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MANDATORY REPORTING OF ABUSE: A HISTORICAL PERSPECTIVE  
ON THE EVOLUTION OF STATES' CURRENT MANDATORY  
REPORTING LAWS WITH A REVIEW OF THE LAWS IN THE  
COMMONWEALTH OF PENNSYLVANIA

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I. INTRODUCTION

CHILDREN are a cherished part of our society, “our most valuable resource.”<sup>1</sup> This view of children as our most valuable resource, and the rights of children, have shifted in the industrialized world over the past 200 years. Long forgotten are the days when children in the United States labored in factories for twelve hours each day. Indeed, today, some would argue that the pendulum has swung from children being seen and not heard to families being controlled by their children, with their hectic schedules dictated by children’s activities. What has not changed, however, is the evil actions of a segment of society bent on abusing and exploiting children.<sup>2</sup> As a nation, we are continually bombarded by media stories reporting child abuse, dangerously and gradually desensitizing us to all but the most egregious cases.<sup>3</sup> Recently, shocking events in Pennsylvania have refocused the attention of a nation on the sexual abuse of children.

As the shift away from exploiting child labor and towards protecting children occurred over the last two centuries and various egregious cases of abuse arose, states began to implement laws requiring certain people to report suspected abuse of children. The first states passed laws in 1963, following the publishing of a seminal article titled, *The Battered-Child Syndrome*.<sup>4</sup> By 1967, all fifty states had passed some form of mandatory reporting law. The federal government’s first major foray into the area of child abuse prevention occurred

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\* Judge, Second Judicial District, Lancaster County, Pennsylvania Court of Common Pleas. I wish to thank University of Virginia law student and Blackstone Fellow, Kevin Gallagher for his excellent research assistance and drafting, as well as Aaron Armstrong for his helpful comments and research.

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1. Palma Joy Strand, *Do We Value Our Cars More than Our Kids? The Conundrum of Care for Children*, 19 DUKE J. GENDER L. & POL’Y 1 (2011) (citing THE HOME BOOK OF AMERICAN QUOTATIONS 80 (Bruce Bohle ed., 1967) (quoting Herbert Hoover)).

2. See U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT (2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>. In its Human Trafficking Report, the United States Department of State issued an annual report explaining the global problem involving the exploitation and abuse of children. See *id.*

3. Internet Search of “Child Abuse News Stories,” GOOGLE, <http://www.google.com> (type “Child Abuse News Stories” into search engine to yield results) (yielding 25,000 results of child abuse news stories).

4. C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MED. ASS’N 17 (1962), available at <http://jama.jamanetwork.com/article.aspx?articleid=327895>.

on January 31, 1974, when Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA).<sup>5</sup> CAPTA has no federal mandatory reporting provision, but rather requires states to pass their own mandatory reporting provisions in order to receive federal grants.<sup>6</sup>

States' laws vary in their comprehensiveness with respect to mandatory reporting of abuse. All states require at least some professions to report suspected abuse. The most comprehensive statutes require all persons who have reasonable cause to suspect abuse to report, while the least comprehensive statutes require only a small list of named professional groups to report.

The findings of abuse at State College, Pennsylvania and within the Archdiocese of Philadelphia have renewed interest in Pennsylvania's mandatory reporting laws. Pennsylvania enacted its first law mandating that certain people report suspected abuse of children in 1963. Since this first mandatory reporting law, the law has been amended several times, most notably in 1975.

The first state laws on mandatory reporting of child abuse came as a direct response to a call to action from the media and interest groups. This trend remained clear as both Congress and state legislatures crafted and amended laws to prevent child abuse throughout history. Wanting to protect their children, each of the fifty states tailored unique mandatory reporting laws. Some mandated that large numbers of people report abuse and enacted strict penalties for failure to do so, while other states only required specific groups of professionals to report and had lenient or no statutory penalties for failure to report. Like other states, the Pennsylvania legislature enacted and amended its original mandatory reporting law in response to the media and pushes from interest groups. In comparison with comprehensiveness of other state laws, Pennsylvania's law has always been in the middle ground. Though it is still uncertain how Pennsylvania will respond to the most recent child abuse scandal, it has always been certain that there is a clear need for communities to protect their children.

## II. HISTORICAL OVERVIEW

### A. *The First State Laws and What Initiated Them*

Just as child abuse is certainly not a new concept, neither are laws prohibiting child abuse. The Bible, for example, prohibited the sacrifice of children, considering the practice despicably pagan.<sup>7</sup> However, prior to 1963, California was the only state in which child abuse was explicitly criminalized.<sup>8</sup> It took the seminal medical study of C. Henry Kempe and his colleagues to goad American states to pass child abuse laws. Published in 1962, Kempe's

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5. See 42 U.S.C. §§ 5101–5119 (2006).

6. See *id.* § 5106(a).

7. See *Leviticus* 20:1–5.

8. See Donald W. Green, III, *Parent and Child—Child Beating—Recent Legislation Requiring Reporting of Physical Abuse*, 45 OR. L. REV. 114, 115 (1965–1966).

*The Battered-Child Syndrome*<sup>9</sup> caused the public to begin thinking about the pervasive problem of child abuse in America. It was “one of the first studies to point out the growing incidence of child abuse and its social and medical ramifications.”<sup>10</sup> Scholarship written contemporaneous to the creation of the first mandatory child abuse reporting laws noted the distinct influence Kempe’s study had on the inception of these laws.<sup>11</sup> The direct causal link between *The Battered-Child Syndrome* and the subsequent passage of mandatory reporting laws has become something of a truism in modern scholarship, with many scholars noting that within three years of the study, all fifty states had mandatory reporting laws.<sup>12</sup>

However, mandatory reporting laws did not spring fully-formed from *The Battered-Child Syndrome*, as is often portrayed; rather, Kempe’s study worked to galvanize the American public to take action to combat the existing problem of child abuse. In 1963, the Children’s Bureau of the United States Department of Health, Education, and Welfare (Children’s Bureau) released a publication noting that “[c]hild neglect and abuse are not new phenomena in our society, or in any society. What is new is the increase and violence in the attacks on infants and young children by parents and other caretakers.”<sup>13</sup> The Children’s Bureau, along with three other organizations (the Council of State Governments, the American Humane Association, and the American Medical Association), proposed model statutes for state legislatures to help solve child abuse. It was the Children’s Bureau’s proposal that became the most influential.<sup>14</sup> The model statutes were designed by “interested government and private groups” in order to “offer various alternatives to the state legislators on the issue of who should be required to report.”<sup>15</sup>

More often than not, these child abuse reporting laws were passed quickly, perhaps even hastily. Monrad Paulsen, Graham Parker, and Lynn Adelman reported on a study conducted by the Columbia University School of Law in the mid-1960s and set out four primary influences on both the laws themselves and the speed at which they were created.<sup>16</sup> First and foremost, they noted that

9. See generally Kempe et al., *supra* note 4.

10. Green, *supra* note 8, at 115.

11. See, e.g., Mario C. Ciano, Note, *Ohio’s Mandatory Reporting Statute for Cases of Child Abuse*, 18 CASE W. RES. L. REV. 1405 (1967) (noting that from Kempe’s study and others like it “facts were brought to light which awakened the public and legislative bodies to the realization that a problem existed whose solution challenges social, medical, and legal resources alike”); Hugh C. Wilfong II, *Physicians and Surgeons Immunity—Texas Statute Permits Physicians to Report Injuries Resulting from Child Abuse and Provides Immunity from Civil and Criminal Liability for So Reporting*, 44 TEX. L. REV. 584, 584 (1966) (noting that “attention of the medical profession was . . . drawn to [the] problem” by study).

12. See, e.g., Gary B. Melton, *Mandated Reporting: A Policy Without Reason*, 29 CHILD ABUSE & NEGLECT 9, 10 (2005).

13. CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH, EDUC., & WELFARE, *THE ABUSED CHILD: PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD I* (1963).

14. See Monrad G. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 1, 2–3 (1967).

15. See *id.* at 3.

16. See generally Monrad Paulsen, Graham Parker & Lynn Adelman, *Child Abuse*

calls to action from the press and broadcasters created an impetus for child abuse reporting laws because “several national magazines have run stories calling for legislative action and attracting public attention with eye-catching headlines and photographs of dreadfully abused children.”<sup>17</sup> Second, they noted what they called the significance of the individual, as many individual doctors were “consequential” in passing of legislation.<sup>18</sup> Third, they noted the multiplicity and importance of voluntary associations, calling such groups “the vanguard of efforts to enact child abuse reporting legislation.”<sup>19</sup> Finally, they noted the executive branches of various states and their cooperation with voluntary groups, writing that “in most states, agencies of the executive department have played strategic roles in the enacting of child abuse reporting legislation, either by initiating study of the problem and formulating the most important proposals or by giving support to those individuals or organizations that have taken the lead.”<sup>20</sup> These four influences were crucial in ushering the Children’s Bureau proposal (or other models) into codified legislation, as most states did in fact use these models to frame their debates.

The Children’s Bureau proposal was unique because it placed the duty to report solely on physicians and other medical staff.<sup>21</sup> From the beginning of the debates, the question of who should be required to report suspected child abuse was contentious. The Children’s Bureau chose the medical profession to the exclusion of others because they believed that abused children come to their attention when they seek medical assistance, physicians’ special skill and training make them uniquely qualified to diagnose potential instances of child abuse, and physicians had previously resisted reporting child abuse because they viewed it as “meddling” or a “violation of professional confidence.”<sup>22</sup> Most states, when they finally passed mandatory reporting laws, followed this model, or something very close to it. For example, in 1963, Ohio, one of the first states to pass a mandatory reporting law, required “physicians and other medical personnel to report any case of child injury which they believed to have been caused by physical abuse.”<sup>23</sup> Forty-six other states followed Ohio’s lead in the period between 1963 and 1965, including Pennsylvania.<sup>24</sup>

Three states, however, went above and beyond the Children Bureau’s recommendation. Nebraska, Tennessee, and Utah passed laws that put an obligation on *all* citizens having evidence of child abuse to report.<sup>25</sup> These

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*Regulation Laws—Some Legislative History*, 34 GEO. WASH. L. REV. 482 (1965).

17. *Id.* at 490.

18. *See id.* at 491.

19. *Id.* at 493.

20. *Id.* at 497.

21. *See* Paulsen, *supra* note 14, at 3.

22. *Id.* at 3–4.

23. Ciano, *supra* note 11, at 1405.

24. For a full discussion of the history of mandatory reporting child abuse statutes in Pennsylvania, see Part IV.

25. I use the term “universal mandatory reporting” to describe these laws. Although the laws take two different forms (requiring all adults to report while also enumerating certain professional groups or simply requiring all adults to report), I refer to both under the umbrella of “universal” because of the foundational similarities in their purposes.

states believed it was a moral obligation of all citizens to safeguard abused children.<sup>26</sup> Universal application of the duty to report would “assure appropriate protection of the maximum number of children” by making “the obligation an unavoidable duty of all responsible persons with knowledge or suspicion of specific instances of child abuse.”<sup>27</sup> Donald Stuart wrote a contemporary analysis of Nebraska’s universal mandatory reporting law for the Creighton Law Review stating, “[t]he *any person* approach reflects an unwillingness on the part of the Nebraska Legislature to exclude any potential source of information.”<sup>28</sup> Similarly, in Indiana, a law modeling the Children’s Bureau proposal was passed in 1965 but repealed in 1971 in exchange for a universal mandatory reporting law, which purported to “facilitate the discovery of child abuse by requiring all persons to report suspected cases . . . .”<sup>29</sup> The desire to shed light on any and all cases of child abuse, rather than only the ones that might come to the attention of a doctor or other medical professional, drove a few states to adopt universal mandatory reporting laws during this initial period between 1963 and 1965.

The decision to adopt universal mandatory reporting laws was also fueled by a legislative rejection of two justifications that the Children’s Bureau used for focusing solely on medical professionals. First, the Nebraska legislature contended that “the duty of all becomes the duty of none,” pointing out that friends, relatives, and teachers would be likely to observe signs of abuse just as well as a doctor a child sees once a year.<sup>30</sup> Second, the Nebraska legislature rejected the argument that only trained people can recognize battered child syndrome by defining child abuse in a way that it would be unmistakable even for non-professionals.<sup>31</sup> The Children’s Bureau’s proposal defined child abuse simply as “serious physical injury or injuries inflicted upon [the child] other than by accidental means by a parent or other person responsible for [the child’s] care.” Nebraska determined that that definition was not an effective way of curbing abuse and crafted its own definition. They defined abuse as:

[K]nowingly, intentionally, or negligently causing or permitting a minor child or an incompetent or disabled person to be: (a) placed in a situation that may endanger [the child’s] life or health; (b) tortured, cruelly confined, or cruelly punished; (c) deprived of necessary food, clothing, shelter, or care; or (d) left unattended in a motor vehicle, if such minor child is six years of age or younger.<sup>32</sup>

The specific nature of this definition, the Nebraska legislators believed, would

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26. See Vincent De Francis, *Child Abuse—The Legislative Response*, 44 DENV. L.J. 3, 20 (1967).

27. *Id.*

28. Donald Stuart, Comment, *Mandatory Reporting of Child Abuse in Nebraska*, 8 CREIGHTON L. REV. 791, 793 (1975).

29. *Indiana’s Statutory Protection for the Abused Child*, 9 VAL. U. L. REV. 89, 93 (1974) (hereinafter *Indiana’s Statutory Protection*)

30. See Stuart, *supra* note 28, at 794.

31. See *id.* at 793.

32. NEB. REV. STAT. § 28-710(2)(a)(i)–(iv) (West 2012).

allow everyone, not just doctors or other medical professionals, to understand what was a reportable offense and what was not.

Nebraska's arguments for the creation of universal mandatory reporting laws may have been persuasive to other states following the initial rush of legislation in the mid-1960s, as many states, such as Indiana, decided that their laws were inadequate for what they were trying to accomplish. In 1971, Indiana adopted a type of mandatory reporting law that would subsequently be mimicked by fifteen other states. The state enumerated certain categories of professionals that were required to report while also putting the duty on all persons in the state. These laws were passed in an attempt to alleviate the inertia—that was especially prevalent in the medical profession—which kept professionals from reporting despite their firm belief that the moral duty to report child abuse was on everyone, not just certain people.<sup>33</sup> By 1978, twenty states had some type of universal mandatory reporting law<sup>34</sup> with sixteen of them following Indiana's lead by requiring "any person" to report in addition to specified professionals.<sup>35</sup>

Even the thirty states that did not adopt universal mandatory reporting laws still broadly expanded the group of professionals mandated to report. By 1974, thirty-four states required nurses to report, twenty-four required teachers to report, twenty-five required social workers to report, and nine required police officers to report.<sup>36</sup> Just four years later, due to the passage of CAPTA, forty-eight states required nurses to report, forty-nine required teachers and school officials to report, forty-nine required social workers to report, and forty required law enforcement officers to report.<sup>37</sup> The general trend, therefore, was toward universal mandatory reporting rather than away from it, even for those states that ultimately rejected adopting a totally universal approach.

#### B. *The Child Abuse Prevention and Treatment Act*

As Justice Louis D. Brandeis opined, one of the benefits of federalism is that states can act as laboratories of experimentation.<sup>38</sup> Left to their own devices, states can craft different solutions to the same problem and implement them in order to achieve the best possible system. As shown above, the states put this into practice in the late 1960s and early 1970s, weaving a patchwork quilt of varied attempts at achieving the best system, whether it was through a universal reporting requirement or through enumeration of certain groups of

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33. See *Indiana's Statutory Protection*, *supra* note 29, at 93–95.

34. See Brian G. Fraser, *A Glance at the Past, a Gaze at the Present, a Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes*, 54 CHI.-KENT L. REV. 641, 658 n.113 (1978) (listing Alabama, Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming as states which required "any other person" or "any person" to report, as of 1978).

35. See Brian G. Fraser, *A Pragmatic Alternative to Current Legislative Approaches to Child Abuse*, 12 AM. CRIM. L. REV. 103, 110 n.28 (1974).

36. See Fraser, *supra* note 34, at 657.

37. See *id.* at 657–58.

38. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

professionals. However, as often happens to large-scale issues of the day, the federal government looked to step into what it perceived not as a patchwork quilt, but as a void needing federal regulation. It attempted to impose national order on the situation.

In 1973, Senator Walter Mondale wrote, “Nowhere in the Federal Government could we find one official assigned full time to the prevention, identification, or treatment of child abuse and neglect.”<sup>39</sup> In order to rectify this situation and fill the alleged void created by the hodgepodge of state legislation, Mondale authored and sponsored CAPTA, presenting it to the Senate on March 13, 1973. The House summed up best the need for this law in its July 1973 report:

Each year in this country, thousands of innocent children are beaten, burned, poisoned, or otherwise abused by adults. One source . . . estimates that 60,000 cases of child abuse are reported annually. Barbara Blum, assistant administrator of the New York City Human Resources Administration, testified that in that city alone, more than 13,000 cases of child abuse or suspected abuse have been reported thus far during 1973. Witnesses agreed that most estimates of the incidence of child abuse represent only a small proportion of the number of children who are actually maltreated.<sup>40</sup>

Hearings on the legislation took place almost immediately, from the end of March into April 1973. Mondale continued to lead the charge for the passage of the bill, with the help of key witnesses.

Mondale contended, “It [was] pretty obvious that most child abuse is not reported at all.”<sup>41</sup> To him, then, despite the fact that all fifty states had some sort of child abuse legislation, these laws were not adequate to solve the problem and federal intervention was necessary. The “timeliness” of the hearings was emphasized heavily. For instance, Mondale noted that, “[P]ractically every day as we have held these hearings there has been a story [in the news].”<sup>42</sup> He then introduced into the record an article from the Washington Post on March 27, 1973, recounting the story of a Marine and his wife who were convicted of gross negligence in the beating to death of their two-month-old daughter.<sup>43</sup> Therefore, just as during the initial onslaught of child abuse laws in the mid-1960s, the mass media played a role in spurring on child abuse legislation.

Continuing with Paulsen, Parker, and Adelman’s rubric,<sup>44</sup> the elements of

39. JOHN E. B. MYERS, *CHILD PROTECTION IN AMERICA: PAST, PRESENT, AND FUTURE* 95 (2006).

40. H.R. REP. NO. 93-685 (1974), *reprinted in* 1974 U.S.C.C.A.N. 2763, 2764.

41. *Child Abuse Prevention Act of 1973: Hearings Before the Subcommittee on Children and Youth of the Committee on Labor and Public Welfare*, 93d Cong. 137 (1973) (hereinafter *CAPTA Hearings*) (statement of Senator Walter Mondale).

42. *See id.*

43. *See id.* at 138 (reproducing *Two Found Guilty in Death of Baby*, WASH. POST, Mar. 27, 1973).

44. *See* Paulsen, Parker & Adelman, *supra* note 16.



“significance of the individual” and “the importance of voluntary associations” were certainly involved as well. Individual doctors again took the helm at the congressional hearings,<sup>45</sup> coupled with leaders of prominent voluntary associations that dealt with child abuse policy.<sup>46</sup> The star witness at the hearings was none other than C. Henry Kempe, the man who lit the fire eleven years earlier by co-authoring *The Battered-Child Syndrome*. Besides being the leading scholar in the field, he also “riveted the Subcommittee’s attention with ‘before and after’ photographs of a little girl rescued from cruelty.”<sup>47</sup> Although not entirely on board, the Nixon administration did cooperate with these voluntary groups to ensure passage of the law. Originally, the Nixon administration opposed the legislation, but supported it as “political momentum grew.”<sup>48</sup> In fact, for example, during the hearings the Assistant Secretary for Legislation in the Department of Health, Education, and Welfare, Stephen Kurzman, testified along with Dr. James Goodman, the Director of the Division of Special Mental Health Programs from the National Institute of Mental Health.<sup>49</sup> The combination of the mass media, the significant individuals and voluntary associations that rallied behind the law, and the cooperation between the executive branch and proponents of the bill led to the Act being passed by both houses and signed into law by President Nixon in January 1974.

CAPTA was not a mandatory reporting law per se, but rather a broad law about child abuse generally. CAPTA’s purpose statement set forth Mondale’s mission: “To provide financial assistance for a demonstration program for the prevention, identification, and treatment of child abuse and neglect, to establish a National Center on Child Abuse and Neglect, and for other purposes.”<sup>50</sup> Two large programs that CAPTA created are the Office on Child Abuse and Neglect and the National Clearinghouse on Child Abuse and Neglect Information. Both of those programs, however, are beyond the scope of this article. More relevant to the matter at hand—despite the initial traction behind the law, CAPTA essentially abdicated the issue of mandatory reporting to the states.

CAPTA does not have a federal uniform provision about mandatory reporting because the drafters of CAPTA decided that it was not purposed to create a federal strategy to deal with child abuse in its totality. Rather, CAPTA was simply supposed to meet the “critical need for increased funding for research, reporting, training, and treatment” of child abuse.<sup>51</sup> CAPTA was not meant to create a comprehensive system of mandatory reporting, but rather to

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45. See MYERS, *supra* note 39, at 95 (listing Vincent De Francis, Elizabeth Elmer, Vincent Fontana, David Gil, and Henry Kempe as expert witnesses at hearings).

46. See *CAPTA Hearings*, *supra* note 41, at iii–v (listing representatives from American Academy of Pediatrics, National Center for the Prevention and Treatment of Child Abuse and Neglect, and National Institute of Mental Health, among others as testifying at hearings).

47. See MYERS, *supra* note 39, at 95.

48. See *id.* at 98.

49. See *CAPTA Hearings*, *supra* note 41, at v.

50. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974).

51. Lois Hochhauser, *Child Abuse and the Law: A Mandate for Change*, 18 HOWARD L. J. 200, 217 (1973).

encourage states to shore up their policies through monetary incentives. Accordingly, CAPTA required states to pass a mandatory child abuse reporting statute in order to receive federal grants under CAPTA.<sup>52</sup>

The relevant statutory text on both funding and mandatory reporting is Title 42, Section 5106(a) of the United States Code.<sup>53</sup> This statute directs the Secretary to “make grants to the States . . . for purposes of assisting the States in improving the child protective services system of each such State . . .”<sup>54</sup> To be eligible for a grant, the State must submit a “State plan that specifies the areas of the child protective services system . . . that the State will address with amounts received under the grant.”<sup>55</sup> This State plan has to contain:

[A]n assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law or has in effect and is operating a state program relating to child abuse and neglect that includes provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances.<sup>56</sup>

The law therefore simply conditions CAPTA funding on the state passing its *own* mandatory reporting law, as the federal government ultimately decided that this issue was one to be dealt with by the states.

The issue was revisited in 1990 with legislation entitled the *Victims' Bill of Rights*, and was sponsored by Harry Reid. However, the federal law remained basically unchanged after 1974 except for one key addition to the scheme of reporting. In 1989, Harry Reid and Joe Biden called a hearing by the Senate Committee on the Judiciary on the subject of the treatment of child abuse allegations and victims in the judicial and victims services system. Reid reasoned that the hearing was a necessity, citing his astonishment at reading, “Justice Department findings that [ninety] percent of all child abuse cases do not go forward to prosecution.”<sup>57</sup> As far as reporting goes, Patricia A. Toth, the director of the National Center for Prosecution of Child Abuse, who testified on behalf of the National District Attorneys Association, initially recommended that the federal government strengthen mandatory reporting laws by working “together with state and local governments.”<sup>58</sup> However, as the hearing progressed, the testimony became increasingly less pro-federal. Chairman Biden suggested that the federal government simply “help spur reform in the

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52. Brooke Albrandt, *Turning in the Client: Mandatory Child Abuse Reporting Requirements and the Criminal Defense of Battered Women*, 81 TEX. L. REV. 655, 656 (2002).

53. 42 U.S.C. § 5106(a) (2006).

54. *Id.*

55. *Id.* § 5106(a)(1)(A).

56. *Id.* § 5106(a)(2)(B)(i).

57. *The Treatment of Child Abuse Allegations and Victims in the Judicial and Victims Services System: Hearing Before the Committee on the Judiciary*, 101st Cong. 2 (1989) (statement of Senator Harry Reid).

58. *See id.* at 105.

States” by giving more money through the already viable systems put in place by CAPTA.<sup>59</sup> Although not ever seriously argued by even the firmest proponents of child abuse reform, the 101st Congress decided ultimately not to adopt a federal mandatory reporting provision and continue to abdicate the issue to the states.

One fairly significant change that came out of the 1989–90 hearings, however, involved a mandatory reporting provision on federal property. Currently enshrined at Title 42, Section 13031 of the United States Code Annotated, this provision enumerates certain categories of people who must report child abuse on “[f]ederal land or in a federally operated (or contracted) facility.”<sup>60</sup> Sections 13031(b)(1) through (8) list the specific professions that must report, consisting of eight categories: medical professionals, mental health professionals, counselors, school officials, child care workers, law enforcement personnel, foster parents, and commercial film and photo processors.<sup>61</sup> The federal government, therefore, passed a mandatory reporting law for people in its exclusive jurisdiction that was comparable to the various state provisions, without forcing that law on the entire nation. This situation has remained the status quo to this day, barring the passage of the Speak Up to Protect Every Abused Kid Act in the near future.<sup>62</sup>

### C. *Recent Developments in State and Federal Law*

#### 1. *Clergy Abuse*

When the news broke about the grand jury report concerning Jerry Sandusky’s misconduct with multiple children and the failure of the people around him to report it, petitions for strengthened mandatory reporting laws arose from citizens, legislators, and pundits alike. Although mandatory

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59. *See id.* at 147.

60. 42 U.S.C. § 13031(a) (2006).

61. *See id.* § 13031(b)(1)–(8). Specifically, the law lists the following professions in the appropriate subsections:

(1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

(2) Psychologists, psychiatrists, and mental health professionals.

(3) Social workers, licensed or unlicensed marriage, family, and individual counselors.

(4) Teachers, teacher’s aides or assistants, school counselors and guidance personnel, school officials, and school administrators.

(5) Child care workers and administrators.

(6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.

(7) Foster parents.

(8) Commercial film and photo processors.

*Id.*

62. *See infra* notes 110–12 and accompanying text for a discussion of the passage of the Speak Up to Protect Every Abused Kid Act.

reporting is presently at the forefront of the public consciousness in a way that it arguably has not been since the 1960s, developments in mandatory reporting law are not new to the last decade. In fact, the past ten years have seen significant changes in the mandatory reporting landscape. The general trend, as will be seen, is that recent changes to mandatory reporting legislation have come about in response to high-profile child abuse cases in a particular jurisdiction.

In 2003, the Boston Globe ran a series of exposés on criminal prosecutions of alleged child abusers within the Roman Catholic Church. The newspaper ran stories of over nine hundred children who were sexually abused by priests or other persons affiliated with the Catholic Church, leading to the indictment of many high-profile leaders in the Church. The series received a 2003 Pulitzer Prize for Public Service for “its courageous, comprehensive coverage . . . an effort that pierced secrecy, stirred local, national and international reaction and produced changes in the Roman Catholic Church.”<sup>63</sup> Part of the national reaction was the overhaul of mandatory reporting laws to include clergy in the groups of named professionals responsible for reporting.

Massachusetts, being in the epicenter of the controversy, quickly moved to solve the problem as best it could. The Attorney General of Massachusetts issued a report in 2003 on child abuse in the Boston Archdiocese that “blamed its inability to prosecute more perpetrators of abuse on ‘weak’ state reporting statutes.”<sup>64</sup> The Massachusetts General Assembly thus sought to rectify the problem by considering several bills to shore up its child abuse laws and increase penalties on people who failed to comply with mandatory reporting statutes.<sup>65</sup> In that same year, Massachusetts passed Senate Bill 2230, which added to the list of mandatory reporters:

[P]riest[s], rabbi[s], ordained or licensed minister[s] of any church, religious society, or faith, or an accredited Christian Science practitioner, or any person or layperson in any church, religious society or faith acting in a capacity as a leader, official, delegate or other designated function on behalf of any church, religious society or faith.<sup>66</sup>

However, because of the national attention that the Boston-centered scandal received, the ramifications of clergy abuse spilled beyond Massachusetts’s borders. After the Massachusetts Attorney General’s report

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63. Christy Cox, *Abuse in the Catholic Church*, DART CTR. FOR JOURNALISM & TRAUMA (Apr. 8, 2003), <http://dartcenter.org/content/abuse-in-catholic-church> (citing Pulitzer website) (internal quotations omitted).

64. Christopher R. Pudelski, *The Constitutional Fate of Mandatory Reporting Statutes and the Clergy-Communicant Privilege in a Post-Smith World*, 98 NW. U. L. REV. 703, 707 (2004).

65. Ralph Ranalli, *Bills Aim for Stricter Abuse Laws*, BOSTON GLOBE (July 25, 2003), [http://www.boston.com/globe/spotlight/abuse/print4/072503\\_bills.htm](http://www.boston.com/globe/spotlight/abuse/print4/072503_bills.htm).

66. *State Child Welfare Legislation 2002–2003*, NAT’L CONF. OF ST. LEGS. 1, 16 (2004), <http://www.ncsl.org/Portals/1/documents/cyf/childlegislation.pdf> (hereinafter *State Child Welfare Legislation 2002–2003*).

was released, other state legislatures beyond Massachusetts began feeling increasing public pressure to strengthen their laws as well.<sup>67</sup> Twelve states<sup>68</sup> added clergy to the list of mandated reporters in the year or so following the Boston Globe series on child abuse.<sup>69</sup> There is little debate that these legislative changes were spurred by the scandals that rocked the country during that time. In fact, the National Conference of State Legislatures (NCSL) in its report on child welfare legislation from 2002 and 2003 concluded that “[i]n response to high-profile media reports of child abuse by clergy, many states continued the trend of enacting laws to require clergy reporting of child abuse.”<sup>70</sup> Thus, these twelve states directly reacted to a high-profile child abuse event and changed their mandatory reporting laws to ensure that such a situation did not happen again.

It is likely that the clergy abuses were perpetuated when priests failed to report cases of abuse that were reported to them by penitents. This raises the question of whether priests should be required to report confessions of abuse in spite of the priest-penitent privilege. A law review article written by Christopher R. Pudelski at the time of the clergy abuse scandals argued that the recent changes to mandatory reporting statutes that included clergy in the list of mandated reporters “put the clergy-communicant privilege and mandatory child abuse reporting statutes on a collision course” because they pit “two of society’s most cherished beliefs and strongly held values, the right to free exercise of religion and the prevention of child abuse, against each other.”<sup>71</sup> Many states, viewing the privilege as sacred to a degree, included an exemption from the mandatory reporting statute for communications covered by the priest-penitent privilege.<sup>72</sup> However, due to the fact that many communications to and by priests were protected by the priest-penitent privilege, prosecutors prior to 2002 could only go so far against clerical abuse. This fact led at least one scholar to advocate for the abrogation of the privilege “in order to ensure that all complaints or allegations of indecent sexual acts on children are brought to the attention of the appropriate government agency.”<sup>73</sup> This issue, and other

67. *See id.*

68. *See id.* at 16–17 (listing Colorado, Connecticut, Illinois, Massachusetts, and Missouri as changing laws in 2002 and Alabama, Arkansas, Louisiana, Maine, New Mexico, South Carolina, and Vermont as changing laws in 2003).

69. *See, e.g.*, 2002 Colo. Sess. Laws, S.B. 210, Ch. 295; 2002 Conn. Acts, H.B. 5680, Act 138; 2002 Ill. Laws, H.B. 5002, P.A. 92-801; 2002 Mass. Acts, S.B. 2230, Act 14; 2002 Mo. Laws, S.B. 923; 2003 Ala. Acts, H.B. 262, Act 272; 2003 Ark. Acts, H.B. 2262, Act 1039; 2003 La. Acts, H.B. 171, Act 567, S.B. 383, Act 1187; 2003 Me. Public Laws, L.D. 309, Ch. 210; 2003 N.M. Laws, H.B. 247, Ch. 189; 2003 S.C. Acts, H. 3199, Act 94; 2003 Vt. Acts, S. 93, Act 43.

70. *State Child Welfare Legislation 2002–2003*, *supra* note 66, at 3.

71. *See* Pudelski, *supra* note 64, at 704.

72. *See State Child Welfare Legislation 2002–2003*, *supra* note 66, at 16–17 (listing Illinois, Massachusetts, Missouri, New Mexico, and South Carolina as states which passed such exemption in 2002–2003).

73. Julie M. Arnold, “Divine” Justice and the Lack of Secular Intervention: Abrogating the Clergy-Communicant Privilege in Mandatory Reporting Statutes to Combat Child Sexual Abuse, 42 VAL. U. L. REV. 849, 851 (2008).

evidentiary issues like it,<sup>74</sup> remains contentious because both sides believe they are protecting indispensable rights. It will more than likely take a Supreme Court case on the issue to finally resolve the conflict.

## 2. *Dr. Earl B. Bradley Scandal*

As the dust was settling from the rampant clergy abuse scandals, the state of Delaware was struck with the news of a serial pedophile's indictment. In December 2009, Dr. Earl B. Bradley, a pediatrician from Lewes, was charged with raping nine of his female patients. However, after news of this story broke and more victims came forward, the grand jury report that was released in February 2010 indicted him on 471 counts of sexually assaulting 102 girls and one boy he had previously treated.<sup>75</sup> After even more children came forward, these numbers eventually ballooned to 526 counts with 130 children, the youngest being three months old.<sup>76</sup> The governor of Delaware, Jack Markell, quickly pegged Widener Law dean Linda L. Ammons to draft a report about the situation, focusing on the failings of various medical, police, and legal authorities to report Bradley along the way. Ammons recommended that Delaware's reporting laws be changed, particularly to clarify language on when law enforcement officers are mandatory reporters.<sup>77</sup> The Delaware state legislature, however, went further and proposed nine bills to deal with the Bradley situation, seven of which came directly from the governor's office.

Debate in the legislature was minimal. The Dover Post reported that although there were "acknowledged shortcomings" in the bills, the legislature placed the bills "on a de facto fast track and engaged in little debate on the measures as they came up for votes" because of the magnitude of the scandal.<sup>78</sup> The bills covered a range of subjects, including accelerating the process to suspend a doctor's license to practice in emergency situations, imposing fines

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74. For a discussion of the clash between the attorney-client privilege and mandatory reporting laws, see, for example, Alison Beyea, *Competing Liabilities: Responding to Evidence of Child Abuse that Surfaces During the Attorney-Client Relationship*, 51 ME. L. REV. 269 (1999); Adrienne Jennings Lockie, *Salt in the Wounds: Why Attorneys Should Not Be Mandated Reporters of Child Abuse*, 36 N.M. L. REV. 125 (2006); Robert P. Mosteller, *Child Abuse Reporting Laws and Attorney-Client Confidences: The Reality and the Specter of Lawyer as Informant*, 42 DUKE L.J. 203 (1992); Robin A. Rosencrantz, *Rejecting 'Hear No Evil Speak No Evil': Expanding the Attorney's Role in Child Abuse Reporting*, 8 GEO. J. LEGAL ETHICS 327 (1995); Nancy E. Stuart, *Child Abuse Reporting: A Challenge to Attorney-Client Confidentiality*, 1 GEO. J. LEGAL ETHICS 243 (1987).

75. See Cris Barrish, *Delaware Crime: Grand Jury Indicts Dr. Earl Bradley in Sexual Abuse of 103 Child Patients*, DEL. ONLINE (Feb. 23, 2010), [http://www.delawareonline.com/article/20100223/NEWS01/100223004?nclick\\_check=1](http://www.delawareonline.com/article/20100223/NEWS01/100223004?nclick_check=1).

76. See Barbara Raskauskas, *Nine Delaware Bills Pass Following Dr. Earl Bradley Child Molestation*, YAHOO VOICES (July 12, 2010), <http://voices.yahoo.com/nine-delaware-bills-pass-following-dr-earl-bradley-6384214.html?cat=25>.

77. *Law Dean Linda L. Ammons Completes Her Independent Review into the Matter of Lewes Pediatrician Dr. Earl Bradley*, WIDENER LAW (May 11, 2010), <http://law.widener.edu/NewsandEvents/Articles/2010/de051110bradleyreport.aspx>.

78. Doug Denison, *Legislature Acts on Package of 'Bradley Bills'*, DOVER POST (June 28, 2010), [http://www.doverpost.com/news/x1143336558/Legislature-acts-on-package-of-Bradley-Bills?zc\\_p=0](http://www.doverpost.com/news/x1143336558/Legislature-acts-on-package-of-Bradley-Bills?zc_p=0).

for failure to report, requiring an adult to be in the room with a physician if the child is required to disrobe, mandating that physicians and police officers complete training to help them recognize child abuse, and providing for fingerprinting and background checks for all Delaware physicians.<sup>79</sup> Most interestingly, Senate Bill 229, which stated that people in a “position of trust, authority or supervision over a child” would be subject to “enhanced penalties,” mentioned Earl Bradley by name as the motivation for the creation of the law.<sup>80</sup> The legislature thus quickly responded to an enormous scandal by updating its child abuse laws, much like what happened in Massachusetts after the clergy abuse.

The relevant mandatory reporting provision that emerged from the scandal is found in Senate Bill 297. The law clarified that any person or institution with reasonable knowledge of child abuse would be required to make a report, thus shoring up the perceived shortcomings of Delaware’s old laws. The law thrust Delaware into the realm of universal mandatory reporting, as it stated that “[a]ny person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report . . . .”<sup>81</sup> The bill defined “person” as including, but not limited to, “any physician, any other person in the healing arts including any person licensed to render services in medicine, osteopathy or dentistry, any intern, resident, nurse, school employee, social worker, psychologist, medical examiner, hospital, health care institution, the Medical Society of Delaware or law enforcement agency.”<sup>82</sup> Delaware thus narrowed the language in its child abuse reporting statute, ensuring that universal mandatory reporting would indeed be followed in the state. By doing this, it joined seventeen other states<sup>83</sup> that had already passed universal mandatory reporting laws.

### 3. *Sandusky Scandal*

The most recent scandal that has sent shockwaves through state legislatures, prompting significant change in mandatory reporting laws, is the horrific instance of child abuse perpetrated by Jerry Sandusky, a former defensive coordinator for the Pennsylvania State University football team. Although the ramifications of this scandal will likely be felt for years to come, we can already see that this situation has followed—and probably will continue to follow—the general trend of child sexual abuse leading to quick and significant changes to states’ mandatory reporting laws. Although the scandal

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79. See Raskauskas, *supra* note 76.

80. *Id.* (internal quotations omitted).

81. DEL. CODE ANN. tit. 16, § 903 (West 2010).

82. *Id.*

83. See *Mandatory Reporters of Child Abuse and Neglect*, CHILD WELFARE INFO. GATEWAY 1, 18–52 (Apr. 2010), [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/manda.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm) (listing Florida, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, and Utah as states, along with Delaware, as having universal mandatory reporting).

erupted in Pennsylvania, the fury over Sandusky's high-profile abuse has spread beyond the borders of the Commonwealth, affecting change across the nation.

Jerry Sandusky was charged in late 2011 with forty counts related to the sexual abuse of young boys who he had met through his work with needy children under the auspices of his Second Mile Foundation.<sup>84</sup> After the story gained national attention and created tumultuous outrage from the general public, it came to light that numerous Penn State officials had known about the abuse and had not reported it.<sup>85</sup> The Christian Science Monitor rightly reports that “[w]hen the child sex abuse scandal at Penn State erupted last year, public anger was not only directed toward Jerry Sandusky . . . but toward the people around him who didn't report their suspicions to police.”<sup>86</sup> This outcry caused a significant amount of shifting in the legislative landscape in early 2012 and will probably only continue, since Sandusky was found guilty on forty-five of forty-eight charges for sexually abusing ten young boys.<sup>87</sup>

The grand jury report indicting Sandusky was released on November 4, 2011. Less than two weeks later, states were already attempting to fix their mandatory reporting laws. For instance, on November 15, 2011, Missouri Attorney General Chris Koster called for a law requiring “any person who witnesses sexual abuse of a child to report it to law enforcement.”<sup>88</sup> Because Missouri's current law only enumerates certain professions, such as teachers, physicians, and clergy, Koster wanted reporting to change “in light of the recent child sex abuse scandal out of Penn State.”<sup>89</sup>

Missouri was not alone in its desire to change its laws. Thirty states and the District of Columbia introduced bills in the 2012 legislative year dealing with reporting of suspected child abuse and neglect, “many of them directly in response to the Sandusky case.”<sup>90</sup> Once again, voluntary associations played a key role in agitating for changes in the laws. For instance, Pamela Pine, founder of the nonprofit organization, Stop the Silence: Stop Child Sexual

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84. See Mark Viera, *Former Coach at Penn State is Charged with Abuse*, N.Y. TIMES (Nov. 5, 2011), <http://www.nytimes.com/2011/11/06/sports/ncaafootball/former-coach-at-penn-state-is-charged-with-abuse.html?r=1>.

85. See Michael Muskal, *Sandusky Scandal: Freeh Report Condemns Top Penn State Officials*, L.A. TIMES (July 12, 2012), <http://www.latimes.com/news/nation/nationnow/la-na-nn-penn-state-freeh-report-released-20120712,0,519370.story>. Former FBI Director Louis Freeh stated as to his findings in his report about the scandal: “Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky's child victims by the most senior leaders at Penn State. The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.” *Id.* (internal quotation marks omitted).

86. Joann Loviglio, *Sandusky Child Sex Abuse Scandal Raises Questions About State Laws*, CHRISTIAN SCI. MONITOR (June 9, 2012), <http://www.csmonitor.com/USA/Latest-News-Wires/2012/0609/Sandusky-child-sex-abuse-scandal-raises-questions-about-state-laws>.

87. See Joe Drape, *Sandusky Guilty of Sexual Abuse of 10 Young Boys*, N.Y. TIMES (June 22, 2012), <http://www.nytimes.com/2012/06/23/sports/ncaafootball/jerry-sandusky-convicted-of-sexually-abusing-boys.html>.

88. Lauren Matter, *Should Everyone Be 'Mandatory Reporters' When It Comes to Child Abuse?*, KSPR (Nov. 16, 2011), [http://articles.kspr.com/2011-11-16/sexual-abuse\\_30408164](http://articles.kspr.com/2011-11-16/sexual-abuse_30408164).

89. See *id.*

90. Loviglio, *supra* note 86.



Abuse, prophesized that the Penn State scandal would be the “beginning of a wakeup call” and lead legislators to “close those loopholes” in their mandatory reporting laws.<sup>91</sup> The work of Pine’s nonprofit, as well as many other similar organizations coupled with the mass media, once again provided an impetus for serious change in mandatory reporting laws.

As of August 2012, the thirty states mentioned above<sup>92</sup> and the District of Columbia had proposed 105 bills, ten of which had passed as of the date of this article, just months after the Sandusky scandal broke. Of the states that did not already have universal mandatory reporting, two broad trends can be seen in the bills that were proposed during this period. First, eight states proposed bills which would make all persons mandatory reporters in their states.<sup>93</sup> Reacting to the shortcomings of laws like those enacted in Pennsylvania that had created the Sandusky situation, these states attempted to ensure that a similar situation would not happen in their territories. However, of the eight states that proposed these universal mandatory reporting bills, only one legislature passed a bill into law. On May 25, 2012, Louisiana Governor Bobby Jindal signed a universal mandatory reporting bill<sup>94</sup> into law while declaring that “[w]e have a moral duty to protect our children. This new law will ensure that suspected cases of abuse are reported to the proper authorities and will punish those who fail to report these monstrous acts.”<sup>95</sup> Other than Louisiana, however, the states that attempted to create universal mandatory reporting laws ended up having more bark than bite, as the other seven bills either failed or remain pending in the legislature.<sup>96</sup>

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91. Jason Koebler, *States Consider Mandating Sex Abuse Reporting After Penn State Scandal*, U.S. NEWS & WORLD REP. (Nov. 18, 2011), <http://www.usnews.com/education/blogs/high-school-notes/2011/11/18/states-consider-mandating-sex-abuse-reporting-after-penn-state-scandal>.

92. *See Mandatory Reporting of Child Abuse and Neglect: 2012 Introduced Legislation*, NAT’L CONF. OF ST. LEGS. (June 4, 2012), <http://www.ncsl.org/issues-research/human-services/2012-child-abuse-mandatory-reporting-bills.aspx> (hereinafter *Mandatory Reporting of Child Abuse*) (listing Alabama, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Missouri, Mississippi, Nebraska, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, South Carolina, South Dakota, Virginia, Vermont, Washington, West Virginia, and Wisconsin as having proposed bills dealing with child abuse in 2012).

93. *See id.* (listing H.B. 676 (Ala. 2012); A.B. 1438 (Cal. 2012); H.B. 1176 (Ga. 2012); H.B. 2233 (Haw. 2012); S.B. 2575 (Haw. 2012); H.B. 5584 (Ill. 2012); H.B. 577 (La. 2012); H.B. 1102, 96th Gen. Assemb., 2d Reg. Sess. (Mo. 2012); and H.B. 4428 (S.C. 2012) as proposing changes to universal mandatory reporting).

94. LA. REV. STAT. ANN. § 14:403(A)(1)(b)(4)(a) (2012). Section 14:403(A)(1)(b)(4)(a) mandates that:

Any person who is eighteen years of age or older who witnesses the sexual abuse of a child and knowingly or willfully fails to report the sexual abuse to law enforcement or to the Department of Children and Family Services as required by Children’s Code Article 610, shall be fined not more than ten thousand dollars, imprisoned, with or without hard labor, for not more than five years, or both.

*Id.*

95. *New Law Will Require Mandatory Reporting of Sexual Abuse*, NBC 33 NEWS (May 26, 2012), <http://www.nbc33tv.com/news/louisiana-politics/2012-legislative-session/new-law-will-require-mandatory-reporting-of-sexual->

96. *See Mandatory Reporting of Child Abuse*, *supra* note 92.

The other notable trend in the 2012 onslaught of proposed legislation is the targeted nature of many of the bills toward the Sandusky scandal. As the people who failed to report Sandusky's misdeeds were school employees and athletic officials, many of the bills specifically enumerated these categories of people as mandatory reporters.<sup>97</sup> However, only two states actually passed bills that concretely effected these changes. First, Oregon passed a bill that added to the list of already-enumerated professions employees of higher education institutions, coaches, assistant coaches, or trainers of child athletes and individuals who provide guidance, instruction, or training in youth development activities.<sup>98</sup> Interestingly, an official Oregon governmental publication specifically noted that "[t]his legislation is a response to the recent 'Penn State' event and publicity."<sup>99</sup> Second, Oregon's neighbor, Washington, similarly passed a bill enumerating categories specific to the scandal.<sup>100</sup> Many states thus attempted to respond directly to the Sandusky scandal by including categories of people into their mandatory reporting statutes that would prevent a similar situation from happening in their states in the future.

One state that deserves special mention is Virginia. Of the ten laws that were actually enacted nationwide dealing with child abuse, five of them came out of the Virginia legislature.<sup>101</sup> These laws accomplished a broad range of objectives, from adding professionals to the list of mandatory reporters<sup>102</sup> to

97. *See id.* The National Conference of State Legislatures' report listed the following bills as including school employees and athletic officials as mandatory reporters: A.B. 1434 (Cal. 2012) (employees of public or private institution of higher education); A.B. 1435 (Cal. 2012) ("athletic coach, administrator, or director of a public or private organization"); S.B. 193 (Conn. 2012) ("coach or director of intramural, interscholastic or youth athletics, any coach or director of a private sports organization or team, any administrator, faculty, staff, athletic director, coach or trainer employed by a constituent unit of the state system of higher education or private institution of higher education, . . . any youth camp administrator"); H.B. 3887 (Ill. 2012) ("personnel of institutions of higher education and athletic program or facility personnel"); H.B. 2533 (Kan. 2012) ("any employee, contractor or administrator of any public or private educational institution"); A.B. 8901 (N.Y. 2012) (school athletic directors, school coaches, school assistant coaches); S.B. 154 (S.D. 2012) ("employees or volunteers of a child advocacy organization or child welfare service provider"); and H.B. 4065 (W.V. 2012) ("youth camp administrators, camp counselors, employees and volunteers of entities that provide organized activities for children"). *See id.*

98. *See* H.B. 4016, 76th Leg. Assemb., Reg. Sess. (Or. 2012) (enacted and codified at OR. REV. STAT. § 419B.005(4)(bb)-(dd) (2012)).

99. *End of Session Summary Report*, OR. DEP'T OF HUMAN SERVS. 1, 4 (Mar. 2012), <http://www.oregon.gov/DHS/aboutdhs/budget/2011-2013/docs/leg-session-end-final2012-03.pdf?ga=t>.

100. *See* S.B. 5991 (Wash. 2012) (enacted and codified at WASH. REV. CODE ANN. § 26.44.030(1)(f) (West 2012)) (enumerating "administrative and academic or athletic department employees, including student employees, of institutions of higher education . . . and of private institutions of higher education"); *see also* WASH. REV. CODE ANN. § 28B.10.846(1)(a) (West 2012) (enumerating "all employees of institutions of higher education, not considered academic or athletic department employees, who have reasonable cause to believe a child has suffered abuse or neglect").

101. *See Mandatory Reporting of Child Abuse*, *supra* note 92 (noting that Va. H.B. 3, 74, 970, 1237 and S.B. 239 were enacted into law in 2012).

102. *See id.* (reporting H.B. 3 as adding "athletic coach, director or other person employed by or volunteering with a private sports organization or team and administrators, employees, or volunteers of public or private day camps, youth centers, and youth recreation

reducing the time limit for reporting from seventy-two hours to twenty-four hours.<sup>103</sup> Although not much research has been done on the motivations behind these new Virginia laws because of how recent they are, it seems that Virginia has an especially strong child abuse advocacy lobbying group that may have contributed to the high number of laws passed in the first half of 2012. Prevent Child Abuse Virginia (PCAV) is an organization that has much influence on Virginian politics. For instance, PCAV spearheaded the effort to raise awareness for the problem of child abuse by naming April Child Abuse Prevention Month, an effort that received support from the Virginia Department of Social Services.<sup>104</sup> PCAV's influence on the state government can be seen in Governor Robert F. McDonnell's official recognition of April as Child Abuse Prevention Month in 2012.<sup>105</sup> PCAV supported and lobbied for the mandatory reporting bills in the Virginia legislature.<sup>106</sup> It is likely that through its influence and efforts, PCAV was able to affect significant change on Virginian politics.

Another facet that could have had an impact on the success of the legislation is a report that was released in April 2012 by the Children's Advocacy Institute at the University of San Diego that gave Virginia a B- for its child abuse reporting laws, ranking it better than only nineteen states in the country.<sup>107</sup> The combination of pressure from PCAV and the state's poor showing in this well-known ranking system more than likely prodded legislators to update Virginia's mandatory reporting laws.

It is also interesting to note that although the general trend was towards universal mandatory reporting (by becoming universal or adding more categories of professions to the mandatory reporting statutes), half<sup>108</sup> of the eighteen states that already had universal mandatory reporting systems in place prior to the Sandusky scandal still proposed legislation dealing with reporting. Despite having the most comprehensive type of mandatory reporting already, these states attempted to shore up perceived weaknesses in the system or close loopholes.<sup>109</sup> This shows the wholesale manner in which the Sandusky scandal

programs"; H.B. 970 as adding "any person employed by a public or private institution of higher education"; H.B. 1237 as adding "a law enforcement agency"; and S.B. 239 as adding "individuals employed by a public or private organization responsible for the care, custody, or control of children.")

103. *See id.* (reporting H.B. 74 as reducing time limit for reporting suspected child abuse or neglect by mandated reporters from seventy-two hours to twenty-four hours).

104. *See About Us*, PREVENT CHILD ABUSE VIRGINIA, <http://pcav.org/about-us/> (last visited Aug. 7, 2013).

105. *See April is Child Abuse Prevention Month*, SUSSEX COUNTY, VIRGINIA (Apr. 11, 2012), <http://www.sussexcountyva.gov/news/index/view/id/39/>.

106. *See Bills We Support*, PREVENT CHILD ABUSE VA. (last visited July 3, 2012), <http://pcav.org/advocacy/bills-we-support/>.

107. *State Secrecy and Child Deaths in the U.S.*, CHILD. ADVOC. INST. & FIRST STAR (2012), <http://www.caichildlaw.org/Misc/StateSecrecy2ndEd.pdf>.

108. *See Mandatory Reporting of Child Abuse*, *supra* note 92 (listing Delaware, Florida, Idaho, Indiana, Maryland, Mississippi, Nebraska, New Hampshire, and New Jersey as states with proposed legislation).

109. *See id.* The NCSL Report listed the following bills and proposed changes: Del. H.B. 243 (simplifying mandatory reporting requirements); Fla. H.B. 1355 (raising penalties

shook the entire nation—even those states that probably believed their mandatory reporting laws were strong.

The last facet of the current state of mandatory reporting laws is the federal government's attempted intervention into the arena. Despite purposefully abdicating mandatory reporting to the states through CAPTA and subsequent amendments to it, the federal government responded to the Sandusky scandal by trying to intervene in this area historically left to the states. Whereas CAPTA left the issue of what groups should be mandated to report up to the individual states, Senate Bill 1877, also known as the Speak Up to Protect Every Abused Kid Act, introduced by Senator Bob Casey of Pennsylvania in November 2011, would require states to pass laws mandating that all adults report instances of child abuse in order to receive federal funding through CAPTA.<sup>110</sup> Senator Casey, in an official press release, specifically noted that this legislation was a response to “a case of blatant failure on the part of adults to protect children,” clearly alluding to the Sandusky scandal.<sup>111</sup> He proposed the legislation to “close a loophole that allows abusers to get away with heinous crimes and emphasize the responsibility of all adults to protect children from abuse and neglect.”<sup>112</sup> The bill was instantly referred to the Senate Committee on Health, Education, Labor, and Pensions and has not emerged from it thus far.

Despite the bill being fairly far away from passage, the mere proposal of the Speak Up to Protect Every Abused Kid Act mobilized opponents of universal mandatory reporting. Various organizations began advocating for people to not get caught up in the frenzy of the Sandusky scandal and pass laws that they may regret later. For instance, Richard Wexler, executive director of the National Coalition for Child Protection Reform, believes there are a number of problems with proposals like Senate Bill 1877. He writes that more mandated reporting will overload child protective service agencies, force people to call in cases that are “patently absurd” because they fear penalties, and subject more children to the trauma of child abuse investigations, which usually include a “visual inspection.”<sup>113</sup> Teresa Huizar, executive director of the

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for failure to report to one million dollars for each failure); Idaho S.B. 1245 (mandating reports of abuse within twenty-four hours of incident); Ind. S.B. 267 (creating educational materials on child abuse); Md. H.B. 1067/S.B. 63 (adding penalty for failures to report); Miss. H.B. 943 (creating Mandated Reporter Training Division); Neb. L.B. 839 (mandating reports of abuse within twenty-four hours of incident); Neb. L.B. 993 (creating training programs for mandatory reporters); N.H. H.B. 1249 (establishing enhanced criminal penalty for supervisor who fails to report employee or volunteer); N.J. A.B. 4396/S.B. 3143 (mandating immediate reporting for mandatory reporters). *See id.*

110. *See* Richard Simon, *Penn State Scandal Prompts Calls for Child-Abuse Reporting Laws*, L.A. TIMES (Nov. 16, 2011), <http://latimesblogs.latimes.com/nationnow/2011/11/penn-state-scandal-inspires-legislation.html>.

111. *Casey Introduces Bill to Strengthen Child Protection Laws*, ROBERT P. CASEY, JR., U.S. SENATOR FOR PA. (Nov. 16, 2011), <http://www.casey.senate.gov/newsroom/press/release/?id=4870f6e4-6537-44d8-ad1b-3c41da07751e>.

112. *Id.*

113. *See* Richard Wexler, *Increasing Mandatory Reporting of Alleged Child Abuse and Neglect Will Hurt Children*, NAT'L COAL. FOR CHILD PROT. REFORM (Dec. 11, 2011), <http://www.nccpr.org/reports/mandatoryreporting.pdf>.

National Children's Alliance in Washington, D.C., believes that "the jury is still out as to whether states that require all adults to report suspected abuse have reporting rates higher than those without universal mandatory reporting requirements."<sup>114</sup> Similarly, in the organization's analysis of Senate Bill 1877, the Family Defense Center, a child advocacy group based out of Chicago, posits that "[m]aking all adults mandated reporters will lead to a massive increase in the number of calls that are not likely to be deemed meritorious by authorities."<sup>115</sup> The nation is not unanimous about whether the current trend toward universal mandatory reporting is the wisest path to take.

The question of whether universal mandatory reporting actually leads to an increase in the number of calls that are not likely to be deemed meritorious by authorities has caused much debate, but the numbers seem to support a conclusion to that effect. For instance, although Pennsylvania has not switched to a universal mandatory reporting statute, it has generally been trending in that direction. However, with significant steps toward universal reporting has come an increase in the number of unsubstantiated reports. After the passage of the PCSL, the number of reports that were substantiated fell from forty-four percent in 1976 to thirty-five percent in 1977.<sup>116</sup> Similarly, in 2010, before the Sandusky scandal, the Department of Welfare reported that 3,656 of 24,615 reports (14.85 percent) were substantiated.<sup>117</sup> In 2011, however, only 3,408 of 24,378 reports (13.98 percent) were substantiated.<sup>118</sup>

### III. NATIONAL OVERVIEW

All fifty of the United States have mandatory reporting laws.<sup>119</sup> The two

114. Anna Stolley Persky, *Beyond the Penn State Scandal: Child Abuse Reporting Laws*, D.C. BAR (June 2012), [http://www.dcbar.org/for\\_lawyers/resources/publications/washington\\_lawyer/june\\_2012/child\\_abuse.cfm](http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/june_2012/child_abuse.cfm) (internal quotations omitted).

115. *Analysis of S. 1877—The "Speak Up to Protect Every Abused Kid Act"*, FAM. DEF. CTR. (Dec. 7, 2011), <http://www.familydefensecenter.net/analysis-of-s-1877.html>.

116. See STAFF OF JOINT STATE GOV'T COMM'N, ADMINISTRATION OF PENNSYLVANIA'S CHILD ABUSE LAW: A LEGISLATIVE OVERSIGHT EVALUATION 13–14 (Comm. Print 1979) (reporting that in 1976, 2,851 of 6,415 reports were substantiated and that in 1977, 4,499 of 12,939 reports were substantiated).

117. See Ivey DeJesus, *Calls to Child Abuse Hotline Doubled After Jerry Sandusky's Arrest*, PATRIOT-NEWS (Dec. 9, 2011), [http://www.pennlive.com/midstate/index.ssf/2011/12/calls\\_to\\_child\\_abuse\\_hotline\\_h.html](http://www.pennlive.com/midstate/index.ssf/2011/12/calls_to_child_abuse_hotline_h.html).

118. See *Pennsylvania Department of Public Welfare Releases Child Abuse Report to Increase Awareness, Highlight Prevention*, PR NEWSWIRE (May 11, 2012), <http://www.prnewswire.com/news-releases/pennsylvania-department-of-public-welfare-releases-child-abuse-report-to-increase-awareness-highlight-prevention-151114935.html>.

119. See ALA. CODE §§ 26-14-1 to -13 (2013) (Alabama); ALASKA STAT. §§ 47.17.010–.290 (2013) (Alaska); ARIZ. REV. STAT. ANN. § 8-201 (2013) (Arizona); ARK. CODE ANN. §§ 12-18-101 to -1101 (West 2013) (Arkansas); CAL. PENAL CODE § 11164 (West 2013) (California); COLO. REV. STAT. ANN. §§ 19-3-301 to -316 (West 2013) (Colorado); CONN. GEN. STAT. § 17a-100a (2013) (Connecticut); DEL. CODE ANN. tit. 16 §§ 901–14 (West 2013) (Delaware); FLA. STAT. §§ 39.201, .202, .205, .01 (2013) (Florida); GA. CODE ANN. § 19-7-5 (West 2013) (Georgia); HAW. REV. STAT. §§ 350-1 to -7 (2013) (Hawaii); IDAHO CODE ANN. §§ 16-1601 to -1643 (West 2013) (Idaho); 325 ILL. COMP. STAT. 5/4 (2013) (Illinois); IND. CODE §§ 31-33-5-1 to -4 (2013) (Indiana); IOWA CODE §§

areas of analysis that are integral to understanding a state's mandatory reporting law are (1) the enumerated mandatory reporters and (2) the penalties for failure to report. This section will examine the most and least comprehensive states in each category, at least as they stand at the time of the writing of this article.

#### A. *Most Comprehensive States—Mandated Reporters*

The most comprehensive systems possible reside in the nineteen states that have universal mandatory reporting.<sup>120</sup> Two states, New Jersey and Wyoming, still follow the original model for universal mandatory reporting that was adopted by Nebraska, Tennessee, and Utah in the 1960s, which simply places the duty for reporting on all persons without enumerating certain categories of professions.<sup>121</sup> The other seventeen states, including the newest state to adopt universal mandatory reporting, Louisiana, follow the model that Indiana enacted in the mid-1970s by enumerating certain categories of professionals, while also

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232.68–.70 (2013) (Iowa); KAN. STAT. ANN. § 38-2223 (West 2013) (Kansas); KY. REV. STAT. ANN. §§ 620.030–.040 (West 2013) (as amended by 2013 Ky. Laws Ch. 25, H.B. 3) (Kentucky); LA. CHILD. CODE ANN. art. 609 (2013) (as amended by 2013 La. Sess. Law Serv. Act 163 (H.B. 557)) (Louisiana); ME. REV. STAT. tit. 22 §§ 4011-A to 4012 (2013) (as amended by 2013 Me. Legis. Serv. Ch 268 (H.P. 1094)) (Maine); MD. CODE ANN., FAM. LAW § 5-701 (West 2013) (Maryland); MASS. GEN. LAWS ch. 119, § 51A (2013) (Massachusetts); MICH. COMP. LAWS §§ 722.621–.623 (2013) (Michigan); MINN. STAT. § 626.556 (2013) (as amended by 2013 Minn. Sess. Law Serv. Ch. 82 (S.F. 745)) (Minnesota); MISS. CODE ANN. § 43-21-353 (West 2013) (Mississippi); MO. REV. STAT. § 210.115 (2013) (Missouri); MONT. CODE ANN. §§ 41-3-201 to -208 (West 2013) (as amended by 2013 Mont. Laws Ch. 337 (H.B. 131)) (Montana); NEB. REV. STAT. § 28-710 to -717 (2013) (as amended by 2013 Neb. Laws L.B. 265) (Nebraska); NEV. REV. STAT. §§ 432b.220–.320 (2013) (Nevada); N.H. REV. STAT. ANN. §§ 169-C:29 to :39 (2013) (New Hampshire); N.J. STAT. ANN. §§ 9:6-8.9 to .10 (West 2013) (New Jersey); N.M. STAT. ANN. § 32A-4-1 (West 2013) (New Mexico); N.Y. SOC. SERV. LAW §§ 411–28 (McKinney 2013) (New York); N.C. GEN. STAT. § 7B-301 (2013) (North Carolina); N.D. CENT. CODE §§ 50-25.1-01 to -03 (2013) (North Dakota); OHIO REV. CODE ANN. § 2151.421 (West 2013) (Ohio); OKLA. STAT. tit. 10a, § 1-2-101 (2013) (as amended by 2013 Okla. Sess. Law Serv. Ch. 374 (S.B. 460)) (Oklahoma); OR. REV. STAT. §§ 419B.005–.015 (2013) (Oregon); 23 PA. CONS. STAT. §§ 6303–13 (2013) (Pennsylvania); R.I. GEN. LAWS §§ 40-11-1 to -3.1 (2013) (Rhode Island); S.C. CODE ANN. § 63-7-310 (2013) (South Carolina); S.D. CODIFIED LAWS §§ 26-8A-1 to -10 (2013) (South Dakota); TENN. CODE ANN. §§ 37-1-401 to -403 (West 2013) (Tennessee); TEX. FAM. CODE ANN. §§ 261.101–.111 (West 2013) (as amended by 2013 Tex. Sess. Law Serv. Ch. 395 (S.B. 152)) (Texas); UTAH CODE ANN. §§ 62A-4a-401 to -403 (as amended by 2013 Utah Laws Ch. 171 (S.B. 255)) (West 2013) (Utah); VT. STAT. ANN. tit. 33, §§ 4911–13 (West 2013) (Vermont); VA. CODE ANN. §§ 63.2-1501, -1509 (as amended by 2013 Va. Laws Ch. 72 (H.B. 1622)) (West 2013) (Virginia); WASH. REV. CODE §§ 26.44.010, .030 (2013) (as amended by 2013 Wash. Legis. Serv. Ch. 23 (S.S.B. 5077)) (Washington); W. VA. CODE §§ 49-6A-1, -2 (2013) (West Virginia); WIS. STAT. §§ 48.02, .981 (2013) (Wisconsin); WYO. STAT. ANN. §§ 14-3-201, -205 (West 2013) (Wyoming).

120. The nineteen states that have mandatory reporting are Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming.

121. See N.J. STAT. ANN. § 9:6-8.10 (“Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse . . . .”); WYO. STAT. ANN. § 14-3-205 (“Any person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected or who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect . . . .”).

expecting all persons to report.<sup>122</sup> Regardless of whether or not the state specifies certain categories, a universal mandatory reporting state has the most comprehensive scheme possible in that all of its citizens are mandated to report cases of child abuse.

Of the thirty-one states that do not mandate universal reporting, however, certain states stand out as having more comprehensive requirements than others. California enumerates forty different categories of professions as mandated reporters, a quantity unparalleled in the United States.<sup>123</sup> Arkansas's statute features the next highest amount with thirty-seven categories of professions enumerated.<sup>124</sup> The Pennsylvania Bar Institute, in its 2012 publication

122. For a discussion of the reasoning behind enumerating these categories while still requiring all individuals to report, see *supra* notes 7–37 and accompanying text.

123. See CAL. PENAL CODE § 11165.7. The statute enumerates:

(1) A teacher. (2) An instructional aide. (3) A teacher's aide or teacher's assistant employed by any public or private school. (4) A classified employee of any public school. (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school. (6) An administrator of a public or private day camp. (7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization. (8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children. (9) Any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis. (10) A licensee, an administrator, or an employee of a licensed community care or child day care facility. (11) A Head Start program teacher. (12) A licensed worker or licensing evaluator employed by a licensing agency. (13) A public assistance worker. (14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities. (15) A social worker, probation officer, or parole officer. (16) An employee of a school district police or security department. (17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school. (18) A district attorney investigator, inspector, or local child support agency caseworker. (19) A peace officer . . . . (20) A firefighter, except for volunteer firefighters. (21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor . . . . (22) An emergency medical technician. (23) A psychological assistant . . . . (24) A marriage and family therapist trainee . . . . (25) An unlicensed marriage and family therapist intern . . . . (26) A state or county public health employee who treats a minor for venereal disease or any other condition. (27) A coroner. (28) A medical examiner, or other person who performs autopsies. (29) A commercial film and photographic print or image processor . . . . (30) A child visitation monitor . . . . (31) An animal control officer or humane society officer . . . . (32) A clergy member . . . . (33) Any custodian of records of a clergy member . . . . (34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department. (35) An employee or volunteer of a Court Appointed Special Advocate program . . . . (36) A custodial officer . . . . (37) Any person providing services to a minor child . . . . (38) An alcohol and drug counselor . . . . (39) A clinical counselor trainee; and a clinical counselor intern . . . .

*Id.*

124. See ARK. CODE ANN. § 12-18-402. The statute enumerates:

(1) A child care worker or foster care worker; (2) A coroner; (3) A day care center worker; (4) A dentist; (5) A dental hygienist; (6) A domestic abuse advocate; (7) A

*Protecting Our Children: The Responsibility of Organization*, analyzed all fifty of the mandatory reporting laws in the United States and placed the enumerated professions of each into broad categories. After California (which had twenty-three of these broad categories) and Arkansas (which had twenty of these broad categories), the three states with the next highest amounts were Illinois,<sup>125</sup>

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domestic violence shelter employee; (8) A domestic violence shelter volunteer; (9) An employee of the Department of Human Services; (10) An employee working under contract for the Division of Youth Services of the Department of Human Services; (11) A foster parent; (12) A judge; (13) A law enforcement official; (14) A licensed nurse; (15) Medical personnel who may be engaged in the admission, examination, care, or treatment of persons; (16) A mental health professional; (17) An osteopath; (18) A peace officer; (19) A physician; (20) A prosecuting attorney; (21) A resident intern; (22) A school counselor; (23) A school official; (24) A social worker; (25) A surgeon; (26) A teacher; (27) A court-appointed special advocate program staff member or volunteer; (28) A juvenile intake or probation officer; (29) A clergy member, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent the clergy member: (A) Has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or (B) Received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission; (30) An employee of a child advocacy center or a child safety center; (31) An attorney ad litem in the course of his or her duties as an attorney ad litem; (32)(A) A sexual abuse advocate or sexual abuse volunteer who works with a victim of sexual abuse as an employee of a community-based victim service or mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families. (B) A sexual abuse advocate or sexual abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency; (33) A rape crisis advocate or rape crisis volunteer; (34)(A) A child abuse advocate or child abuse volunteer who works with a child victim of abuse or maltreatment as an employee of a community-based victim service or a mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families. (B) A child abuse advocate or child abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency; (35) A victim/witness coordinator; (36) A victim assistance professional or victim assistance volunteer; or (37) An employee of the Crimes Against Children Division of the Department of Arkansas State Police.

*Id.*

125. See 325 ILL. COMP. STAT. 5/4 (2002). Illinois is listed as requiring the following categories to report:

Any physician, resident, intern, hospital, hospital administrator and personnel engaged in examination, care and treatment of persons, surgeon, dentist, dentist hygienist, osteopath, chiropractor, podiatrist, physician assistant, substance abuse treatment personnel, funeral home director or employee, coroner, medical examiner, emergency medical technician, acupuncturist, crisis line or hotline personnel, school personnel (including administrators and both certified and non-certified school employees), personnel of institutions of higher education, educational advocate assigned to a child pursuant to the School Code, member of a school board or the Chicago Board of Education or the governing body of a private school (but only to the extent required in accordance with other provisions of this Section expressly concerning the duty of school board members to report suspected child abuse), truant officers, social worker, social services administrator, domestic violence program personnel, registered nurse, licensed practical nurse, genetic counselor, respiratory care practitioner, advanced practice nurse, home health aide,



Oregon,<sup>126</sup> and Washington,<sup>127</sup> all of which had fourteen categories.<sup>128</sup> These five states are the most comprehensive of the non-universal systems because of the sheer number of categories that they enumerate as mandatory reporters. This fact becomes especially evident when viewed in juxtaposition with the least comprehensive systems, some of which only enumerate four or five categories.

B. *Least Comprehensive States—Mandated Reporters*

When compared to the laundry lists featured in the laws mentioned above, the laws in six states seem rather inadequate because they enumerate only four

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director or staff assistant of a nursery school or a child day care center, recreational or athletic program or facility personnel, early intervention provider as defined in the Early Intervention Services System Act, law enforcement officer, licensed professional counselor, licensed clinical professional counselor, registered psychologist and assistants working under the direct supervision of a psychologist, psychiatrist, or field personnel of the Department of Healthcare and Family Services, Juvenile Justice, Public Health, Human Services (acting as successor to the Department of Mental Health and Developmental Disabilities, Rehabilitation Services, or Public Aid), Corrections, Human Rights, or Children and Family Services, supervisor and administrator of general assistance under the Illinois Public Aid Code, probation officer, animal control officer or Illinois Department of Agriculture Bureau of Animal Health and Welfare field investigator, or any other foster parent, homemaker or child care worker having reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to the Department.

*Id.*

126. See OR. REV. STAT. § 419B.005(5) (2013). Oregon is listed as requiring the following categories to report: medical and mental health professionals; school employees; employees of the Department of Human Services, Oregon Health Authority, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department; peace officers; members of the clergy; certified foster care or child care providers; attorneys or court-appointed special advocates; firefighters or emergency medical technicians; members of the Legislative Assembly; physical, speech, or occupational therapists; audiologists or speech-language pathologists; employees of a private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney. See *id.*

127. See WASH. REV. CODE ANN. § 26.44.030(1)(a) (West 2012). Washington is listed as requiring the following categories to report: practitioners, county coroners, or medical examiners; law enforcement officers; professional school personnel; registered or licensed nurses, social service counselors, psychologists, or pharmacists; employees of the Department of Early Learning; licensed or certified child care providers or their employees; employees of the Department of Social and Health Services; juvenile probation officers; placement and liaison specialists, responsible living skills program staff, or HOPE center staff; state family and children's ombudsman or any volunteer in the ombudsman's office; persons who supervise employees or volunteers who train, educate, coach, or counsel children or have regular unsupervised access to children; Department of Corrections personnel; any adult with whom a child resides; guardians ad litem and court-appointed special advocates. See *id.*

128. I use the Pennsylvania Bar Institute's breakdown of these categories for these three statutes because the list of mandatory reporters is spread throughout the text of the statute, rather than being in one single section like in California and Arkansas.

or five categories of professions. Although many of these states utilize an umbrella method in that they attempt to fit many specific professionals into an overarching category their laws still are not as comprehensive as the aforementioned states. The Pennsylvania Bar Institute's publication lists the following five states as enumerating only four or five categories: Arizona, Georgia, Kansas, South Dakota, and Vermont. The manner in which these states proceed in enumerating this small amount of categories, however, differs vastly.

For instance, Arizona has the most bare-bones mandatory reporting statute.<sup>129</sup> The statute states that "any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse . . . shall immediately report or cause reports to be made of this information . . . ." However, the statute specifically limits the definition of "person" to the following five categories: medical professionals;<sup>130</sup> peace officers, members of the clergy, priests or Christian Science practitioners; parents, stepparents, or guardians of the minor; school personnel or domestic violence victim advocates; and any other person who has the responsibility for the care or treatment of the minor. South Dakota similarly has a short list of mandatory reporters, listing:

Any physician, dentist, doctor of osteopathy, chiropractor, optometrist, mental health professional or counselor, podiatrist, psychologist, religious healing practitioner, social worker, hospital intern or resident, parole or court services officer, law enforcement officer, teacher, school counselor, school official, nurse, licensed or registered child welfare provider, employee or volunteer of a domestic abuse shelter, employee or volunteer of a child advocacy organization or child welfare service provider, chemical dependency counselor, coroner, or any safety-sensitive position . . . .<sup>131</sup>

Although this list appears rather long, it breaks down into four simple categories: medical and mental health professionals, school officials, law enforcement officers, and any safety-sensitive position. Having only four or five categories enumerated in just a few words stands out as not very comprehensive as compared to the average state, and especially considering the most comprehensive states listed above.

On the other side of the least comprehensive spectrum is Kansas, which, while enumerating only five broad categories of professionals (medical professionals, mental health professionals, school officials, law enforcement officers, and social services workers) does so with a lot of verbiage compared to Arizona or South Dakota.<sup>132</sup> In between the two extremes are the statutes of

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129. See ARIZ. REV. STAT. ANN. § 13-3620 (2013).

130. See *id.* ("Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor, or social worker who develops the reasonable belief in the course of treating a patient.").

131. S.D. CODIFIED LAWS § 26-8A-3 (2013).

132. See KAN. STAT. ANN. § 38-2223 (West 2012). The statute enumerates:

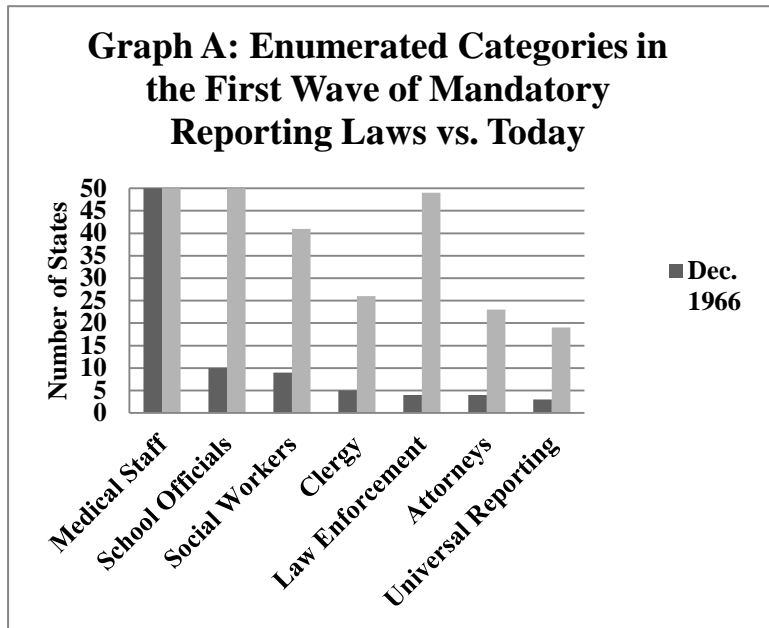
Georgia and Vermont, both of which enumerate five broad categories of professionals in a middle-of-the-road manner.<sup>133</sup> Although sometimes these statutes seem to have large lists of professionals, this fact is misleading as to their comprehensiveness. Rather than enumerate “medical professionals” like some statutes, these statutes list many individual types of medical professionals. When boiled down to core categories like the Pennsylvania Bar Institute does in its publication, it is evident that these statutes are not very comprehensive, as they only have a few categories enumerated.

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(A) The following persons providing medical care or treatment: Persons licensed to practice the healing arts, dentistry and optometry, persons engaged in postgraduate training programs approved by the state board of healing arts, licensed professional or practical nurses and chief administrative officers of medical care facilities; (B) the following persons licensed by the state to provide mental health services: licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors; (C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; (D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers, community corrections officers, case managers . . . and mediators . . . ; (E) any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including, but not limited to, counseling, adoption services and pregnancy education and maintenance.

*Id.*

133. See GA. CODE ANN. § 19-7-5(c)(1) (West 2012) (“(A) Physicians licensed to practice medicine, physician assistants, interns, or residents; (B) Hospital or medical personnel; (C) Dentists; (D) Licensed psychologists . . . ; (E) Podiatrists; (F) Registered professional nurses or licensed practical nurses . . . ; (G) Professional counselors, social workers, or marriage and family therapists . . . ; (H) School teachers; (I) School administrators; (J) School guidance counselors, visiting teachers, school social workers, or school psychologists . . . ; (K) Child welfare agency personnel . . . ; (L) Child-counseling personnel; (M) Child service organization personnel; (N) Law enforcement personnel; or (O) Reproductive health care facility or pregnancy resource center personnel and volunteers.”); see also 33 VT. STAT. ANN. tit. 33, § 4913(a) (West 2013) (“Any physician, surgeon, osteopath, chiropractor, or physician’s assistant . . . , any resident physician, intern, or any hospital administrator . . . , and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel . . . , dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, headmaster of an approved or recognized independent school . . . , school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy . . .”).



### C. Most Comprehensive States—Penalties<sup>134</sup>

While most states carry a misdemeanor charge with failing to report, four states upped the ante by creating the potential for a felony offense in the event of such a failure. For instance, Arizona's statute provides that a person who fails to report is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, in which case the person is guilty of a class 6 felony.<sup>135</sup> A class 6 felony in Arizona carries a minimum jail sentence of six months with a maximum of one and a half years.<sup>136</sup> Illinois defines a failure to report as a Class A misdemeanor with a subsequent violation carrying a class 4 felony charge.<sup>137</sup> A class 4 felony in Illinois carries a minimum jail sentence of one year with a maximum of three years.<sup>138</sup> Minnesota's statute features a provision that if the abused child dies because of lack of medical care, the person is guilty of a felony and "may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both."<sup>139</sup> Finally, a failure to report is normally a Class A misdemeanor in Texas, except that it carries a state jail felony if it is "shown on the trial of the offense that the child was a person with an intellectual disability . . ."<sup>140</sup> A state jail felony in Texas carries a minimum jail sentence of 180 days and a

134. See Appendix A for comprehensive list of penalties by state.

135. See ARIZ. REV. STAT. ANN. § 13-3620(O).

136. See *id.* § 13-702(D).

137. See 325 ILL. COMP. STAT. ANN. 5/4.02 (2013).

138. See 730 ILL. COMP. STAT. ANN. 5/5-4.5-45(a) (2013).

139. MINN. STAT. ANN. § 626.556(6)(c) (West 2012).

140. TEX. FAM. CODE ANN. § 261.109(b) (West 2012).

maximum jail sentence of two years with a fine not to exceed \$10,000.<sup>141</sup> These states, considering the stigma attached to a felony offender as well as the longer prison sentences that come with such an offense, showcase the harshest penalties in the country, at least in those certain circumstances listed in the statutes.

Two other states are notable with respect to comprehensiveness, not because of jail sentences, but because of fines. Delaware's mandatory reporting statute, while not carrying any jail sentence with its failure to report provision, has the strictest monetary punishment in the United States, without question. Any failure to report carries an automatic \$10,000 fine, with a subsequent violation bringing about a \$50,000 fine. The only state that might possibly have a claim to the most stringent monetary penalty is Florida, due to its new mandatory reporting law that was passed in the wake of the Sandusky scandal. The new law, formerly House Bill 1355, threatens universities and colleges with one million dollar fines if known or suspected abuse on campus or at school-sponsored functions goes unreported. The increase in penalties, along with other provisions in the law dealing with the staffing of the Department of Children and Families and allocations of funds to victims of abuse, caused the bill's sponsor Chris Dorworth to call it the "most comprehensive child abuse reporting law in the nation."<sup>142</sup> Dorworth's claim may be true; the one million dollar fine attached to a failure to report is unprecedented and far outstrips any previous penalty.

#### D. *Least Comprehensive States—Penalties*

Although every state has a mandatory reporting law, not every state has a penalty for failing to report under that law. Three states—Maryland, North Carolina, and Wyoming—currently do not have penalties put forth in their statutes for failing to report when mandated to do so.<sup>143</sup> This may not be the case for long, as advocacy groups in these states clamored for a change in the laws by adding penalties following the Sandusky scandal. For instance, various groups in Maryland, such as the Survivors Network of Those Abused by Priests and the Maryland Coalition Against Sexual Assault, as well as prominent politicians in the state legislature, advocated for the creation of at least some kind of penalty in the mandatory reporting statute.<sup>144</sup> Although these efforts have not succeeded to date, it is likely that these states will eventually put forth some kind of penalty, especially in light of the after-effects of the Sandusky

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141. See TEX. PENAL CODE ANN. § 12.35 (West 2011).

142. *Scott Signs Bills Making Child Abuse Reporting Everyone's Job*, CBS MIAMI (Apr. 28, 2012), <http://miami.cbslocal.com/2012/04/28/scott-signs-bills-making-child-abuse-reporting-everyones-job/>.

143. For a discussion on the factors leading these three states to possibly impose penalties for failure to report, see *infra* note 144 and accompanying text.

144. Childs Walker, *After Penn State, Md. May Examine Strengthening Child Abuse Reporting Law*, BALT. SUN (Nov. 15, 2011), [http://articles.baltimoresun.com/2011-11-15/news/bs-md-abuse-reporting-criminal-20111115\\_1\\_report-abuse-child-abuse-reporting-laws](http://articles.baltimoresun.com/2011-11-15/news/bs-md-abuse-reporting-criminal-20111115_1_report-abuse-child-abuse-reporting-laws).

scandal and the intense societal pressure for reform.

Among states that do in fact have penalties in place, there are a few that are fairly trite. Three states deserve special mention. First, New Jersey, which ironically has one of the most comprehensive reporting systems in that it is universal, has a penalty statute that simply states: “Any person knowingly violating the provisions of this act including the failure to report an act of child abuse having reasonable cause to believe that an act of child abuse has been committed, is a disorderly person.”<sup>145</sup> Disorderly person crimes are essentially petty crimes in New Jersey, so not much power is put behind the penalty for failing to report.<sup>146</sup> Similarly, in Iowa, the penalty statute stipulates that, “Any person, official, agency, or institution required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.”<sup>147</sup> Simple misdemeanor is the lowest form of misdemeanor in Iowa, carrying a penalty of a fine between \$65 and \$625 or no more than thirty days in jail.<sup>148</sup> Hawaii defines a failure to report as a petty misdemeanor.<sup>149</sup> According to Hawaii law, a petty misdemeanor carries a maximum sentence of only thirty days in jail.<sup>150</sup> These three states thus have noticeably lax penalties when it comes to failing to report.

Besides New Jersey, Iowa, and Hawaii, there are also thirty-four states that define at least some sort of failure to report as simply a misdemeanor.<sup>151</sup>

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145. N.J. STAT. ANN. § 9:6-8.14 (West 2013).

146. *See, e.g.*, *J.S. v. R.T.H.*, 714 A.2d 924, 931 (N.J. 1998); *F.A. v. W.J.F.*, 656 A.2d 43, 46 (N.J. Super. Ct. 1995). The lack of power behind the penalty does not hinder people being prosecuted under it. *See J.S.*, 714 A.2d at 935.

147. IOWA CODE ANN. § 232.75 (West 2013).

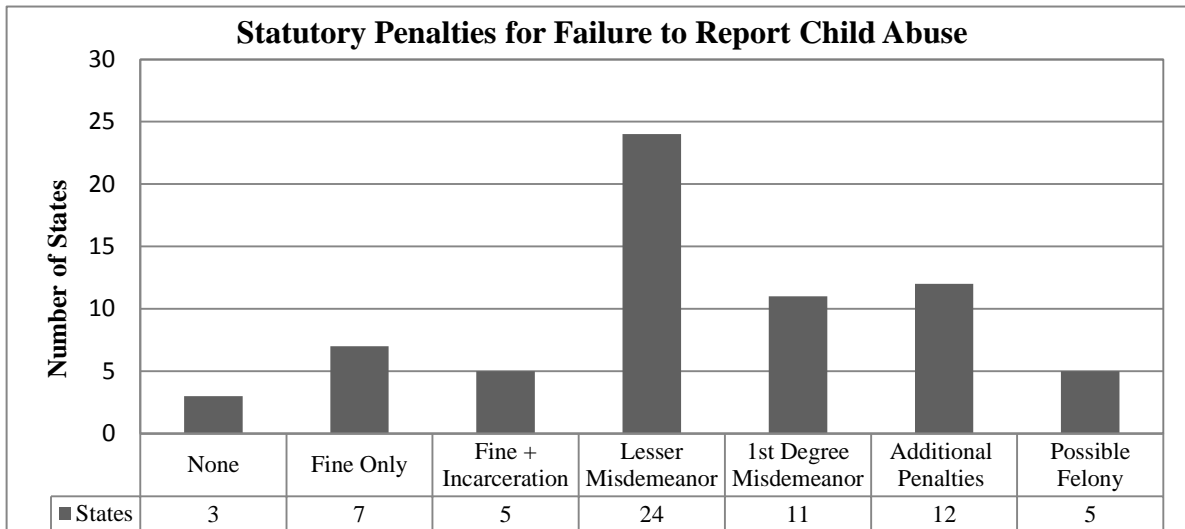
148. *See id.* § 903.1.

149. *See* HAW. REV. STAT. § 350-1.2 (2013).

150. *See id.* § 706-663.

151. *See* ALA. CODE § 26-14-13 (2013) (Alabama—“misdemeanor”); ALASKA STAT. § 47.17.068 (2013) (Alaska—“Class A misdemeanor”); ARIZ. REV. STAT. ANN. § 13-3620(O) (2013) (Arizona—“Class 1 misdemeanor”); ARK. CODE ANN. § 12-18-201 (West 2009) (Arkansas—“Class A misdemeanor”); COLO. REV. STAT. ANN. § 19-3-304(4)(a) (West 2013) (Colorado—“Class 3 misdemeanor”); GA. CODE ANN. § 19-7-5(h) (Georgia—“misdemeanor”) (West 2012); IDAHO CODE ANN. § 16-1605(4) (West 2013) (Idaho—“misdemeanor”); 325 ILL. COMP. STAT. 5/4.02 (2002) (Illinois—“Class A misdemeanor”); IND. CODE § 31-33-22-1(b) (2013) (Indiana—“Class B misdemeanor”); KAN. STAT. ANN. § 38-2223(e) (West 2012) (Kansas—“Class B misdemeanor”), KY. REV. STAT. ANN. § 620.990(1) (West 2008) (Kentucky—“Class B misdemeanor”); LA. CHILD. CODE ANN. art. 609 (2012) (Louisiana—“misdemeanor”); MICH. COMP. LAWS § 722.633(2) (2013) (Michigan—“misdemeanor”); MO. REV. STAT. § 210.165(1) (2012) (Missouri—“Class A misdemeanor”); MONT. CODE ANN. § 41-3-207(2) (West 2013) (Montana—“misdemeanor”); NEB. REV. STAT. § 28-717 (2012) (Nebraska—“Class III misdemeanor”); NEV. REV. STAT. § 432B.240 (2011) (Nevada—“misdemeanor”); N.H. REV. STAT. Ann. § 169-C:39 (2006) (New Hampshire—“misdemeanor”); N.M. STAT. ANN. §32A-4-3(F) (West 2012) (New Mexico—“misdemeanor”); N.Y. SOC. SERV. LAW § 420(1) (McKinney 2013) (New York—“Class A misdemeanor”); N.D. CENT. CODE § 50-25.1-13 (West 2013) (North Dakota—“Class B misdemeanor”); OHIO REV. CODE ANN. § 2151.99(A)(1) (West 2011) (Ohio—“misdemeanor of the fourth degree”); OKLA. STAT. tit. 10A, § 1-2-101(C) (2013) (Oklahoma—“misdemeanor”); 23 PA. CONS. STAT. tit. § 6319 (2007) (Pennsylvania—“misdemeanor of the third degree”); R.I. GEN. LAWS ANN. § 40-11-6.1 (West 2012) (Rhode Island—“misdemeanor”); S.C. CODE ANN. § 63-7-410 (2012) (South Carolina—“misdemeanor”); S.D. CODIFIED LAWS § 26-8A-3 (2012) (South Dakota—“Class 1 misdemeanor”); TENN.

Although these misdemeanors bring a wide variety of penalties to individuals (for instance, a gross misdemeanor in Washington carries a penalty with a maximum of one year in jail, a \$5,000 fine, or both and a misdemeanor in Michigan carries a ninety-three day prison sentence), the fact that they are all misdemeanors and not felonies is the significant consideration as far as sentencing is concerned. The majority of states in America, therefore, categorize a failure to report as a misdemeanor.



#### IV. PENNSYLVANIA’S LAW

##### A. *The Original Mandatory Reporting Law*

Pennsylvania’s mandatory reporting law has been in the public eye since the Sandusky scandal broke, and for good reason. The purported weaknesses of the law have been blamed for allowing Sandusky to prey on children for as long as he did. A more in-depth study of the evolution of Pennsylvania’s law, therefore, will help to understand the historical development of these laws, as well as what the future holds for them.

Spurred on by Kempe’s *Battered-Child* study and news reports both locally and across the nation, Pennsylvania was one of the first states to pass a mandatory reporting law, doing so in 1963, just one year after the publication of Kempe’s study. Act Number 492 of 1963 had the title,

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CODE ANN. § 37-1-412(a) (West 2013) (Tennessee—“Class A misdemeanor”); TEX. FAM. CODE ANN. § 261.109(b) (West 2009) (Texas—“Class A misdemeanor”); UTAH CODE ANN. § 62A-4a-411 (West 2013) (Utah—“Class B misdemeanor”); WASH. REV. CODE § 26.44.080 (2013) (Washington—“gross misdemeanor”); W. VA. CODE § 49-6A-8 (2012) (West Virginia—“misdemeanor”).

“An act to consolidate, amend and revise the penal laws of the Commonwealth,” requiring physicians and persons conducting, managing or in charge of hospitals and pharmacies to report to the police when persons with injuries inflicted in violation of the law come or are brought to them; imposing penalties for failure to make such reports; absolving persons who make such reports from civil or criminal liability; and eliminating the privilege against certain testimony.<sup>152</sup>

The act’s text explicitly mandated reporting for some professions,<sup>153</sup> and remained as the state’s mandatory reporting statute for about ten years.

More than any other factor, it seems that the Children’s Bureau’s model statute<sup>154</sup> influenced Pennsylvania to pass the mandatory reporting law in its

152. Act of Aug. 24, 1963, No. 492, 1963 Pa. Laws 1156, 1156–57 (codified as amended at 18 PA. STAT. ANN. tit. § 4330 (West Supp. 1965)).

153. The text of the act is as follows:

Section 1. The act of June 24, 1939 (P.L. 872), known as “The Penal Code,” is amended by adding, after section 329, a new section to read:

Section 330. (a) Failure to Report Injuries by Deadly Weapon or Criminal Act.— Any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern or resident, or any person conducting, managing or in charge of any hospital or pharmacy, or in charge of any ward or part of a hospital, to whom shall come or be brought any person suffering from any wound or other injury inflicted by his own act or by the act of another by means of a knife, gun, pistol or other deadly weapon, or in any other case where injuries have been inflicted upon any person in violation of any penal law of this Commonwealth, shall report the same immediately, both by telephone and in writing, to the chief of police or other head of the police department of the city, borough, incorporated town or township, or to the Pennsylvania State Police. The report shall state the name of the injured person, if known, his whereabouts and the character and extent of his injuries.

(b) When the person who comes, or is brought to the physician, as herein defined, or to the person in charge of conducting or managing a pharmacy, or to the person in charge of any hospital or any ward or part of a hospital, is under the age of eighteen (18) years, the report shall be made to the presiding judge of the Juvenile Court or the Community Child Protective Service where such court or service exists. When there is no such court or service, the report shall be made to the police in the same manner as required for injuries to those eighteen (18) years of age or older, as herein-before set forth.

Any physician or other person who fails to make the report required by this section is guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to undergo imprisonment not exceeding one (1) year, or both.

No physician or other person shall be subject to civil or criminal liability by reason of making a report required by this section.

In any judicial proceeding resulting from a report pursuant to this act, the physician-patient privilege shall not apply in respect to evidence regarding such injuries or the cause thereof.

*Id.*

154. The text of the model act is as follows:

1. Purpose. The purpose of this Act is to provide for the protection of children who have had physical injury inflicted upon them and who are further threatened by the conduct of those responsible for their care and protection. Physicians who become aware of such cases should report them to appropriate police authority thereby causing the protective services of the State to be brought to bear in an effort to



enacted form. The most convincing evidence of this fact is the verbatim quote of the model statute at the beginning of Section 330(a). Both the model statute and Pennsylvania's statute have the exact same phrase enumerating the categories of professionals who are now mandated reporters: "Any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern and resident . . ."155 Pennsylvania was obviously inspired by the Model Statute to the point that it borrowed the Model's enumeration language wholesale for its own act.

Although this one line is the only significant use of the model statute language, the Pennsylvania statute noticeably borrows from the format of the model statute. The model statute has six sections: Purpose, Reports by Physicians and Institutions, Nature and Content of Report: to Whom Made, Immunity from Liability, Evidence not Privileged, and Penalty for Violation. Although not in the same order, the Pennsylvania statute covers all six of these areas. Like the model statute, the Pennsylvania law only mandates reports by

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protect the health and welfare of these children and to prevent further abuses.

2. Reports by Physicians and Institutions. Any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern and resident, having reasonable cause to suspect that [a] child under the [maximum age of juvenile court jurisdiction] brought to him or coming before him for examination, care or treatment has had serious physical injury or injuries inflicted upon him other than by accidental means by a parent or other person responsible for his care, shall report or cause reports to be made in accordance with the provisions of this Act; provided that when the attendance of a physician with respect to the child is pursuant to the performance of services as a member of the staff of a hospital or similar institution he shall notify the person in charge of the institution or his designated delegate who shall report or cause reports to be made in accordance with the provisions of this Act.

3. Nature and Content of Report: to Whom Made. An oral report shall be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to an appropriate police authority. Such reports shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the physician believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

4. Immunity from Liability. Anyone participating in good faith in the making of a report pursuant to this Act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

5. Evidence not Privileged. Neither the physician-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding a child's injuries or the cause thereof, in any judicial proceeding resulting from a report pursuant to this Act.

6. Penalty for Violation. Anyone knowingly and willfully violating the provisions of this Act shall be guilty of a misdemeanor.

CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUC., & WELFARE, *supra* note 13. The act is also reproduced in *Legislation as Protection for the Battered Child*, 12 VILL. L. REV. 313, 317-18 n.40 (1967).

155. The Model Statute says "intern *and* resident" while the Pennsylvania statute says "intern *or* resident," but I do not believe that the difference is significant. *Compare supra* note 153, *with supra* note 154 (comparing full text of both statutes).

physicians and medical institutions and, again, used the exact same language from the Model Statute to do so. Both statutes mandate that the person report to the law enforcement authorities and detail what the report should contain. Just like the model statute, the Pennsylvania law absolves the reporter from civil or criminal liability and limits the use of the physician-patient privilege on any information useful for reporting. Finally, the Pennsylvania law follows the model statute's recommendation in making the offense a misdemeanor, which in Pennsylvania carries the penalty of a fine up to \$500, imprisonment of up to one year, or both.

Two observations are worth noting about Pennsylvania's 1963 mandatory reporting law. First, the categories enumerated by the law as mandatory reporters are fairly sparse. Following the model statute's recommendation, as mentioned above, Pennsylvania simply listed medical professionals as mandatory reporters. It was not alone in doing so; twenty-two other states enumerated only medical professionals in their first mandatory reporting law.<sup>156</sup> Although seemingly solving the problem as far as the Children's Bureau was concerned, these laws paled in comparison with laws passed in other states that enumerated many more categories. Nevada, for instance, had the most comprehensive law at the time, at least in terms of the numbers of enumerated categories. Nevada's statute pegged as mandatory reporters healing arts personnel, nurses, social workers, school officials, dentists, attorneys, and clergymen.<sup>157</sup> When viewed against that background, the Pennsylvania law seems fairly bare bones, even by the standards of the 1960s.

Second, the penalty put forward by the statute was strong, especially when compared with other state statutes. As mentioned above, the penalty for failing to report is a misdemeanor, with a maximum fine of \$500 or a maximum jail sentence of one year or both. This penalty, juxtaposed with Vermont's \$25 fine and the twenty-five states that did not have any punishment for failing to report, was evidently one of the most stringent penalties at the time.<sup>158</sup> This penalty was so strong that it is still more severe than many statutory penalties in place in various states today.<sup>159</sup> Thus, Pennsylvania at one time had, at least in one respect, the strongest mandatory reporting law in the nation. The evolution of the law from the 1960s shows how this state of affairs changed.

The first step in this evolution came about just four years later. In 1967,

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156. See J. Harvey Eger & Anthony J. Popeck, *The Abused Child: Problems and Proposals*, 8 DUQ. L. REV. 136, 146-47 (1969) (listing Arizona, California, Colorado, Connecticut, Delaware, Florida, Idaho, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, Ohio, Rhode Island, South Carolina, Texas, Vermont, Washington, and Wisconsin as states requiring reports only by "healing arts personnel").

157. See *id.* at 147.

158. See Lois Hochhauser, *Child Abuse and the Law: A Mandate for Change*, 18 HOWARD L.J. 200, 205-06 (1973).

159. See, e.g., ALA. CODE § 26-14-13 (2013) ("[A] sentence of not more than six months' imprisonment or a fine of not more than \$500.00."); MICH. COMP. LAWS § 722.633(1), (2) (2013) ("[I]mprisonment for not more than 93 days or a fine of not more than \$500.00, or both."); W. VA. CODE § 49-6A-8 (2013) ("[C]onfined in jail not more than thirty days or fined not more than \$1,000, or both.").

the Pennsylvania legislature, perhaps self-conscious of the extreme nature of their penalty, amended the newly minted child abuse law by removing the aforementioned penalty section and replacing it with the following language: “Violation of any of the provisions of this act shall constitute a summary offense and shall be punishable by a fine not exceeding three hundred dollars (\$300), and in default thereof, imprisonment not exceeding ninety (90) days.”<sup>160</sup> Taking the enforcement factor away from an already narrow law left Pennsylvania in a state of underreporting.

B. *The 1975 Child Protective Services Law*

Fairly soon after the 1967 Amendment was passed, voluntary organizations and other interested parties began clamoring for a new law. The speed at which the Pennsylvania legislature had passed the original statute inhibited the amount of debate they had entertained over its terms. An influential article written in the *Duquesne Law Review* in 1969 advocated for changes to the law immediately. It pointed out that a serious drawback to the legislation was the “increased hazard to the injured child” due to the fact that “[p]arents who are aware of the statute are reluctant to bring in an injured child for treatment.”<sup>161</sup> The movement gained traction throughout the late 1960s and into the early 1970s, at which point the unrest began to be heard by the Pennsylvania legislature.

In 1975, the legislature responded to pressure from voluntary organizations and news reports by drafting and considering a bolstered child abuse bill. The media was especially vehement about child abuse in the mid-1970s, preying on what they perceived to be the weaknesses of the current law. As the *Wellsboro Gazette* reported after the fact,

The accounts of children who are severely beaten, children who are locked in dark closets and isolated rooms [sic] children who are blistered and scarred by burns and reports of children who are fatally beaten by angry adults increase daily. The grim, sad, and sordid statistics relate what is happening to children in communities not only in Pennsylvania but across the country.<sup>162</sup>

Certain legislators had a different take on the media’s agenda. Representative Richardson from Philadelphia declared during the debate on the House floor, “[W]e have been spanked into believing by the press and others that we need a child abuse bill no matter how raggedy it is.”<sup>163</sup> Similarly, Representative Zeller from Lehigh County lamented that voting against the bill would be like “voting against motherhood and apple pie” because the “liberal

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160. Act of Aug. 14, 1967, No. 91, 1967 Pa. Laws 239, 239–41 (codified as amended at 18 PA. STAT. ANN. tit. § 4330 (West 1967)).

161. Eger & Popeck, *supra* note 156, at 148.

162. *Shapp Announces Opening of 24-Hour “Childline”*, WELLSBORO GAZETTE, Apr. 15, 1976, <http://newspaperarchive.com/wellsboro-gazette/1976-04-15/page-5>.

163. H. JOURNAL 159-80, 1975 Sess., at 3012 (Pa. 1975).

press” had created such a circus around the issue that anyone who voted against the bill would “be labeled a real monster.”<sup>164</sup> Nonetheless, both sides agreed that the media played a large role in moving the bill into the Pennsylvania legislature.

The proposed bill, Senate Bill No. 25, received lively debate on the floor of the House of Representatives. For instance, Representative Dreibelbis from Centre County cited statistics from the Department of Welfare to show that a stronger mandatory reporting law was not needed because there were not very many cases of child abuse in Pennsylvania to begin with.<sup>165</sup> Representative LaMarca from Berks County countered with the declaration that, “[T]he very reason for this bill is the fact that those figures are the ones that you cite. There has been no obligation and duty, and there has been no penalty imposed if people do not report child abuse.”<sup>166</sup> LaMarca effectively argued that Dreibelbis’s statistics showed that there was a vast underreporting problem in Pennsylvania due to the lack of concrete punishment for failing to report, not that child abuse did not exist in Pennsylvania. Representative DiCarlo from Erie supported LaMarca, stating that the new law would make it “much more feasible and much easier to have child abuse cases reported,” which would solve “[o]ne of the problems in the Commonwealth of Pennsylvania and other states [in] that the cases never get reported.”<sup>167</sup> Debate raged over many other issues not relevant to mandatory reporting, but it is interesting to note that mandatory reporting was certainly not an ignored issue during the debate over a comprehensive child abuse law.

Ultimately, the proponents of the bill had the stronger arguments. Representative DiCarlo argued,

[T]he individuals who have worked with the problem of child abuse for the last year and a half have looked at the problem; all interested parties have gotten together. We feel that the bill we have in front of us is the best possible piece of legislation that can be passed.<sup>168</sup>

As Representative McLane from Lackawanna County declared on the Floor, because Pennsylvania essentially had no child abuse legislation at the time, a good solution was better than nothing.<sup>169</sup> The House ended up passing the bill by a vote of 169 to 22 in October 1975.

In the Senate, the bill was not so contentious. Senator O’Pake led the charge for the bill when it was first introduced, pulling on his fellow senators’ heartstrings by showing the need for a stronger child abuse bill through the use

164. *See id.* at 3013.

165. *See id.* at 3003 (“[I]n the last 5 years there were 53 counties which reported no cases of suspected child abuse. In 1974, there were four counties that had zero suspected cases. In 1973, there were nine counties that had zero suspected cases. In 1972, there were nine counties that had zero suspected cases; in 1971, 11; and in 1970, 22. In the last 5 years, there were 14 counties that had less than 10 suspected cases of child abuse.”).

166. *Id.*

167. *Id.* at 3014.

168. *See H. JOURNAL* 159-78, 1975 Sess., at 2905 (Pa. 1975).

169. *See id.* at 2905-06.

of a current event anecdote. Responding to a charge that the bill would remove protections on family privacy, Senator O’Pake declared, “This morning, at about 4:00 o’clock, in Philadelphia, a six-month old baby was found dead in a bureau or dresser drawer, well protected in the isolation of family privacy, protected to the point that the baby is now dead.”<sup>170</sup> As the bill came to a vote in November 1975, O’Pake again promoted it, telling his fellow senators: “Last year the cries of over 2,200 children-victims in Pennsylvania were heard and reported. How many more went undetected, causing severe and permanent scarring of young human beings we will never know. Perhaps this law will permit Pennsylvania to hear and respond to their cries.”<sup>171</sup> O’Pake’s testimony was quite persuasive. The Senate passed the bill unanimously, and it was signed into law by the governor of Pennsylvania on November 26, 1975.

The Child Protective Services Law (CPSL),<sup>172</sup> became the foundation of Pennsylvania’s current child abuse law. With the exception of a few revisions, its basic form remains intact even today. The first notable feature of the CPSL is that it bolstered the penalties for failing to report. As noted, the penalties prior to the passage of the CPSL were a maximum jail sentence of ninety days or a maximum fine of \$300. The CPSL formally defined a failure to report as a summary offense, which also carried a ninety-day jail sentence.<sup>173</sup> Where the law really increased the penalties was in regards to subsequent violations.

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170. S. JOURNAL 159-25, 1975 Sess., at 291 (Pa. 1975).

171. S. JOURNAL 159-62, 1975 Sess., at 927 (Pa. 1975).

172. See 23 PA. CONS. STAT. ANN. §§ 6301–85 (2012). The Child Protective Services Law, in pertinent part, states:

Section 4. Persons Required to Report Suspected Child Abuse.—(a) Any persons who, in the course of their employment, occupation, or practice of their profession come into contact with children shall report or cause a report to be made in accordance with section 6 when they have reason to believe, on the basis of their medical, professional, or other training and experience, that a child coming before them in their professional or official capacity is an abused child.

(b) Whenever any person is required to report under subsection (c) in his capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, he shall immediately notify the person in charge of such institution, school, facility, agency, or the designated agent of the person in charge. Upon notification, such person in charge of his designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6. Nothing in this act is intended to require more than one report from any such institution, school, or agency.

(c) Persons required to report suspected child abuse under subsection (a) include, but are not limited to, any licensed physician, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, a Christian Science practitioner, school administrator, school teacher, school nurse, social services worker, day care center worker or any other child care or foster care worker, mental health professional, peace officer or law enforcement official.

Section 12. Penalties for Failure to Report. Any person or official required by this act to report a case of suspected child abuse who willfully fails to do so shall be guilty of a summary offense, except that for second or subsequent offense shall be guilty of a misdemeanor of the third degree.

Child Protective Services Law, No. 124, 1975 Pa. Laws 438, 438–52.

173. See 18 PA. CONS. STAT. ANN. § 1105 (1972).

Whereas the old law had a ninety-day maximum jail sentence regardless of whether the violation was a first-time incident or a subsequent violation, the CPSL enlarged the potential penalty to one year, if the person was a repeat offender.<sup>174</sup> This subtle difference served the purpose of ensuring that child abuse cases would not habitually go unreported. A failure to report one time might be an honest mistake, but subsequent failures mark a pattern of irresponsibility.

The second notable feature of the CPSL is that it greatly expanded the group of mandatory reporters by enumerating many more types of professionals besides medical personnel. Although many of the listed professions can be grouped under the heading of “medical professionals,” the list also includes coroners, dentists, school officials, social services and day care workers, and law enforcement officers, among a few others. This expansion of the class of mandatory reporters served as the “the main thrust” of the new law, and it encouraged a “more complete reporting of cases of suspected child abuse.”<sup>175</sup> By adding more mandatory reporters to the current pool, the legislators certainly accomplished this goal.

The question may arise whether the CPSL should have included a universal mandatory reporting provision. However, observers looking back in a post-Sandusky world must remember that in 1975, universal mandatory reporting was a minority view. At no point during the debates on the Pennsylvania Senate and House of Representatives floors was the idea of universal mandatory reporting even mentioned. Even a few years after the passage of the law, when the Pennsylvania General Assembly conducted an oversight evaluation of the perceived triumphs and shortcomings of the new law, not one of the thirty-six proposals to strengthen the law suggested a switch to universal reporting.<sup>176</sup> At the time of the creation of the CPSL, it did not seem to cross the drafters’ minds to make the law universally apply to all adults.

The Joint State Government Commission (Commission), while finding certain aspects about which to recommend change, generally praised the law when it conducted its evaluation. The Commission concluded: “The Child Protective Services Law encourages public reporting of suspected child abuse by requiring the State and counties to receive reports 24 hours a day, 7 days a week, and to undertake comprehensive public education activities. Since enactment of the law, reporting of suspected child abuse has risen dramatically.”<sup>177</sup> The report found that the number of reports of suspected child abuse from all sources increased by over one hundred percent, from 6,415 reports in 1976 to 12,939 reports in 1977.<sup>178</sup> The generally positive review of

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174. *See id.* § 1104 (enumerating misdemeanor of third degree as carrying maximum one year jail sentence).

175. *See* Kathleen I. Walsh, *The Pennsylvania Child Protection Services Law*, 81 DICK. L. REV 823, 825 (1977).

176. *See generally* S. COMM. ON AGING & YOUTH & H. COMM. ON HEALTH & WELFARE, ADMINISTRATION OF PENNSYLVANIA’S CHILD ABUSE LAW: A LEGISLATIVE OVERSIGHT EVALUATION, S. 163-1, 1979 Sess. (Pa. 1979).

177. *Id.* at 13.

178. *See id.*

the Commission, coupled with the overall success of the law in terms of the increase in reporting, contributed to its staying power. Since 1975, only minute amendments have been made to the Law.

### C. *The PCSL in Title 23*

In 1990, the CPSL was incorporated into Title 23 of the Pennsylvania Consolidated Statutes.<sup>179</sup> Although some minor changes were made to the language of the statute at this time, it remained for all intents and purposes identical to the statute found formerly in Title 11.<sup>180</sup> The statute has been amended a few times since being incorporated into Title 23, with three amendments being particularly notable—one in 1994 and two in 2006.

Two of these amendments occurred in response to clergy abuse scandals, and the other amendment further bolstered penalties for failing to report. Act 151 of 1994 amended the mandatory reporting law to include clergy.<sup>181</sup> After 1994, members of the clergy were included as mandatory reporters in Section 6311 of the CPSL. Pennsylvania amended the law again in 2006, in the wake of

179. 23 PA. CONS. STAT. ANN. §§ 6303–86

180. The relevant sections of Title 23 of the Pennsylvania Consolidated Statutes Annotated are as follows:

§6311. Persons required to report suspected child abuse

(a) General rule.—Persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when they have reason to believe, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

(b) Enumeration of persons required to report.—Persons required to report under subsection (a) include, but are not limited to, any licensed physician, osteopath, medical examiner, coroner, funeral director, dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, a Christian Science practitioner, school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker, mental health professional, peace officer or law enforcement official.

(c) Staff members of institutions, etc.—Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.

§6319. Penalties for failure to report

A person or official required by this chapter to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

23 PA. CONS. STAT. ANN. §§ 6311–19 (1990).

181. See *id.* § 6311(b). For the full text of Section 6311(b), see *supra* note 180.

a 2005 grand jury report uncovering dozens of cases of priests who had sexually abused hundreds of children under the watch of the Philadelphia archdiocese. In 2006, the Pennsylvania Senate introduced Senate Bill 1054, which attempted to close any loopholes that may have contributed to the clergy abuse scandal and expanded mandatory reporting. The bill required people in charge of caring for children to report suspected abuse even if the caretaker did not hear about the abuse directly from the child.<sup>182</sup> This specifically addressed problems that arose during the Philadelphia archdiocese scandal, as some believed the church was not legally obligated to report child abuse to the police when children's parents, as opposed to the children themselves, reported abuse to the archdiocese under the old law.<sup>183</sup> More importantly, the bill made supervisors and employers of child abusers responsible for mandatory reporting by making all laws regarding child endangerment applicable to them.<sup>184</sup> The bill received significant support from people who had been outraged by the clergy abuse scandal.

However, despite the charged emotions that usually led to expedient legislative processes, the bill stalled in the Pennsylvania legislature. Michael Piechuch, majority chief counsel for the Pennsylvania House Judiciary Committee, believed that the Catholic bishops were to blame for the quagmire. He opined that if Cardinal Justin Rigali, the Cardinal of Philadelphia, supported the bill, "it would probably be done . . ."<sup>185</sup> The Philadelphia Catholic Conference eventually issued a statement that it was not actively opposing the bills, which gave traction to the legislature in the summer of 2006.<sup>186</sup> Although the bill almost died in the House in mid-June of 2006, it was finally passed into law on November 29, 2006.<sup>187</sup> Pennsylvania thus needed its own clergy abuse scandal to join the myriad of other states that had already attempted to avoid clergy abuse scandals through strengthened mandatory reporting legislation.

The second noteworthy change in the 2006 amendments to the original passage of the CPSL was the further intensification of penalties. As amended in 2006, Section 6319 of the CPSL now reads:

A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate

182. See *Time to Revise Pathetic Sex-Abuse Laws. Pa. Senate Doesn't Have Much Time to Approve SB 1054*, PHILA. INQUIRER (Nov. 20, 2006), [http://articles.philly.com/2006-11-20/news/25407298\\_1\\_abuse-pennsylvania-senate-laws](http://articles.philly.com/2006-11-20/news/25407298_1_abuse-pennsylvania-senate-laws).

183. Angela Couloumbis, *Pa. Sex-Abuse Law is Weaker Than Other States'. Grand Jurors Say the Law Keeps Them from Pursuing Charges in the Clergy Probe. Child Advocates Admit Change is Difficult*, PHILA. INQUIRER (Sept. 25, 2005), [http://articles.philly.com/2005-09-25/news/25428983\\_1\\_sexual-abuse-limitations-on-child-abuse-marci-hamilton](http://articles.philly.com/2005-09-25/news/25428983_1_sexual-abuse-limitations-on-child-abuse-marci-hamilton).

184. See *id.*

185. David O'Reilly, *Bishops: We're Not Blocking Legislation. The Catholic Church Said Its Passive Approach on Pa. Sex-Abuse Bills Did Not Indicate Opposition*, PHILA. INQUIRER (Aug. 14, 2006), [http://articles.philly.com/2006-08-14/news/25396435\\_1\\_report-abuse-catholic-bishops-archdiocese](http://articles.philly.com/2006-08-14/news/25396435_1_report-abuse-catholic-bishops-archdiocese).

186. See *id.*

187. See Act of Nov. 29, 2006, P.L. 1581, No. 179 (codified at 18 PA. CONS. STAT. ANN. § 4304 (2006)).



authorities who willfully fails to do so commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation.<sup>188</sup>

The maximum jail sentences for both a first-time failure and a subsequent failure were increased. The first-time failure sentence rose from ninety days to one year. The second-time failure sentence rose from one year to two years.<sup>189</sup> This 2006 amendment was passed as part of a larger bill, along with three other bills, that were all aimed at bolstering penalties in situations dealing with child abuse. The bills were so strong that Pennsylvania Governor Edward G. Rendell declared as he signed them into law that “today is an extraordinary day for victims of sexual assault in Pennsylvania and especially for the youngest victims.”<sup>190</sup> These penalties remained in place during the Sandusky scandal and remain in place to this day.

#### D. *Potential Changes to the Current Law*

In response to the Sandusky scandal, the Pennsylvania legislature introduced numerous bills, most likely due to the fact that the scandal took place on its soil. Although none of the eight bills have been passed as of the date of this article, they represent a level of outrage that is specifically targeted at the Sandusky events. First and foremost, House Bill 1895 allows exceptions to governmental immunity for child sexual abuse acts committed by individuals employed by a public institution, agency, or other legal entity.<sup>191</sup> Similarly, House Bill 2046 declares that whenever a person is acting in an enumerated capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, that person shall have the legal obligation to report if he or she has personally witnessed an act he or she reasonably believes may constitute child abuse.<sup>192</sup> In a more specifically targeted bill, House Bill 1990 adds school staff members, school faculty, or coaches to the list of mandatory reporters.<sup>193</sup>

Less relevant to mandatory reporting of child abuse, but still relevant to child abuse generally, is House Bill 2026. This bill requires that licensing boards for professionals that fall within the scope of mandated reporting for suspected child abuse or neglect require those professionals to submit documentation of the completion of at least two hours of approved continuing education training per licensing cycle on the identification and reporting of

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188. 23 PA. CONS. STAT. ANN. § 6319 (2007).

189. See 18 PA. CONS. STAT. ANN. § 1104(2) (2006) (enumerating misdemeanor of second degree as carrying sentence of imprisonment for not more than “two years”).

190. See *Governor Rendell Signs Bills to Protect Children, Aid Victims of Sexual Assault and Toughen Penalties for Sex Offenders*, BISHOP ACCOUNTABILITY (Nov. 30, 2006), [http://www.bishop-accountability.org/news2006/11\\_12/2006\\_11\\_29\\_Yahoo\\_PaGovernor.htm](http://www.bishop-accountability.org/news2006/11_12/2006_11_29_Yahoo_PaGovernor.htm).

191. See *Mandatory Reporting of Child Abuse*, *supra* note 92.

192. See *id.*

193. See *id.*

child abuse.<sup>194</sup> The legislative history of these bills shows that the Pennsylvania legislature certainly had the Sandusky scandal in the forefront of its consciousness while writing the bills.

Three of the bills currently pending in the legislature attempt to strengthen penalties for failing to report child abuse. Senate Bill 1413, interestingly, increases the penalty for failure to report from a misdemeanor of the third degree to a misdemeanor of the first degree, while downgrading any subsequent violations from a second degree misdemeanor to a third degree misdemeanor. This bill would thus focus more on preventing even the first instance of child abuse from happening, as compared with the current law. House Bills 2047 and 2048 are identical in pertinent part,<sup>195</sup> as both increase the penalty for a first failure from a third degree misdemeanor to a second degree misdemeanor, and the penalty for a subsequent failure to report from a second degree misdemeanor to a first degree misdemeanor.<sup>196</sup> Unlike the Senate bill, House Bills 2047 and 2048 seek to increase penalties on both first time offenses and subsequent violations for a more comprehensive penalty structure.

The final bill introduced in the Pennsylvania legislature dealing with mandatory reporting during the 2012 legislative session would switch Pennsylvania to a universal mandatory reporting system. House Bill 1999 requires individuals who have firsthand or secondhand knowledge of, or reasonable cause to believe a child is being sexually abused to report the suspected abuse to law enforcement officials as soon as is practical.<sup>197</sup> Although not stated in such unequivocal terms as other universal mandatory reporting laws, this bill would serve the purpose of effectively making all adults potential mandated reporters, as any adult who gained first-hand or second-hand knowledge would have to report. Therefore, any adult has the potential to become a mandatory reporter if he or she witnesses child abuse happening, even if he or she does not belong to one of the professional groups usually enumerated in mandatory reporting statutes. While none of these bills have passed as of the writing of this article, it will be interesting to see the reaction of the legislature at the epicenter of the Sandusky scandal.

Aside from the legislative aspect, the level of reporting dramatically increased following the Sandusky scandal. Child Line, Pennsylvania's hotline for reporting suspected child abuse, averaged around 2,300 calls a week prior to the scandal.<sup>198</sup> Between November 7, 2011 and November 11, 2011, just days after Sandusky's arrest, Child Line received 4,832 calls of suspected child abuse.<sup>199</sup> Carey Miller, a spokeswoman for the Pennsylvania Department of

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194. *See id.*

195. *See id.* The bills differ in that H.B. 2048 allows prosecution for failure to report to be commenced within three years after the discovery of a willful failure to report or refer, while H.B. 2047 does not. *See id.*

196. *Id.*

197. *See id.*

198. *See* Ivey Dejesus, *Calls to Child Abuse Hotline Doubled After Jerry Sandusky's Arrest*, PATRIOT-NEWS (Dec. 9, 2011), [http://www.pennlive.com/midstate/index.ssf/2011/12/calls\\_to\\_child\\_abuse\\_hotline\\_h.html](http://www.pennlive.com/midstate/index.ssf/2011/12/calls_to_child_abuse_hotline_h.html).

199. *See id.*

Welfare, said that while merely a “guess,” she believed that “when you have a high profile case such as the one that happened in Penn State” it gets “national attention” and “increases awareness.”<sup>200</sup> The number of calls fell to an amount much closer to the average in the next week.<sup>201</sup>

#### V. CONCLUSION

Mandatory reporting of child abuse has changed significantly over the previous half century. Historically, all changes appear to occur after sad, headline-grabbing stories of abuse or when determined advocates press for change.

Just as history is important to a liberal education so that citizens understand their past, so too is history important in the law. As new challenges to protecting children rear their heads, citizens are well-advised to remember the history of how laws, such as mandatory reporting, came into existence and changed through time. Such remembrance will help avoid the pitfalls of unintended consequences and hasty reactions in the face of frightening abuse. It may also help Americans, as a society, to consider more broadly how to protect children and how law enforcement officers are best made aware of potential abuse.

Preventing abuse cannot be achieved merely through mandating that everyone report abuse—mandatory reporting, at its best, merely identifies abuse that has already occurred. Though it is difficult to measure the effectiveness of future abuse prevention through the tool of mandating reporting, one thing is certain: social costs of abuse are significant in terms of broken lives and financial costs. The need remains to strive for communities where children are safe.

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200. *See id.*

201. *See id.* (noting that 2,866 calls were logged).

APPENDIX A: STATES AND THEIR STATUTORY PENALTIES FOR  
FAILURE TO REPORT

STATE	PRIMARY PENALTY	ADDITIONAL PENALTIES
Alabama	Misdemeanor (6 months, \$500)	
Alaska	Class A misdemeanor	
Arizona	Class 1 misdemeanor	Class 6 felony (reportable offense)
Arkansas	Class C misdemeanor (reckless)	Class A misdemeanor (knowing)
California	6 months, \$1,000 (mandated reporter)	1 year, \$5,000 (willful failure)
Colorado	Class 3 misdemeanor	
Connecticut	\$500-\$2500 fine, education/training	
Delaware	\$10,000	\$50,000 (subsequent)
Florida	1st degree misdemeanor (1 year, \$1,000)	3rd degree felony (live with child)
Georgia	Misdemeanor	
Hawaii	Petty misdemeanor	
Idaho	Misdemeanor	
Illinois	Class A misdemeanor	Class 4 felony (subsequent)
Indiana	Class B misdemeanor	
Iowa	Simple misdemeanor	
Kansas	Class B misdemeanor	
Kentucky	Class B misdemeanor	
Louisiana	\$10,000, 5 years	
Maine	\$500	
Maryland	NOT ADDRESSED IN STATUTE	
Massachusetts	\$1,000	
Michigan	Misdemeanor (93 days, \$500)	
Minnesota	Misdemeanor	Felony (if child dies)
Mississippi	1 year, \$5,000	
Missouri	Class A misdemeanor	
Montana	Misdemeanor	
Nebraska	Class III misdemeanor	
Nevada	Misdemeanor	
New Hampshire	Misdemeanor	
New Jersey	Disorderly person	
New Mexico	Misdemeanor (1 year, \$1,000)	
New York	Class A misdemeanor	
North Carolina	NOT ADDRESSED IN STATUTE	
North Dakota	Class B misdemeanor	
Ohio	4th degree misdemeanor	1st degree misdemeanor (clergy)

Oklahoma	Misdemeanor	
Oregon	Class A violation	
Pennsylvania	3rd degree misdemeanor	Misdemeanor 2 (subsequent)
Rhode Island	Misdemeanor (1 year, \$500)	
South Carolina	Misdemeanor (6 months, \$500)	
South Dakota	Class 1 misdemeanor	
Tennessee	Class A misdemeanor (\$2,500)	
Texas	Class A misdemeanor	State jail felony (intellectually disabled child)
Utah	Class B misdemeanor	
Vermont	\$500	6 months, \$1,000 (cover up)
Virginia	\$500	\$100-\$1,000 (subsequent)
Washington	Gross misdemeanor (1 year, \$5,000)	
West Virginia	Misdemeanor (10 days, \$100)	
Wisconsin	6 months, \$1,000	
Wyoming	NOT ADDRESSED IN STATUTE	