-crime>> [accessed 20 January 2024].

<sup>30</sup> Samuel Devaraj and Jean Lau, “Police issue advisory to man for not reporting sex crime by S’pore Catholic order member”, *The Straits Times* (7 May 2022) <<https://www.straitstimes.com/singapore/courts-crime/police-issued-advisory-against-man-64-in-spore-catholic-sex-abuse-case-for-not-reporting-crime>> [accessed 20 January 2024].

law cements this proposition, connections between various provisions in the PC have been drawn by various law firms.<sup>31</sup>

24. Section 424 of the CPC, s 202 of the PC and s 204A of the PC arguably exist in the same pipeline.<sup>32</sup> A contravention of s 424 of the PC could be simultaneously characterized as an offence under s 202 of the PC, which involves the “[intentional omission to give] information respecting that offence which he is legally bound to give”.<sup>33</sup> Such inaction could result in a charge under s 202 of the PC, which attracts a jail term of up to 6 months, a fine, or both.<sup>34</sup>
25. Alternatively, an infringement of s 424 of the CPC could be construed as a simultaneous contravention of s 204A of the PC, which pertains to the obstruction, prevention, perversion or defeat of justice.<sup>35</sup> A contravention attracts imprisonment for up to 7 years, with a fine, or with both.<sup>36</sup> Although these online publications are not authoritative, they suggest the spectrum of penalties that the court could mete out when confronted with a contravention of s 424 of the CPC.
26. With pieces of the puzzle gradually being revealed through various cases, there has been no decisive authority that delineates the mechanism of s 424 of the CPC in relation to CAN. It remains uncertain as to how courts will approach such a case. Practically speaking, s 424 CPC will unlikely be discussed as a standalone in the criminal justice system, simply because the failure to report certain crimes will only be discovered and addressed peripherally to the primary crime committed.

***i. How effective is the CPC in compelling the general public to report cases of CAN?***

27. Despite its broader applicability as compared to s 6(1) of the CYPA,<sup>37</sup> s 424 of the CPC suffers from limitations in compelling the reporting of CAN.
28. The first issue would be its limited scope pertaining to CAN issues. Presently, s 424 of the CPC only applies to specified forms of physical and sexual abuse, while emotional abuse and child neglect exceed the confines of this provision.

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<sup>31</sup> Abdul Rahman Law Corporation, “Failure to Report a Crime” *ARLC* (2024) <<https://www.arlc.com.sg/failure-to-report-a-crime>> [accessed on 16 January 2024]; Eugene Thuraisingam LLP, “Is It An Offence To Not Report Crime?” *Eugene Thuraisingam LLP* (2024) <<https://thuraisingam.com/news-mentions/is-it-an-offence-to-not-report-crime>> [accessed on 16 January 2024].

<sup>32</sup> Penal Code 1871 s 202; Abdul Rahman Law Corporation, “Failure to Report a Crime”, *ARLC* (2024) <<https://www.arlc.com.sg/failure-to-report-a-crime>> [accessed on 16 January 2024].

<sup>33</sup> Penal Code 1871 s 202; Eugene Thuraisingam LLP, “Is It An Offence To Not Report Crime?” *Eugene Thuraisingam LLP* (2024) <<https://thuraisingam.com/news-mentions/is-it-an-offence-to-not-report-crime>> [accessed on 16 January 2024].

<sup>34</sup> Penal Code 1871 s 202.

<sup>35</sup> Penal Code 1871 s 204A; Abdul Rahman Law Corporation, “Failure to Report a Crime”, *ARLC* (2024) <<https://www.arlc.com.sg/failure-to-report-a-crime>> [accessed on 16 January 2024].

<sup>36</sup> Penal Code 1871 s 204A.

<sup>37</sup> Children and Young Persons Act 1993 s 6(1).

29. Secondly and relatedly, because the CPC is anchored on the PC and not the CYPA, it also does not specifically provide for mandatory reporting for CAN against minors. The Association of Women for Action and Research (“**AWARE**”) has suggested that reporting should be mandatory when the case involves minors under 18 years of age, which aligns with the demographic that CYPA seeks to protect.<sup>38</sup> This recommendation was put forth as **AWARE** was of the view that minors “are not of legal or statutory age to make the right decisions for themselves”.<sup>39</sup> This strengthens the argument that the scope of reporting duties pertaining to CAN cases must be reviewed, and the scope of reporting duties under s 424 CPC should be expanded to bolster protection for CYPs.
30. Thirdly, the wording of s 424 of the CPC is ambiguous. It imposes a legal duty on the community to report specified arrestable offences, save for cases where there had been a “reasonable excuse”.<sup>40</sup> Both legislation and case law are silent on what constitutes a “reasonable excuse” since this provision has not been given much spotlight in the courts.<sup>41</sup> This generates uncertainty as to when one could be exonerated.<sup>42</sup>
31. To bridge this lacuna, several recommendations have been made. For instance, in the context of sexual assault, **AWARE** has suggested that reasonable excuses could be made out when:<sup>43</sup>
- a. The maintenance of client trust and confidentiality in respect of the information trump the need to report the sexual assault under s 424 of the CPC, to effectively provide that support and assistance; and
  - b. The risk of prospective danger to the client or another person is not sufficiently clear or significant to outweigh the need for trust and confidentiality.

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<sup>38</sup> **AWARE**, “**AWARE**’s Position on Section 424 of the Criminal Procedure Code”, *AWARE* (October 2022) <<https://www.aware.org.sg/2022/10/awares-position-on-section-424-of-the-criminal-procedure-code/>> [accessed 15 January 2024].

<sup>39</sup> **AWARE**, “**AWARE**’s Position on Section 424 of the Criminal Procedure Code”, *AWARE* (October 2022) <<https://www.aware.org.sg/2022/10/awares-position-on-section-424-of-the-criminal-procedure-code/>> [accessed 15 January 2024].

<sup>40</sup> Criminal Procedure Code 2010 s 424.

<sup>41</sup> Chan Wing Cheong, “Forum: Clarity needed in legal duty to report crimes” *The Straits Times* (27 October 2020) <<https://www.straitstimes.com/opinion/forum/forum-clarity-needed-in-legal-duty-to-report-crimes>> [accessed on 15 January 2024].

<sup>42</sup> Chan Wing Cheong, “Forum: Clarity needed in legal duty to report crimes” *The Straits Times* (27 October 2020) <<https://www.straitstimes.com/opinion/forum/forum-clarity-needed-in-legal-duty-to-report-crimes>> [accessed on 15 January 2024].

<sup>43</sup> **AWARE**, “**AWARE**’s Position on Section 424 of the Criminal Procedure Code”, *AWARE* (October 2022) <<https://www.aware.org.sg/2022/10/awares-position-on-section-424-of-the-criminal-procedure-code/>> [accessed 15 January 2024].

32. Extra-judicially, MHA has stated that identifying a “reasonable excuse” for purposes of s 424 of the CPC would entail a fact-specific inquiry.<sup>44</sup> Individual circumstances will be examined to determine if an exception to the reporting duty should be granted.<sup>45</sup> Although the courts are no strangers to fact-based inquiries, MHA’s statement unfortunately does little to inform the public about the scope of their reporting duties under s 424 of the CPC.<sup>46</sup>
33. In a recent Straits Times report, lawyer Mr Chooi Jing Yen has suggested that a reasonable excuse could be found when the individual has asked questions of the relevant parties and concluded that no abuse had occurred.<sup>47</sup>
34. Finally, it is also uncertain if a time limitation could ratify an individual’s decision to not report an arrestable crime stipulated under s 424 of the CPC. An example raised in a Straits Times forum letter by Professor Chan Wing Cheong is where an 18-year-old victim reveals to a counsellor that “a sexual offence had happened to her when she was 12”.<sup>48</sup> Assuming that there is no danger of recurrence, would the counsellor be deemed to have contravened s 424 of the CPC for not reporting and therefore be penalised accordingly?<sup>49</sup> It seems that an absence of a time bar would place too arduous a burden on individuals, who may have only learnt about the offence many years after the CAN incident.
35. Given the inadequacy of s 424 of the CPC in addressing CAN concerns, we now turn to CAN-specific legislation to inspect its scope of protection.

### ***b. Children and Young Persons Act 1993***

36. Under s 6(1) CYPA, a person who has the “custody, charge or care” of a CYP is guilty of an offence if he “knowingly permits” a child or young person to be ill-treated by someone else.<sup>50</sup> Under s 6(2) CYPA, a caregiver bears the legal duty to “take such steps

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<sup>44</sup> Lu Xinyi, “Forum: No legal requirement for victim’s consent to lodge police report”, *The Straits Times* (11 November 2020) <<https://www.straitstimes.com/opinion/forum/forum-no-legal-requirement-for-victims-consent-to-lodge-police-report>> [accessed 15 January 2024].

<sup>45</sup> Lu Xinyi, “Forum: No legal requirement for victim’s consent to lodge police report”, *The Straits Times* (11 November 2020) <<https://www.straitstimes.com/opinion/forum/forum-no-legal-requirement-for-victims-consent-to-lodge-police-report>> [accessed 15 January 2024].

<sup>46</sup> Lu Xinyi, “Forum: No legal requirement for victim’s consent to lodge police report”, *The Straits Times* (11 November 2020) <<https://www.straitstimes.com/opinion/forum/forum-no-legal-requirement-for-victims-consent-to-lodge-police-report>> [accessed 15 January 2024].

<sup>47</sup> Taufiq Zalizan, “Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?” *Today Online* (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed on 16 February 2024].

<sup>48</sup> Chan Wing Cheong, “Forum: Clarity needed in legal duty to report crimes” *The Straits Times* (27 October 2020) <<https://www.straitstimes.com/opinion/forum/forum-clarity-needed-in-legal-duty-to-report-crimes>> [accessed on 15 January 2024].

<sup>49</sup> Chan Wing Cheong, “Forum: Clarity needed in legal duty to report crimes” *The Straits Times* (27 October 2020) <<https://www.straitstimes.com/opinion/forum/forum-clarity-needed-in-legal-duty-to-report-crimes>> [accessed on 15 January 2024].

<sup>50</sup> Children and Young Persons Act 1993 s 6(1).

as [he] could reasonably have been expected [...] to take”, in order to protect the child from the risk.<sup>51</sup>

37. The relevant sub-sections are reproduced below:<sup>52</sup>

***Ill-treatment of child or young person***

**6.—(1)** *A person shall be guilty of an offence if, being a person who has the custody, charge or care of a child or young person, he or she ill-treats the child or young person or causes, procures or knowingly permits the child or young person to be ill-treated by any other person.*

**(2)** *For the purposes of subsection (1) —*

*(a) a person (A) knowingly permits a child or young person (B) to be ill-treated by another person (C) if A being a person who has the custody, charge or care of B, knows or has reason to believe that B was at risk of being ill-treated by C, and failed to take such steps as A could reasonably have been expected in A’s circumstances to take to protect B from that risk; and*

*(b) A’s circumstances mentioned in paragraph (a) include but are not limited to A’s past or present experiences of being ill-treated by C, if any.*

38. Under s 6(6) of the CYPA, this offence may attract a jail term, a fine, or both.<sup>53</sup>

39. Although there is no express requirement in the statute for person (A) to report the matter to the authorities, there is arguably an implied duty to do so as refraining from making a report could be akin to knowingly permitting the CAN to persist under certain circumstances.

40. A broad interpretation of this provision would ensnare different behaviours and could likely encompass a failure to report the CAN to the relevant authorities.<sup>54</sup> This is further supported by the Parliament’s overarching intention for the CYPA to be administered and applied in a manner that takes the welfare and best interests of CYP as the “first and paramount consideration”.<sup>55</sup>

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<sup>51</sup> Children and Young Persons Act 1993 s 6(2).

<sup>52</sup> Children and Young Persons Act 1993 s 6(1); Children and Young Persons Act 1993 s 6(2).

<sup>53</sup> Children and Young Persons Act 1993 s 6(6).

<sup>54</sup> Taufiq Zalizan, “Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?” *Today Online* (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed on 16 February 2024].

<sup>55</sup> *Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 (Dr Vivian Balakrishnan, Minister for Community Development, Youth and Sports).

41. A recent case illustrates the operation of s 6 of the CYPA.<sup>56</sup> There, a 45-year-old mother caught her son sexually abusing her daughter multiple times yet failed to report the assaults to the police.<sup>57</sup> Her cover-up amounted to an act of knowingly permitting the ill treatment of a child under the CYPA.<sup>58</sup> She was sentenced to 4.5 years' imprisonment.<sup>59</sup>
42. Examining the repository of case law pertaining to s 6 of the CYPA (or its former equivalent),<sup>60</sup> its applicability has been notably limited to caregivers.<sup>61</sup> Despite this, s 6 of the CYPA has been said to possibly “extend beyond parents, legal guardians or even family”, to comprise even healthcare professionals and educators.<sup>62</sup> Notably, the present wording of the section still clearly excludes its applicability to members of the public.
43. Courts will have to clarify this when a suitable case presents itself. This article takes the stance that a list of those who have “custody, charge or care”<sup>63</sup> should be specified to consolidate the groups of professionals who have a mandatory duty to report cases of CAN. Although each sector may have their own specific guidelines, it would be fruitful to clearly delineate when the need for mandatory reporting arises. This will be explored more in Part V below.
44. Section 115 of the CYPA would be more relevant to the general public. For ease of reference, the relevant sub-sections are reproduced below:<sup>64</sup>

***Information relating to children and young persons in need of care or protection***

***115.—(1) Any person who knows or has reason to suspect that a child or young person is in need of care or protection may make a notification to the Director-General, a protector or a police officer of the facts and circumstances on which his or her knowledge or suspicion is based.***

...

***(3) A person who makes a notification under subsection (1) —***

<sup>56</sup> Children and Young Persons Act 1993 s 6.

<sup>57</sup> Nikki Yeo, “4.5 years’ jail for mother who covered up son’s rape and sexual abuse of his sister”, *Channel News Asia* (22 February 2024) <<https://www.channelnewsasia.com/singapore/4-and-half-years-jail-mother-covered-sons-rape-sexual-abuse-sister-4141321>> [accessed on 22 February 2024].

<sup>58</sup> Nikki Yeo, “4.5 years’ jail for mother who covered up son’s rape and sexual abuse of his sister”, *Channel News Asia* (22 February 2024) <<https://www.channelnewsasia.com/singapore/4-and-half-years-jail-mother-covered-sons-rape-sexual-abuse-sister-4141321>> [accessed on 22 February 2024].

<sup>59</sup> Nikki Yeo, “4.5 years’ jail for mother who covered up son’s rape and sexual abuse of his sister”, *Channel News Asia* (22 February 2024) <<https://www.channelnewsasia.com/singapore/4-and-half-years-jail-mother-covered-sons-rape-sexual-abuse-sister-4141321>> [accessed on 22 February 2024].

<sup>60</sup> Children and Young Persons Act (Cap 38, 2001 Rev Ed) s 5.

<sup>61</sup> See for instance: *Public Prosecutor v BDB* [2017] SGCA 69; *Public Prosecutor v GEC* [2021] SGDC 236. The defendants in both cases were the parents of the victims.

<sup>62</sup> Taufiq Zalizan, “Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?” *Today Online* (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed on 16 February 2024].

<sup>63</sup> Children and Young Persons Act 1993 s 6(2).

<sup>64</sup> Children and Young Persons Act 1993 s 115(1); Children and Young Persons Act 1993 s 115(3).

*(a) shall not, by virtue of doing so, be held in any proceedings before any court or tribunal or in any other respect to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and*

*(b) insofar as the person has acted in good faith, shall incur no civil or criminal liability in respect of the notification or the provision of any information contained in the notification.*

45. Sections 115(1) and 115(3) of the CYPA are steeped with a flavour of Good Samaritan legislation.<sup>65</sup> It focuses on protecting individuals who decide to step forward to make reports about suspected CAN. Although this protects individuals who decide to make the reports, the provision does not encompass any penalty for a failure to report the suspected CAN, and may therefore not generate the same compulsion that mandatory reporting laws would. This creates an uncomfortable gap in the protection afforded to vulnerable CYPs.

46. Alongside the 2019 CYPA amendments, Singapore has gradually strengthened its CAN-related systems to compel caregivers to be more alert and responsive in reporting cases of CAN.<sup>66</sup> For instance, standardised tools are to be rolled out for frontline professionals to better identify and report cases of family violence.<sup>67</sup> Another example of governmental efforts would be MSF's "Break the Silence" campaign, which encourages victims and witnesses of CAN to seek help.<sup>68</sup>

47. However, significant counterweights exist.<sup>69</sup> For instance, caregivers may still feel reluctant to report instances of CAN despite their legal obligations under s 6 of the CYPA due to their desire to preserve the family unit, the avoidance or denial of the abuse, or fear of retaliation from the perpetrator of the abuse.<sup>70</sup> While these concerns are valid, the failure to report CAN timely could perpetuate a cycle of violence. As such, mandatory reporting requirements can intervene to minimise the failure to make reports.

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<sup>65</sup> For an example of a standalone Good Samaritan legislation in Singapore, albeit in a different context, see: Good Samaritan Food Donation Bill 2024. In that context, the Good Samaritan legislation is meant to "[protect] certain food donors from liability for any death or personal injury resulting from the consumption of food donated by those food donors under certain conditions.

<sup>66</sup> Children and Young Persons (Amendment) Bill 2019.

<sup>67</sup> Louisa Tang, "MSF to launch standardised tools for frontline workers to better detect, report domestic violence" *Channel News Asia* (10 January 2024) <<https://www.channelnewsasia.com/singapore/msf-launch-standardised-tools-frontline-workers-detect-domestic-violence-4037121>> [accessed on 16 February 2024].

<sup>68</sup> Ministry of Social and Family Development, "Break the Silence" *MSF* (2024) <<https://www.msf.gov.sg/what-we-do/break-the-silence>> [accessed 20 January 2025].

<sup>69</sup> Taufiq Zalizan, "Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?" *Today Online* (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed 16 February 2024].

<sup>70</sup> Taufiq Zalizan, "Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?" *Today Online* (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed 16 February 2024].

### **III. VIABILITY OF A MANDATORY REPORTING REGIME**

#### **A. Support for mandatory reporting for CAN cases**

48. According to a survey published by the Singapore Children's Society, there has been increasing support for the idea of a mandatory reporting for professionals in Singapore.<sup>71</sup> This trend could reflect the public's attribution of more responsibility to "individuals who may be deemed to be in the best position to detect CAN, given their expertise and regular contact with children".<sup>72</sup> Examples listed included doctors, teachers, and social workers.<sup>73</sup>
49. Notably, there was no similar trend with regards to mandating CAN reporting for the public.<sup>74</sup> Reasons against mandatory reporting included the respect for individuals' autonomy, the ambiguity and idiosyncratic nature of CAN, the limitations of mandatory reporting legislation, and the safety of the reporters of CAN.<sup>75</sup>
50. From the statistics shown, it appears that there may be uncertainty about the receptiveness towards these suggested reforms, so consultations with stakeholders should be conducted to ascertain the viability of executing these laws. Additionally, despite the comprehensive survey conducted by the Singapore Children's Society, it is noteworthy that the latest data sets presented in that study were extracted more than a decade ago. As such, it cannot be definitive of the views of Singaporeans today.

#### **B. Singapore's socio-cultural backdrop**

51. Parenting can look very different across different cultures, which could in turn be understood through the cultural normativeness theory.<sup>76</sup> This theory posits that "the function of parenting behaviours can differ by their normativeness, such that the parent and child may interpret specific behaviours, including harsh discipline, as appropriate displays of care in contexts where such behaviours are deemed acceptable".<sup>77</sup>

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<sup>71</sup> Jacky Tan, John M Elliott & Cuthbert Teo, "Changing Public Perceptions of Child Abuse and Neglect in Singapore (Revised)" (Research Monograph No 10R, Singapore Children's Society) (2016) at p 25.

<sup>72</sup> Jacky Tan, John M Elliott & Cuthbert Teo, "Changing Public Perceptions of Child Abuse and Neglect in Singapore (Revised)" (Research Monograph No 10R, Singapore Children's Society) (2016) at p 26.

<sup>73</sup> Jacky Tan, John M Elliott & Cuthbert Teo, "Changing Public Perceptions of Child Abuse and Neglect in Singapore (Revised)" (Research Monograph No 10R, Singapore Children's Society) (2016) at p 26.

<sup>74</sup> Jacky Tan, John M Elliott & Cuthbert Teo, "Changing Public Perceptions of Child Abuse and Neglect in Singapore (Revised)" (Research Monograph No 10R, Singapore Children's Society) (2016) at p 25 - 26.

<sup>75</sup> Jacky Tan, John M Elliott & Cuthbert Teo, "Changing Public Perceptions of Child Abuse and Neglect in Singapore (Revised)" (Research Monograph No 10R, Singapore Children's Society) (2016) at p 27 - 28.

<sup>76</sup> Mioko Sudo *et al*, "Physical discipline as a normative childhood experience in Singapore" (2023) 17 (1) Child and Adolescent Psychiatry and Mental Health at p 2.

<sup>77</sup> Mioko Sudo *et al*, "Physical discipline as a normative childhood experience in Singapore" (2023) 17 (1) Child and Adolescent Psychiatry and Mental Health at p 2.

52. In Singapore, strict parenting behaviours such as the caning of a child are accepted as a sign of care and concern with the child's best interests in mind. Given the collectivistic Asian values espoused in our society,<sup>78</sup> it is unsurprising that there is a high acceptance rate for strict parenting measures in Singapore.<sup>79</sup>
53. However, this line of thinking and the downplaying of the negative impacts of CAN may take a toll on a child's well-being. Studies have shown that physical discipline can be linked to detrimental outcomes for children, even in cultures where it is considered a norm.<sup>80</sup>
54. With the entrenchment of such views, it is no wonder that there can be hesitation when deciding whether to report cases of suspected CAN. Witnesses could be wary of the implications of making reports, such as hurting the family's relationships and facing retaliation from the suspected abuser.<sup>81</sup> This provides even more of an impetus for legislative reform.
55. With mandatory reporting clearly delineated and codified, professionals and individuals in the community would be able to carry out their protective functions with greater confidence. Guidance can be drawn from other jurisdictions that have come up with mandatory reporting regimes to address this similar issue.

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<sup>78</sup> See: Mioko Sudo *et al*, "Physical discipline as a normative childhood experience in Singapore" (2023) 17 (1) *Child and Adolescent Psychiatry and Mental Health* at p 2. Confucian values, which are widely endorsed in Singapore, also assign the responsibility on the elders in each family to firmly discipline and govern children to ensure their achievement of societal goals. Conversely, children must be filial, loyal, and respectful towards their elders.

<sup>79</sup> Chan Wing Cheong, "Corporal punishment of Children by parents: Is it discipline or violence and abuse?" (2018) 30 *SACLJ* 545 at p 549.

<sup>80</sup> Mioko Sudo *et al*, "Physical discipline as a normative childhood experience in Singapore" (2023) 17 (1) *Child and Adolescent Psychiatry and Mental Health* at p 4.

<sup>81</sup> Taufiq Zalizan, "Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?" *Today Online* (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed 16 February 2024].

#### IV. DEVELOPMENTS IN OTHER JURISDICTIONS

56. Responding to increasing CAN concerns, other jurisdictions have strengthened their mandatory reporting regimes. Several jurisdictions have designated certain professionals as the target of their mandatory reporting laws,<sup>82</sup> while some have opted to impose reporting duties on the general public.

57. This article will analyse different jurisdictions to identify learning points for a potential enactment of a mandatory reporting regime in Singapore.

##### A. Australia - Northern Territory (NT)

###### a. *Overview of legislation*

58. In NT, the Care and Protection of Children Act 2007 (“CPCA”) lays out the laws pertaining to child protection and safety.<sup>83</sup> The scope of reporting obligations under CPCA is broad; nobody in NT is exempted from the legal duty to report actual and potential CAN.<sup>84</sup> The relevant provision, s 26(1), is reproduced below:<sup>85</sup>

###### **26 – (1) Reporting obligations**

*A person is guilty of an offence if the person:*

*(a) believes, on reasonable grounds, any of the following:*

*(i) a child has suffered or is likely to suffer harm or exploitation;*

*(ii) a child aged less than 14 years has been or is likely to be a victim of a sexual offence;*

*(iii) a child has been or is likely to be a victim of an offence against section 128 of the Criminal Code; and*

*(b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer:*

*(i) that belief; and*

*(ii) any knowledge of the person forming the grounds for that belief; and*

*(iii) any factual circumstances on which that knowledge is based.*

*Maximum penalty: 200 penalty units*

59. Under s 26(1) of the CPCA, a person must make a report to the relevant authorities upon reasonable belief that a child is suffering from abuse.<sup>86</sup> Failing to fulfil the obligations under s 26(1)(b) may attract a maximum of 200 penalty units.<sup>87</sup> According

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<sup>82</sup> See, for example: Mandatory Reporting of CAN Bill 2023 (Hong Kong).

<sup>83</sup> Care and Protection of Children Act 2007 (NT).

<sup>84</sup> Care and Protection of Children Act 2007 (NT) s 26.

<sup>85</sup> Care and Protection of Children Act 2007 (NT) s 26(1).

<sup>86</sup> Care and Protection of Children Act 2007 (NT) s 26(1).

<sup>87</sup> Care and Protection of Children Act 2007 (NT) s 26(1).

to the Penalty Units Act 2009, this roughly translates into a maximum of an AUD\$35,200 fine.<sup>88</sup>

60. Mirroring the wording featured in s 424 of the CPC,<sup>89</sup> s 26(3) of the CPCA houses an identical defence of a “reasonable excuse”.<sup>90</sup> Statutorily, there is a similar lack of definition as to what constitutes a reasonable excuse.<sup>91</sup>
61. However, guidance can be sought from a neighbouring legislation – the Domestic and Family Violence Act 2007 (NT) (“**DFVA**”),<sup>92</sup> which states that all persons must report domestic violence, including CAN, when they believe the victim’s life is under threat. It also provides for the defence of “reasonable excuse”.<sup>93</sup>
62. Under s 124A(3)(c) of the DFVA, a reasonable excuse is established when a person reasonably believes that:
  - a. Someone else had already reported the same belief about the circumstances of family violence;
  - b. The person was planning to remove the victim before reporting the violence as soon as practicable thereafter; or
  - c. If they had made the report as soon as reasonably practicable, “a serious or imminent threat to the life or safety of any person may result”.<sup>94</sup>
63. A similar standard could be applied in the context of the NT CPCA, which seeks to protect children from various types and degrees of harm. The DFVA also states that a person acting in good faith, but making an otherwise inaccurate report, will not be held civilly or criminally liable for contacting the authorities.<sup>95</sup>
64. Despite differing laws across different states, Australia generally boasts a more comprehensive fleet of mandatory reporting obligations.<sup>96</sup> Unlike Singapore, most Australian states have extended the scope of reporting duties to professionals or to the public.<sup>97</sup>

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<sup>88</sup> Penalty Units Act 2009 (NT) s 4(1).

<sup>89</sup> Criminal Procedure Code 2010 s 424.

<sup>90</sup> Care and Protection of Children Act 2007 (NT) s 26(3).

<sup>91</sup> Care and Protection of Children Act 2007 (NT) s 26(3).

<sup>92</sup> Domestic and Family Violence Act 2007 (NT).

<sup>93</sup> Domestic and Family Violence Act 2007 (NT) s 124A(3)(c).

<sup>94</sup> Domestic and Family Violence Act 2007 (NT) s 124A(3)(c).

<sup>95</sup> Domestic and Family Violence Act 2007 (NT) s 125(1).

<sup>96</sup> Australian Government, “Mandatory reporting of child abuse and neglect” *Australian Institute of Family Studies* (August 2023) <<https://aifs.gov.au/resources/resource-sheets/mandatory-reporting-child-abuse-and-neglect#:~:text=Legislation%20in%20the%20ACT%2C%20NT,the%20age%20of%2016%20years.>> [accessed 12 February 2024] at para 4.

<sup>97</sup> Australian Government, “Mandatory reporting of child abuse and neglect” *Australian Institute of Family Studies* (August 2023) <<https://aifs.gov.au/resources/resource-sheets/mandatory-reporting-child-abuse-and-neglect#:~:text=Legislation%20in%20the%20ACT%2C%20NT,the%20age%20of%2016%20years.>> [accessed 12 February 2024] at para 5.

## *b. Successes and limitations*

65. NT is the only territory in Australia that imposes mandatory reporting on all persons. In states such as New South Wales and Tasmania, mandatory reporting is only prescribed for certain professions.<sup>98</sup>
66. The efficacy of stringent and broadly applied reporting laws is observed from the fact that the reporting rate for CAN in the NT is “almost five times the rate of any other Australian jurisdiction”.<sup>99</sup> According to the Australian Institute of Health and Welfare, 9.55% of children in the NT were “the subject of an investigation or notification to child protection services in 2020/2021”.<sup>100</sup>
67. However, with only 31.9% of cases being substantiated, NT has the second lowest substantiation rate of CAN reports.<sup>101</sup> “Substantiation” here means that only 31.9% of the reported cases were, upon investigation, determined to have reasonable cause for the belief that CAN has occurred.<sup>102</sup> Nevertheless, the raw number of substantiated cases of CAN in the NT far exceeds that of other territories.<sup>103</sup>
68. However, there may be drawbacks to such an expansive and inclusive regime. For instance, victims may suffer immense psychological stress if reports are made without their consent.<sup>104</sup> It may also drive a wedge between family members and undermine the

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<sup>98</sup> See: Children and Young Persons (Care and Protection) Act 1998 (NSW) s 27; Children, Young Persons and Their Families Act 1997 (Tasmania) s 14.

<sup>99</sup> Matt Cunningham and Miriah Davis, “Child abuse in the Northern Territory almost five times higher than any other Australian jurisdiction, data shows”, *Sky News Australia* (14 April 2023) <<https://www.skynews.com.au/australia-news/child-abuse-in-the-northern-territory-almost-five-times-higher-than-any-other-australian-jurisdiction-new-data-shows/news-story/839a4e9347147d9470657c9bc2a40dcb#>> [accessed 12 February 2024] at para 1.

<sup>100</sup> Australian Government, “Substantiations within the child protection system remain stable”, *Australian Institute of Health and Welfare* (6 June 2023) <<https://www.aihw.gov.au/news-media/media-releases/2023/june/substantiations-within-the-child-protection-system>> [accessed 12 February 2024], as referred to in Matt Cunningham and Miriah Davis, “Child abuse in the Northern Territory almost five times higher than any other Australian jurisdiction, data shows”, *Sky News Australia* (14 April 2023) <<https://www.skynews.com.au/australia-news/child-abuse-in-the-northern-territory-almost-five-times-higher-than-any-other-australian-jurisdiction-new-data-shows/news-story/839a4e9347147d9470657c9bc2a40dcb#>> [accessed 12 February 2024] at para 2.

<sup>101</sup> Matt Cunningham and Miriah Davis, “Child abuse in the Northern Territory almost five times higher than any other Australian jurisdiction, data shows”, *Sky News Australia* (14 April 2023) <<https://www.skynews.com.au/australia-news/child-abuse-in-the-northern-territory-almost-five-times-higher-than-any-other-australian-jurisdiction-new-data-shows/news-story/839a4e9347147d9470657c9bc2a40dcb#>> [accessed on 12 February 2024] at para 5-6.

<sup>102</sup> Australian Government, “Substantiations within the child protection system remain stable” *Australian Institute of Health and Welfare* (June 2023) <<https://www.aihw.gov.au/news-media/media-releases/2023/june/substantiations-within-the-child-protection-system>> [accessed 12 February 2024] at para 5.

<sup>103</sup> Matt Cunningham and Miriah Davis, “CAN in the Northern Territory almost five times higher than any other Australian jurisdiction, data shows”, *Sky News Australia* (14 April 2023) <<https://www.skynews.com.au/australia-news/child-abuse-in-the-northern-territory-almost-five-times-higher-than-any-other-australian-jurisdiction-new-data-shows/news-story/839a4e9347147d9470657c9bc2a40dcb#>> [accessed 12 February 2024] at para 7.

<sup>104</sup> AWARE, “AWARE’s Position on Section 424 of the Criminal Procedure Code”, *AWARE* (11 October 2022) <<https://www.aware.org.sg/2022/10/awares-position-on-section-424-of-the-criminal-procedure-code/>> [accessed 15 January 2024] at para 11.

autonomy of victims.<sup>105</sup> These complicated yet valid concerns must be addressed by lawmakers and social service agencies. CYP must be provided with adequate psychosocial support if their abuse has been made known to the authorities.

69. Additionally, concerns of over-reporting may emerge.<sup>106</sup> Although mandatory reporting obligations encourage proactivity in the community, the toll on the judicial system and social service agencies must be managed well too. If the sheer number of reports overwhelms the system and there is a misallocation of resources,<sup>107</sup> then the purpose of mandatory reporting would be undermined.

## **B. Canada**

### ***a. Overview of legislation***

70. Several states in Canada have statutes that enshrine the legal duty to report CAN. For instance, Ontario has the Child, Youth and Family Services Act 2017 (“CYFSA”).<sup>108</sup>

71. Under s 125(1) of the CYFSA, all persons with reasonable grounds to suspect that there has been the occurrence or risk of physical, sexual, emotional abuse or neglect towards a child must make a report to the relevant “society” immediately.<sup>109</sup> In the CYFSA, “society” refers to a person’s local Children’s Aid Society.<sup>110</sup>

72. In addition, s 125(2) of the CYFSA also stipulates an ongoing duty to report CAN.<sup>111</sup> This essentially means that “even if the person has made previous reports with respect to the same child”, the person is still legally obliged to make a separate report if there are “additional reasonable grounds” to suspect CAN under s 125(1) of the CYFSA.<sup>112</sup>

73. Under s 125(5) of the CYFSA, only officers or professionals who contravene the abovementioned duties will be guilty of an offence.<sup>113</sup> This contravention must have

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<sup>105</sup> AWARE, “AWARE’s Position on Section 424 of the Criminal Procedure Code”, *AWARE* (11 October 2022) <<https://www.aware.org.sg/2022/10/awares-position-on-section-424-of-the-criminal-procedure-code/>> [accessed 15 January 2024] at para 15.

<sup>106</sup> Mical Raz, “Calling child protective services is a form of community policing that should be used appropriately: Time to engage mandatory reporters as to the harmful effects of unnecessary reports” (2020) *Child and Youth Services Review* 110; Taufiq Zalizan, “Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?” *Today Online* (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed 16 February 2024] at para 11.

<sup>107</sup> Mical Raz, “Calling child protective services is a form of community policing that should be used appropriately: Time to engage mandatory reporters as to the harmful effects of unnecessary reports” (2020) *Child and Youth Services Review* 110 at p 1.

<sup>108</sup> *Child, Youth and Family Services Act*, O 2017, c 14, Sched 1 (Can) s 125(1).

<sup>109</sup> *Child, Youth and Family Services Act*, O 2017, c 14, Sched 1 (Can) s 125(1): see subsections (1) – (13) for specific details on recognised forms of CAN in Canada.

<sup>110</sup> *Child, Youth and Family Services Act*, O 2017, c 14, Sched 1 (Can) s 2, 34 and 35.

<sup>111</sup> *Child, Youth and Family Services Act*, O 2017, c 14, Sched 1 (Can) s 125(2).

<sup>112</sup> *Child, Youth and Family Services Act*, O 2017, c 14, Sched 1 (Can) s 125(2).

<sup>113</sup> *Child, Youth and Family Services Act*, O 2017, c 14, Sched 1 (Can) s 125(5)(a).

been based on information “obtained in the course of the person’s professional or official duties”.<sup>114</sup> Under s 125(6) of the CYFSA, these include “every person who performs professional or official duties with respect to children”.<sup>115</sup> Consequently, under s 125(9) of the CYFSA, an offender will be liable for a fine not exceeding CAD\$5000.<sup>116</sup>

74. This statute serves as a push factor for everyone to step up and report cases of CAN. Even if an erroneous report has been made, s 125(10) of the CYFSA confers immunity to all reporters against lawsuits.<sup>117</sup> The only exception to this would be when the reporter has acted with malice, or in the absence of reasonable grounds for his suspicion.<sup>118</sup>

75. Interestingly, although the wording of s 125(1) of the CYFSA imposes a duty to report CAN on all persons, only officers and professionals can be penalised for a contravention of the duty.<sup>119</sup> There are no consequences for members of the community, such as neighbours, for failing to make reports of suspected or commissioned CAN in Ontario.

76. There is limited case law pertaining to reporter liability.<sup>120</sup> So far, the defendant reporters who have been charged have successfully defended themselves.<sup>121</sup> There are no reported cases against anyone other than specified officers and professionals, since Ontario law does not mete out any sanctions for members of the public who fail to report CAN.<sup>122</sup>

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<sup>114</sup> Child, Youth and Family Services Act, O 2017, c 14, Sched 1 (Can) s 125(5)(b).

<sup>115</sup> Child, Youth and Family Services Act, O 2017, c 14, Sched 1 (Can) s 125(6): this category encompasses healthcare professionals, educators, religious officials, mediators, arbitrators, peace officers, coroners, lawyers, and service providers.

<sup>116</sup> Child, Youth and Family Services Act, O 2017, c 14, Sched 1 (Can) s 125(9).

<sup>117</sup> Child, Youth and Family Services Act, O 2017, c 14, Sched 1 (Can) s 125(10).

<sup>118</sup> Child, Youth and Family Services Act, O 2017, c 14, Sched 1 (Can) s 125(10).

<sup>119</sup> Child, Youth and Family Services Act, O 2017, c 14, Sched 1 (Can) s 125(5).

<sup>120</sup> Kayla Gordon, “Good Intentions, Questionable Results: The Shortcomings of Mandated Reporting for Child Maltreatment” (2019) Western OJS at p 10.

<sup>121</sup> *Rolon v Bell* [2015] ONSC 6042; *BK2 v Chatham-Kent Children’s Services* [2016] ONSC 1921, as referenced in Kayla Gordon, “Good Intentions, Questionable Results: The Shortcomings of Mandated Reporting for Child Maltreatment” (2019) Western OJS.

<sup>122</sup> Child, Youth and Family Services Act, O 2017, c 14, Sched 1 (Can) s 125(5).

## V. RECOMMENDATIONS – RAISING THE BAR

77. Through a comparative lens, there is a stark disparity in the scope and clarity of mandatory reporting duties in Singapore and other jurisdictions. There remain lacunae in our legal landscape that ought to be filled.

78. As explored above, there are two primary issues that need to be resolved in the CAN reporting regime:

- a. the limitations of the existing scope of mandatory reporting duties for the public; and
- b. the ambiguity of what constitutes a “reasonable excuse”.

79. After discussing these issues, the proposed amendments will be presented in part C below. For completeness, non-legal recommendations will also be made.

### A. Expansion of the scope of mandatory reporting duties

80. Two options were considered for this proposal for legislative reform. The first would be to expressly subsume all forms of CAN offences under the ambit of s 424 of the CPC.<sup>123</sup> However, this is not the optimal solution for Singapore. The CPC is geared towards criminal offences in the PC,<sup>124</sup> whereas CAN matters are exclusive to the CYPA. As such, having a crossover between two pieces of legislation may result in unwarranted confusion for the public.

81. The second, and more optimal solution, would be to expand the scope of s 6(1) of the CYPA.<sup>125</sup> Instead of merely prohibiting those with “the custody, charge or care of a child or young person” from knowingly permitting CAN,<sup>126</sup> a more general legal duty to report suspected or commissioned CAN could be imposed on the public.

82. By extending the target demographic of this provision to the general public, lawmakers would be able to include as many people as possible who are in frequent and close contact with CYP. Besides healthcare professionals and educators, this scope would include even those who live next-door or in the same neighborhood as these children. Such a blanket provision would help in meeting the object of the CYPA,<sup>127</sup> which is to place “the welfare and best interests of the child” as “the first and paramount consideration”.<sup>128</sup>

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<sup>123</sup> Criminal Procedure Code 2010 s 424.

<sup>124</sup> Criminal Procedure Code 2010.

<sup>125</sup> Children and Young Persons Act 1993 s 6(1).

<sup>126</sup> Children and Young Persons Act 1993 s 6(1).

<sup>127</sup> Children and Young Persons Act 1993 s 4(b).

<sup>128</sup> *Singapore Parliamentary Debates, Official Report* (3 September 2019) vol. 94 at p 80 (Mr Desmond Lee, Minister for Social and Family Development).

83. To execute this, inspiration can be drawn from both NT and Ontario. For the reasons set out in Part IV above, a wholesale import from either jurisdiction would be inappropriate. Instead, a hybrid framework could fit Singapore best.

## **B. Addition of new provisions to the CYPA**

84. We propose that a new sub-section under s 6 of the CYPA should be inserted. This should state that any person with “reason to believe”<sup>129</sup> that a child is suffering or at risk of suffering from CAN should have a legal duty to make a report to the relevant authorities. Such relevant authorities could include MSF,<sup>130</sup> or the police.

85. Additionally, this duty should impose a responsibility on the public to make the report as soon as it is reasonably practicable.<sup>131</sup> This provides more leeway, as opposed to the legislation in other jurisdictions such as Ontario that demands the report to be made “immediately”.<sup>132</sup> In the CPC and CYPA, there is currently no mention of any timeline for reports to be made. Given the unpredictable nature of CAN, reporters may require more time to fulfil their duties.

86. The law in Singapore is no stranger to the concept of reasonable practicability, and this would largely involve a fact-centric inquiry.<sup>133</sup> An example of this concept can be found in the Workplace Safety and Health Act 2006 (“**WSHA**”).<sup>134</sup> Although unconnected to CAN concerns, case law canvassing WSHA issues can shed light on how such wording could be construed.

87. In essence, the “reasonable practicability” threshold should be pegged at a relatively high standard.<sup>135</sup> If an individual contravenes this section, then the onus would be on the individual to show that it was not reasonably practicable to have done anything differently to better satisfy the duty to report suspected or actual CAN.<sup>136</sup>

88. Next, it is also crucial to feature a defence of having a “reasonable excuse” in the newly amended provision.<sup>137</sup> The availability of this defence is quintessential, as it can mitigate harsh effects of the otherwise overly onerous duty of reporting.

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<sup>129</sup> Adaptation of the definition of “reason to believe” as per the Penal Code 1871 s 26.

<sup>130</sup> Ministry of Social and Family Development, “Understanding Family Violence & Abuse” *MSF* (2024) <<https://familyassist.msf.gov.sg/content/making-decisions/seeking-safety/understanding-violence-abuse/child-abuse-and-neglect/#>> [accessed 1 February 2024]: Reports to the Ministry should be made via the National Anti-Violence Helpline.

<sup>131</sup> For instance, see Domestic and Family Violence Act 2007 (NT) s 124A(3).

<sup>132</sup> See Child, Youth and Family Services Act 2017 s 125(1).

<sup>133</sup> For instance, see *Public Prosecutor v Formwork Hire (S.E.A.) Pte Ltd and another* [2024] SGDC 28 at [41] – [42]. The inquiry involves an “assessment of proportionality”, where multiple factors are taken into account.

<sup>134</sup> Workplace Safety and Health Act 2006 - see provisions under Part 4 of the Act..

<sup>135</sup> *Public Prosecutor v Underwater Contractors Private Limited and anor* [2020] SGDC 299 at [193] – [194].

<sup>136</sup> Mirroring s 47 of the Workplace Safety and Health Act.

<sup>137</sup> Mirroring s 424 of the Criminal Procedure Code 2010.

89. Singapore could consider adopting NT’s comprehensive list of “reasonable excuse[s]” featured in their legislation.<sup>138</sup> However, this should not constitute an exhaustive list. Ultimately, child protection concerns are a matter of public policy. The Parliament must provide relevant guiding principles as to what is a reasonable excuse, as a flexible approach may work better for this piece of social legislation.
90. Although AWARE has proposed certain scenarios where matters of trust and confidentiality would trump the need for reporting, the organisation has also acknowledged that this would not be applicable for cases involving children.<sup>139</sup> Given their vulnerability and immaturity, a child’s objection to reporting the CAN he or she has suffered should not constitute a reasonable excuse for an individual to disregard the mandatory reporting obligation.<sup>140</sup>
91. The proposed addition is as follows:

**Duty to Report**

A person is guilty of an offence if the person:

- (a) has reason to believe<sup>141</sup> that a child or young person is being ill-treated by another person; and
- (b) does not, as soon as reasonably practicable, report the ill-treatment to the relevant authorities as set out in [relevant schedule or relevant subsidiary legislation].<sup>142</sup>

A person will not be found guilty if the person has a reasonable excuse for failing to meet the stipulated reporting duty.<sup>143</sup>

92. Illustrations could be provided to eradicate the pre-existing ambiguity of what constitutes a “reasonable excuse”. These illustrations should be non-exhaustive and aid in delineating the scope of the reporting duty more clearly.<sup>144</sup>

<sup>138</sup> Domestic and Family Violence Act 2007 (NT) s 124A(3)(a) – (c).

<sup>139</sup> AWARE, “AWARE’s Position on Section 424 of the Criminal Procedure Code”, *AWARE* (11 October 2022) <<https://www.aware.org.sg/2022/10/awares-position-on-section-424-of-the-criminal-procedure-code/>> [accessed 15 January 2024] at para 25.

<sup>140</sup> AWARE, “AWARE’s Position on Section 424 of the Criminal Procedure Code”, *AWARE* (11 October 2022) <<https://www.aware.org.sg/2022/10/awares-position-on-section-424-of-the-criminal-procedure-code/>> [accessed 15 January 2024] at para 25.

<sup>141</sup> See Penal Code 1871 s 26.

<sup>142</sup> See: [84] above.

<sup>143</sup> Mirroring s 424 of the Criminal Procedure Code 2010.

<sup>144</sup> Adopted from Domestic and Family Violence Act 2007 (NT) s 124A(3)(c); also, for possible illustration, see: Taufiq Zalizan, “Explainer: What does the law say about relatives or friends not reporting abuse and other crimes?” (15 February 2024) <<https://www.todayonline.com/singapore/explainer-law-relatives-friends-not-reporting-abuse-crimes-2363051>> [accessed 16 February 2024] at para 27.

*Illustrations*

(a) A person (*A*) has reason to believe that there is an instance of child abuse or neglect. However, *A* reasonably believes that another individual has already made a report about the above. *A* therefore does not report the abuse. Here, *A* will not be found guilty of an offence defined in this section.

(b) A person (*A*) has reason to believe that a child (*B*) is being abused or neglected by *B*'s caregiver. *A* plans to remove *B* from danger first, before making a report at a later time, when it is most practicable to do so. *A* therefore does not report the abuse at the first instance. Here, *A* will not be found guilty of an offence defined in this section.

(c) A person (*A*), being a neighbour of a child (*B*), has heard sounds of *B* consistently crying after being hit. *A* is unable to make a report out of fear that the perpetrator of abuse may react violently, placing himself or others at further risk of harm. *A* therefore does not report the abuse. Here, *A* will not be found guilty of an offence defined in this section.

(d) A person (*A*) has reason to believe that a child (*B*) is being abused or neglected by *B*'s caregiver. *A* speaks to *B* or other members of *B*'s households and concludes that *B* was not suffering, or not at risk of suffering, from abuse or neglect. *A* therefore does not report the abuse. Here, *A* will not be found guilty of an offence defined in this section.

The illustrations serve as a guide and are not meant to lay out an exhaustive list of reasonable excuses for purposes of this section.

93. The addition of the proposed sub-section and illustrations should be accompanied by the following penalty:

A person found guilty of the above offence would be liable upon conviction, to a fine not exceeding \$[X].

94. The penalty amount "X" should be pegged at a fraction of the maximum quantum of fine that an offender under s 6(1) CYPA would be liable for.<sup>145</sup> This is because caregivers and professionals who work closely with children should be subjected to more stringent laws given their presumably closer relationships with CYP and the greater responsibility that they undertake.<sup>146</sup> Should the individual in question also fall

<sup>145</sup> Children and Young Persons Act 1993 s 6(1) and s 6(6).

<sup>146</sup> See: [48] above.

under the ambit of s 6 of the CYPA, the prosecution could exercise their discretion in determining the charge applicable.

95. There is also no jail term proposed. As much as the fresh provision aims to serve as a deterrent, it is not meant to be punitive in a way that encourages mindless reporting out of fear of punishment. Rather, it should serve as a form of impetus or encouragement for the public to collectively step up to protect children in the community.
96. Finally, anyone who makes a report in good faith should be immune to legal liability.<sup>147</sup> This would allow reporters to raise genuine concerns without the fear of being penalised for “false alarms”.

### **C. Raising awareness in the community**

97. Besides information that has been disseminated by MSF, other ministries and agencies have also invested efforts to raise awareness about the need for a “whole-of-society” approach to protect CYP from CAN.<sup>148</sup> For instance, Big Love Child Protection Specialist Centre’s annual event, Give A Voice, seeks to “amplify issues of child abuse, and advocate for child protection”.<sup>149</sup>
98. Understanding what CAN entails is essential. If members of the public are unacquainted with the scope of CAN and its corresponding mandatory reporting laws, there would be no effective impetus for them to lodge a report even when red flags are observed. As such, non-legal reforms must be meted out in proportion with legal ones to ensure the workability of the law.
99. Another suggestion is for outreach efforts to be boosted in neighbourhoods. Posters could be tacked onto bulletin boards or put up in communal lifts, and informative brochures could be disseminated at central areas in the community. These constant reminders would prompt neighbours to take timely action to tackle CAN concerns.

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<sup>147</sup> Adopted from Domestic and Family Violence Act 2007 (NT) s 125; Child, Youth and Family Services Act 2017 (Ontario) s 125(10).

<sup>148</sup> Yoganathan Ammayappan and Tan Chen Kee, “Forum: Whole-of-society approach to protect children from sexual abuse”, *The Straits Times* (6 September 2022) <<https://www.straitstimes.com/opinion/forum/forum-whole-of-society-approach-to-protect-children-from-sexual-abuse>> [accessed 1 February 2024] at para 1.

<sup>149</sup> Big Love Child Protection Specialist Centre, “Give A Voice” *Big Love CPSC* (2024) <<https://giveavoice.sg>> [accessed 1 February 2024].

## **VI. IMPLICATIONS**

### **A. Interaction between proposed amendments and existing systemic mechanisms**

100. Given the recent changes effected with the passing of the Women’s Charter (Family Violence and Other Matters) (Amendment) Bill,<sup>150</sup> the proposed amendments also play a role in a tighter and more comprehensive process of ensuring safety of children in the community.
101. The amendments enacted allow for appointed “protectors” to apply for Personal Protection Orders (“PPOs”) on behalf of CYP under 18 years old.<sup>151</sup> If more timely reports of suspected CAN are made, these protectors could intervene soonest to obtain the necessary orders to ensure child safety.
102. Such mechanisms once again highlight the importance of having everyone in the community collaborating with various agencies to protect victims of CAN, who often may not have the means or knowledge to seek help on their own.

### **B. Psychological impact on children**

103. It is vital to recognise that the reporting process can lead to potential trauma for the children involved.<sup>152</sup> To children who are reluctant for reports to be made due to fear of their abusers, reporting requirements could lead to a feeling of invasion of privacy.<sup>153</sup> The spillover effect could be that these children feel vulnerable, anxious, and untrusting towards adults.<sup>154</sup>
104. Therefore, where possible, the individual making a report should aim for transparency with the victim of CAN.<sup>155</sup> CYP have indicated the preference for open communication

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<sup>150</sup> Loraine Lee, “New role of ‘protector’ to help family violence survivors under 18 seek personal protection orders: Sun Xueling”, *Today Online* (27 April 2024) <<https://www.todayonline.com/singapore/protector-new-role-help-under-18-seek-ppo-2204601>> [accessed 25 January 2025].

<sup>151</sup> Loraine Lee, “New role of ‘protector’ to help family violence survivors under 18 seek personal protection orders: Sun Xueling” *Today Online* (27 April 2024) <<https://www.todayonline.com/singapore/protector-new-role-help-under-18-seek-ppo-2204601>> [accessed 25 January 2025] at para 1.

<sup>152</sup> Kate Fitz-Gibbon, Jasmine McGowan, Rebeca Stewart, “I believe you: Children and young people’s experiences of seeking help, securing help and navigating the family violence sytem” (2023) Monash Gender and Family Violence Prevention Centre at p 41 – 45.

<sup>153</sup> Kate Fitz-Gibbon, Jasmine McGowan, Rebeca Stewart, “I believe you: Children and young people’s experiences of seeking help, securing help and navigating the family violence sytem” (2023) Monash Gender and Family Violence Prevention Centre at p 41 – 42.

<sup>154</sup> Kate Fitz-Gibbon, Jasmine McGowan, Rebeca Stewart, “I believe you: Children and young people’s experiences of seeking help, securing help and navigating the family violence sytem” (2023) Monash Gender and Family Violence Prevention Centre at p 43.

<sup>155</sup> Kate Fitz-Gibbon, Jasmine McGowan, Rebeca Stewart, “I believe you: Children and young people’s experiences of seeking help, securing help and navigating the family violence sytem” (2023) Monash Gender and Family Violence Prevention Centre at p 42.

and consideration of the time needed for them to prepare themselves for the imminent report of a CAN.<sup>156</sup>

105. This is especially important for professionals that work closely with children. Springing a report on them with no warning could hurt the therapeutic alliance that has been delicately built. Granted, professionals should also be aware of the exceptions to mandatory reporting that could apply, since the child's safety and wellbeing takes precedence.

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<sup>156</sup> Kate Fitz-Gibbon, Jasmine McGowan, Rebeca Stewart, "I believe you: Children and young people's experiences of seeking help, securing help and navigating the family violence system" (2023) Monash Gender and Family Violence Prevention Centre at p 42.

## **VII. CONCLUSION**

106. The mandatory reporting regime for CAN in Singapore remains inadequate and would benefit from both legal and non-legal reforms. This would aid in bolstering support for vulnerable CYP. Ultimately, the primary consideration is striking a balance between increasing protection for children and ensuring that the legal duty to report suspected CAN cases is not overly onerous. Imposing a duty that is too onerous may fester mistrust and take a toll on public resources.
107. International standards may serve as references but ultimately, the enactment of such amendments should be society-specific. Although other countries have taken different approaches to CAN reporting requirements, a wholesale legal transplant might not bear fruit as Singapore's unique socio-cultural background warrants more scrutiny.
108. With a concerted effort by the Parliament, community stakeholders, and the general population, Singapore has the potential to cultivate a healthy culture of vigilance and timely reporting when necessitated. This will empower everyone to play a larger role in child safety, and in breaking the cycle of CAN within households.

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