



Legislative mandatory reporting duties of child sexual abuse in France and their practice

Emmanuelle Wachenheim
Ministry of justice - France

INTRODUCTION : CIVIL LAW



PROFESSIONALS

Article L. 2112-6 of Public Health Code : obligation for maternal and child protection to report child sexual abuse to the doctor responsible for the service

Article L. 221-6 of Social Action and Family Code: obligation for child welfare services to report child sexual abuse

Art. L. 226-2-2 of Social Action and Family Code

***People bound by professional secrecy** who implement **the child protection policy** or who provide support to it are **allowed to share confidential information** between them in order to assess a particular situation, determine and implement relevant action for protecting and helping minors and his or her family (...) **The father, the mother, anyone acting as parental authority, the guardian, the child considering his or her age are previously informed** in accordance with required terms and conditions unless the information is in conflict with the child's interest.*

I. MANDATORY REPORTING DUTIES IN FRANCE — CRIMINAL LAW



- An obligation of reporting binding upon state employees
- A sanction to a third party (*anyone other than the victim and the perpetrator*) for failing to stop or to report a crime
- Special rules applicable to professional secrecy

I. MANDATORY REPORTING DUTIES IN FRANCE – CRIMINAL LAW



1.1. Obligation of reporting binding upon state employees

Article 40(2) of Criminal Procedure

*Every constituted authority, every public officer or civil servant who, in the performance of his duties, has gained knowledge of the existence of a crime or of an offence **is obliged to notify forthwith the district prosecutor of the offence** and to transmit to this prosecutor any relevant information, official reports or documents.*

I. MANDATORY REPORTING DUTIES IN FRANCE – CRIMINAL LAW



1.2.a) Sanction for failing to stop a crime

Article 223-6 of Criminal Code

*Anyone who, being able to prevent by immediate action a crime or an offence against the bodily integrity of a person, without risk to himself or to third parties, **willfully abstains** from doing so, is punished by five years' imprisonment and a fine of €75,000.*

*The same penalties apply to anyone who **willfully fails to offer assistance to a person in danger** which he could himself provide without risk to himself or to third parties, or by initiating rescue operations.*

*Penalties increase to seven years' imprisonment and a fine of €100 000 (1) when the crime or the offence against the bodily integrity of the person as mentioned under the first paragraph was committed against a child under 15 or (2) **when the person mentioned under the second paragraph is a child under 15.***

I. MANDATORY REPORTING DUTIES IN FRANCE — CRIMINAL LAW



1.2.b) Sanction for failing to report a crime

Article 434-3 of Penal Code

*Any person who, having knowledge of mistreatment, deprivations, or **sexual assaults inflicted upon a minor** or upon a person incapable of self-protection by reason of age, sickness, infirmity, psychical or psychological disability or pregnancy, omits to report this to the administrative or judicial authorities is punished by three years' imprisonment and a fine of €45,000.*

When the lack of information concerns an offence as mentioned under the first paragraph was committed against a minor under 15, sentences increase to five years' imprisonment and a fine of €75,000.

Except where the law otherwise provides, persons bound by an obligation of secrecy pursuant to the conditions set out under article 226-13 are exempted from the above provisions.



1.2.b) Sanction for failing to report a crime

Article 434-3 of Criminal Code

- Under the 1994 New Criminal Code, the infringement of non-reporting only applied to minors under 15
- The French Law of March 14th 2016 dealing with child protection has extended this infringement to all minors
- The French Law of August 3rd 2018 has made sentences stricter when the crime is committed against a minor under 15



1.2.b) Sanction for failing to report a crime

Characteristics:

- The report has to be made as quickly as possible
- No specific form is required except that it has to be addressed to a judicial or administrative authority
- It is a deliberate offence: the awareness of mistreatment must be ascertained
- It includes relatives BUT it excludes those who took part in the crime
- Sanction: five years' imprisonment when the victim is a minor under 15



1.3. Special rules applicable to professional secrecy

Article R. 4127-44 of the Health Public Code

While discerning that a person is victim of mistreatments or deprivations, the doctor has to execute the more appropriate means in order to protect the victim with care and circumspection.

*When the victim is a minor or a person who is not capable to protect herself or himself due to her or his age or her or his physical and mental condition, **the doctor warns the judicial or administrative authorities** unless there are special circumstances the doctor is mindful of.*



1.3. Special rules applicable to professional secrecy

Article 226-14 of Penal Code

1° [The professional secrecy is not applicable] to a person who informs a judicial, medical or administrative authority of cruelty or deprivation, including sexual abuse, of which he has knowledge and which has been inflicted on a minor or a person unable to protect himself because of his age, or physical or psychological state.

2° [The professional secrecy is not applicable] to a doctor who, with the consent of the victim, brings to the knowledge of the public prosecutor instances of cruelty or deprivation, either physical or psychological, that he or she has observed in the exercise of his profession that cause him to believe that physical, sexual or psychological violence of any sort, has been committed. Where the victim is a minor, his or her consent is not necessary.



1.3. Special rules applicable to professional secrecy

Article 226-14 of Criminal Code

Ability to report mistreatment and deprivation(1) with the victim's agreement if he or she is over the age of majority or (2) without his or her agreement if the victim is a vulnerable person or a minor.

Professionals cannot be subject to criminal, civil or disciplinary proceedings for breaching the professional secrecy in that case.

2 Obligations to report :

- The doctor or the professional is a state employee and would be consequently compelled to report these facts on the basis of Article 40 of Criminal Procedure;
- In the event of a judicial order (for example as part of an expertise)

II. THE FRENCH EXPERIENCE



- Written directives issued by the government
- Services facilitating reporting
- Statistics

II. THE FRENCH EXPERIENCE



1.1. Written directives issued by the government

The Directive of March 15th 2001 related to the school environment protection and the fight against sexual abuse

- reminds reporting procedures and conducts to adopt in the event of child sexual abuse
- insists on support measures such as the arrangement of ongoing training for professionals
- provides for making every school to put up a toll-free number dedicated to child abuse

II. THE FRENCH EXPERIENCE



1.1. Written directives issued by the government

The Directive of September 16th 2015 related to a reinforced partnership between the judicial authority and national educational services

- “justice referents” to education officers
- “judges referents” to each public prosecutor’s department

Purpose: information sharing as part of a defined and secure channel of the processing of alerts.

II. THE FRENCH EXPERIENCE



1.2. Services facilitating reporting

- **Cells of gathering “worrying” information**
 - Ensuring the early tracking of child in danger and advising both professionals and private individuals about child sexual abuse
 - Acting as a filter regarding child sexual abuse cases transferred to the judicial authority
- A **“toll-free” national number (24/7)** dedicated to the child protection

II. THE FRENCH EXPERIENCE



1.3. Statistics

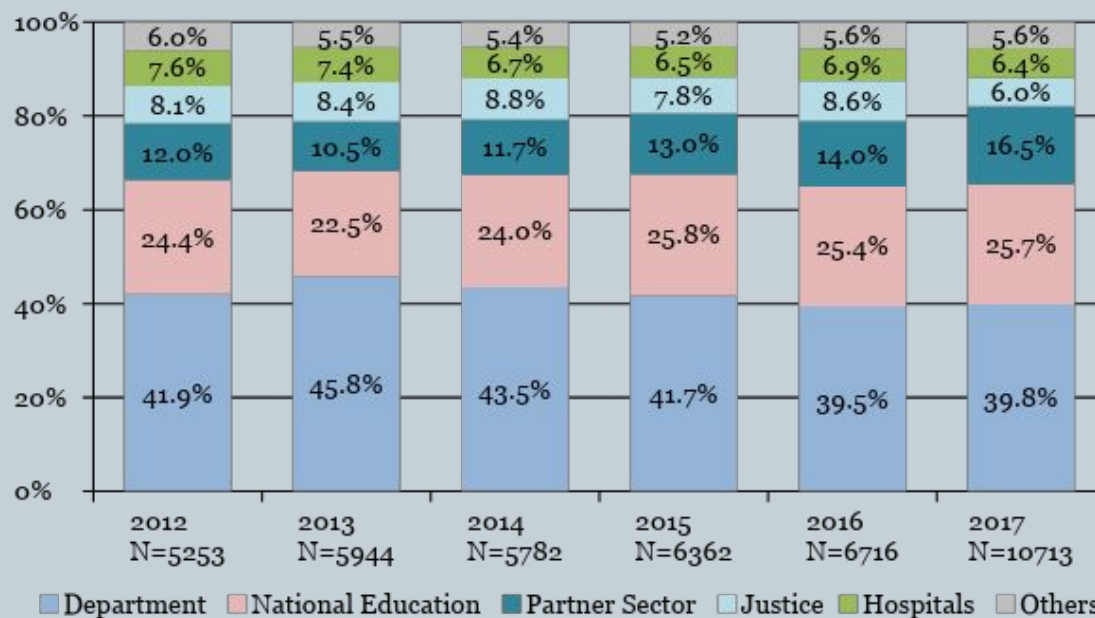
Cases of rape, sexual assault, mistreatment, and abuse against minors disclosed by the relevant authorities (e. g. child welfare services, department for education...)

- 2016: less than 9 % amongst those cases
- 2017: 14 % amongst those cases

II. THE FRENCH EXPERIENCE

1.3. Statistics

Source of cases of rape, sexual assault, mistreatment and abuse against minors revealed by the state authorities:



II. THE FRENCH EXPERIENCE



1.3. Statistics

Crimes leading to a conviction	2012	2013	2014	2015	2016*
DELIBERATE FAILURE TO STOP A CRIME OR AN OFFENCE AGAINST THE INTEGRITY OF A PERSON	99	118	94	69	62
FAILURE TO REPORT A CRIME	35	18	19	21	19
FAILURE TO REPORT MISTREATMENTS, DEPRIVATIONS, SEXUAL ASSAULTS OR ABUSE COMMITTED AGAINST A VULNERABLE PERSON	3	6	8	5	7
FAILURE TO REPORT MISTREATMENTS, DEPRIVATIONS, SEXUAL ASSAULTS OR ABUSE COMMITTED AGAINST A MINOR	67	63	48	86	88
Total	204	205	169	181	176

Source: French National Criminal Record, *temporary data



Criminal Law

Two mechanisms:

- A specific incrimination of behaviour committed against minors that would not be cracked down on if they were committed against adults
- The consideration of age as an aggravating factor



Criminal Procedure

Particular procedure applicable to minor victims on several aspects:

- An extension of rules of domestic territorial jurisdictions
- Derogation rules of statute of limitations
- Minor support: expertise (minor and perpetrator), ad hoc guardian, lawyer, a third party present to the examination, information to the children's judge, audiovisual record



Thank you!

Emmanuelle Wachenheim

Ministry of justice – France

emmanuelle.wachenheim@justice.gouv.fr