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Child Abuse Reporting

Rethinking Child Protection

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THE GENERAL PUBLIC HAS BEEN BEWILDERED BY THE magnitude of sex abuse cases and the widespread failure by pillars of the community to notify appropriate authorities. The crime of sexually abusing children is punishable in all jurisdictions. However, what is the duty to report suspected cases by individuals in positions of trust over young people, such as in the church or university sports?

Since the mid-1980s, law enforcement has been investigating allegations of sexual crimes committed by Catholic priests against young boys and girls. These sexual abuse scandals and lawsuits have cost the Church an estimated \$2 billion in settlements.¹ A 2004 US Conference of Catholic Bishops report found that law enforcement was contacted in only 24% of cases of suspected abuse.² In other cases, the church hierarchy responded internally or not at all: priests may have been counseled, evaluated, provided treatment, suspended, or limited in their priestly duties.²

In late 2011, prosecutors accused a retired assistant football coach at Penn State University of making inappropriate sexual advances or assaults on boys from 1994 to 2009. The coach allegedly interacted with these children through a charity, which he founded as a group foster home to help troubled boys.³ During this period, several junior employees at Penn State reported to their immediate supervisors that they had observed the coach engaged in sexual activities with children. However, these observations apparently were never reported to law enforcement authorities.

To date, prosecutors have filed 52 charges for allegedly abusing more than 10 boys, all of whom this former coach met through his charity. Under Pennsylvania law, “a person who, in the course of employment . . . comes into contact with children” is required to report suspected child abuse.⁴ Penn State required faculty and staff to report only to their university superiors, who in turn had a duty to report to civil or criminal authorities. Prosecutors have charged Penn State officials for failure to report.

See also pp 35 and 39.

Legal Duties to Report Child Abuse

States hold the primary responsibility for child welfare services, and most have enacted comprehensive laws. Child maltreatment, a term that encompasses child abuse and neglect, is defined in the Federal Child Abuse Prevention and Treatment Act (CAPTA) as an act or failure to act on the part of a parent or caregiver that results in death, serious physical or emotional harm, sexual abuse, or exploitation. It is important to distinguish maltreatment—in which case the actor is a parent or caregiver—from bullying—in which case the actor is another child.

States that accept CAPTA funding must meet minimum federal standards, but each state has its own definitions of maltreatment within civil and criminal statutes.⁵ Under state law, any person who knows or suspects a child is being maltreated may contact the local child protective services (“permissive reporters”). Every state also identifies persons who are required to report child abuse (“mandatory reporters”). State law is highly variable in defining who has a mandatory duty to report. As of April 2012, approximately 18 states required *any* adult to report suspected child abuse or maltreatment. Other states limit reporting requirements to professionals having frequent contact with children, such as social workers, teachers, physicians, mental health professionals, and child care providers.⁵

Clergy. Approximately 22 states explicitly include clergy among professionals mandated to report known or suspected instances of child abuse or neglect; 7 additional states encompass clergy within their requirement that “any person” must report.⁵ Although the law often grants a privilege against disclosing certain confidential information in the course of an intimate relationship, such as a priest-penitent relationship, at least 6 states have denied use of the privilege in cases of child maltreatment.⁵

Individuals in Close Supervision of Children. Laws are less clear in their application to individuals in close supervision of children, such as athletic coaches, scout leaders, volunteers in religious programs, and university officials. Persons in these categories would fall into the “any person” designation in about 18 states and scout leaders are

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deemed mandatory reporters in several states.⁵ Institutional rules, however, vary in how to fulfill state reporting requirements. For example, former Penn State head coach, the late Joe Paterno, reportedly fulfilled his obligation by reporting suspected abuse to university leadership. A few states are considering explicitly making athletic coaches mandatory reporters in response to the Penn State scandal.⁶ State reporting requirements, moreover, apply to professionals in close contact with “children,” and it is unclear whether university officials working with college-aged students meet this standard.

Notwithstanding legal duties, there appears to be systematic underreporting of child abuse and neglect. Lax criminal and civil penalties may contribute to underreporting. In most states, failure to report is only a criminal misdemeanor. Civil penalties are also difficult to pursue. Although the Catholic Church made settlement payments to individuals who were abused, it was at a substantial emotional expense to those who had to recall painful memories during protracted court proceedings. Since individuals often delay long periods before reporting the crime, statutes of limitation pose major barriers to justice without prompt reporting.

Ethical Obligations to Report Child Abuse

There are strong moral reasons the law should require adults in close supervision of children to report any individual who they have good reason to believe has abused a child. Individuals responsible for the spiritual, emotional, athletic, or educational upbringing of children, such as teachers, coaches, health care professionals, religious officials and staff, scout leaders, adult volunteers, and club sponsors, are in positions of trust. Parents rely on these adults to safeguard the health and well-being of children. Children placed under the supervision of a responsible adult are uniquely vulnerable, may be unable to defend themselves, and may be fearful of reporting the offense.

Religious institutions, colleges, and schools have close ties to their communities, and the integrity of their employees is a matter of utmost public concern. These institutions should adopt stringent child protection policies because many sexual predators, often familiar with state law, seek out relationships with children in which they can assume posi-

tions of responsibility for the children.⁷ Institutions have a responsibility to be vigilant in preventing and detecting child abuse by members of their community.

What is the appropriate course for promoting prompt reporting of abuse, while still ensuring that respected individuals are not falsely accused? Ideally, state law would place a clear duty on all those in a position of trust to report promptly, not only to their supervisors but also to civil or criminal authorities. Given the vulnerability of young people under the supervision of a sports coach or clergyman, the law should require that abuse of adolescents, as well as children, be mandatorily reportable. The law should also have meaningful penalties for failure to report in cases in which there is good reason to suspect abuse. In the case of Penn State, failure to report is a criminal misdemeanor with limited legal ramifications. In addition to legal changes, institutions should develop internal, transparent processes to prevent and report abuse, such as employee background checks, impartial and anonymous reporting outlets, open-door policies, and ombudsmen charged with educating staff and uncovering abuse.

Children placed in positions of vulnerability deserve no less from a caring society and from respected institutions that should serve as models of professionalism and integrity.

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