

SPECIAL
POINTS OF
INTEREST:

- The author discusses the history of mandated reporting statutes and considers the variation in state reporting laws.
- Several changes have been enacted or proposed prompted mainly by the Penn State scandal and the author considers the value of these changes.
- Recent changes to the reporting laws will no doubt fuel the long-standing debate about the efficacy of such statutes, whether they are efficient uses of resources, and whether they invite unnecessary intrusion into the private realm of family life.



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Mandated Reporting of Child Maltreatment: Developments

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Introduction

Recent high-profile child sexual abuse scandals have provided a new backdrop for discussion of the continued need for and effectiveness of mandated reporting in response to child maltreatment. Such scandals have prompted legislators to revisit and revise their mandated reporting laws. Shortly after the Penn State scandal became public, legislation was introduced to amend the Child Abuse Prevention and Treatment Act to expand mandated reporting. To date, at least ten states have amended their mandated reporting statutes, and proposed legislation is pending in numerous others. These recent actions take place in the broader context of a long-standing debate about the wisdom and efficacy of mandated reporting as a policy prescription.

History of Mandated Reporting Laws

Mandated reporting statutes have their origin in the results of research done between 1946 and 1962 by various members of the medical profession. In 1946, Dr. John

Caffey published an article titled "Multiple Fractures in the Long Bones of Infants Suffering Chronic Subdural Hematoma." Over the next decade, medical professionals published articles reporting various findings regarding inflicted injuries. By the late 1950s, some major children's hospitals around the country had instituted child protection teams and voluntary reporting policies pursuant to which they reported suspected cases of child abuse to law enforcement and child welfare authorities. For example, in 1959 the Children's Hospital of Los Angeles adopted a policy of reporting cases of suspected abuse to the authorities. About this same time, children's hospitals in both Cook County, Illinois, and Pittsburgh, Pennsylvania, began a practice of voluntarily reporting cases of suspected child abuse to legal authorities.

In early 1962, the Children's Bureau of the U.S. Department of Health and Human Services convened a meeting of leading researchers and policy makers in the emerging field of child maltreatment. As a result of that meeting,

the Children's Bureau began to develop guidelines for states to adopt mandated reporting statutes. That meeting was attended by, among others, Dr. C. Henry Kempe, who reported on his and his colleagues' research regarding inflicted injuries to children at hospitals across the country. This research was published in July of that year as "The Battered-Child Syndrome". Within a year of these events, state legislatures began to enact mandatory reporting statutes.

The early reporting laws were typically limited in two ways. First, they generally required the reporting of only serious physical injuries that were thought to be the result of intentional infliction. Second, they most often focused on reporting by medical professionals, particularly physicians, although a few did require other professionals to report suspected abuse.

Few of the original reporting laws contained a definition of *abuse* or *child abuse*. Some early legal commentators argued that if a definition were provided, cases would be missed. By not defining

abuse and *neglect*, the thinking went, the net would be cast wider, fewer cases would be missed, and more children would be protected. From the beginning, it was intended that reporters would err on the side of overreporting rather than underreporting of possible cases, a fact that has over time become ever more controversial.

The early laws generally limited the duty to report primarily to the medical professions, specifically physicians. This was true for several reasons. First, doctors possess unique diagnostic skills and could therefore reveal cases that others, particularly laypersons, could not. A second reason was that other professionals (e.g., educators and social workers) were reporting their concerns to local authorities even in the absence of a statutory mandate that they do so.

Such was the general state of affairs when, in 1974, in response to the needs of children across the country, Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA) in an effort to assist states in funding their child protection systems and to bring more uniformity to the nation's child welfare practice. Among the requirements in the original federal legislation was a requirement that each state, if it wished to avail itself of federal CAPTA dollars, enact a mandatory reporting statute that met certain federally defined criteria.

The scope of mandated reporting has broadened over the past 35 years. Like physical abuse, child sexual abuse has always existed. Beginning in the early 1970s, child sexual abuse became the subject of focused study and systematic advocacy that led to wider societal recognition of this phenomenon. By the mid-1980s, the sexual abuse of children was added to the list of maladies that state statutes required be reported to authorities.

The impact of psychological maltreatment of children was discussed and considered as a residual effect of neglect long before it became the subject of discussion and study as a distinct form of child maltreatment. During the early 1980s, psychological harm came to be understood as both a form of neglect and a form of abuse that resulted from active and intentional humiliation, name calling, and similar kinds of assertive harm inflicted by parents and caretakers. As practitioners began to encounter psychologically battered children and as researchers began to understand the impact of this form of maltreatment on children's development, psychological abuse was added to the statutes requiring reporting.

Variation in Current State Laws

Today, every state, the District of Columbia, and the territories have laws mandating the reporting of various types of maltreatment to children's protective services. Over the past 35 years, as these laws have expanded in their applicability and scope, they have also grown more varied. The specifics of each state's law are unique in terms of what must be reported, to what governmental agency—children's protective services or law enforcement—and by which professional disciplines. Some states make every adult without regard to occupation or their relationship with the child a mandated reporter. In addition to physical abuse, neglect, sexual abuse, and psychological abuse, CAPTA and most state laws now address specific factual situations that must be reported.

Present-day mandated reporting statutes typically articulate when the duty to report is triggered. In most states, "reasonable cause to suspect" or "reasonable cause to believe" that a child is maltreated will trigger duty. There has long

been a question whether the "reasonable cause" is an objective standard or a subjective one.

That is, must the individual who is mandated to report herself hold the belief (subjective) or is the standard that a reasonable person in the mandated reporter's position (objective) before the duty is triggered? It appears that the weight of legal authority comes down in favor of an objective standard and the mandated reporter could be responsible for a failure to comply with the law if a reasonable person in the reporter's situation should have had a reasonable suspicion.

The Purpose and Results of Mandated Reporting

Commentators from various disciplines and from across the political spectrum agree that the reporting laws have accomplished the purpose of bringing cases of suspected maltreatment to the attention of child welfare and law enforcement authorities—perhaps too well. Shortly after the enactment of the first reporting laws, the numbers of reports of suspected maltreatment began to swell and have grown substantially over the years. As the numbers of reports make clear, in the nearly half century since the adoption of mandated reporting, the numbers of cases of potential maltreatment have increased exponentially.

Mandated Reporting Controversy

Focusing on the large number of unsubstantiated cases, commentators have argued that the resources needed to respond to the large volume of reported cases drains vital resources away from supporting families. They also point out that the system is flawed in that it encourages overreporting of cases in which evidence of abuse or neglect is not clear but also suffers from underreporting of actual cases that are not brought to the attention of the authorities. Despite the con-

cern about overreporting that has persisted since the enactment of the first mandated reporting laws, recent research suggests that underreporting is a continuing problem among physicians. Contrasted with the commentators who have argued that mandated reporting is a failed policy are those who argue that it is in fact a success at what it is intended to accomplish: find cases.

Recent Changes in State Laws

In an effort to enhance case finding and to protect children, policy makers have determined that they will calibrate policy to err on the side of overreporting rather than follow the suggestions of those who have advocated for a narrowing of the reporting mandate. While the problem of underreporting will almost certainly persist in the wake of the recent child sexual abuse scandals, legislatures across the country have begun to amend and expand their mandated reporting statutes. At this writing, at least 14 states have amended their laws in response to the sexual abuse of children on Penn State's campus by Jerry Sandusky. Numerous other states are in the process of reviewing their laws and may enact amendments to address perceived shortcomings in reporting requirements. In addition, Pennsylvania Senator Robert P. Casey introduced Senate Bill 1877, the Speak Up to Protect Every Kid Act. This legislation would amend the Child Abuse Prevention and Treatment Act to expand mandated reporting to those circumstances in which a child is abused by someone who is not the child's parent, guardian, or legal custodian, in order to provide federal financial support for public education campaigns that would raise awareness of the need to report suspected child maltreatment, and to fund the training of volunteers in the need to report suspected maltreatment.

Some states have explicitly applied mandated reporting laws to coaches or other employees and volunteers of athletic programs, while some have expanded their mandated reporting statutes to include additional professionals or volunteers. Others have expanded reporting to include not just primary and secondary teachers but also colleges, university, and technical school instructors and employees of these organizations. In addition to statutory mandates to report suspected maltreatment, some state legislatures have provided that institutions of higher learning must adopt internal policies to address employees' duty to report. A number of states have included other non-educator employees of educational institutions and several have adopted legislation to promote education and awareness of the duty to report suspected child maltreatment.

Some states have chosen to increase the criminal penalties for failure to report. Presumably because in the Penn State situation some employees of the University did not report because they feared retaliation, some states have explicitly prohibited employers from retaliating against an employee who reports in good faith suspected child abuse.

Conclusion—Impact of Changes

These recent changes to the reporting laws—and those that are likely still to come—will no doubt fuel the long-standing debate about the efficacy of such statutes, whether they are efficient uses of resources, and whether they invite unnecessary intrusion into the private realm of family life. Will it really make children safer if we legally mandate, subject to criminal penalties, that the little league coach or the school secretary report child abuse rather than just the school teacher or principal? We should not hope for too much.

There may be relatively modest increases in the number of cases reported. But in the Sandusky scandal, two individuals actually saw Mr. Sandusky sexually assaulting children at different times. Despite this rare occurrence of an eyewitness actually seeing the sexual abuse of a child, nothing was done. And, of course, neither initiated any report to the authorities—law enforcement or CPS. Despite clear reason to know of the sexual abuse of children, individuals at the highest level of the university structure failed to do what seems obvious even to one utterly unaware of the duty to report sexual abuse of children or the dynamics of child sexual abuse.

Under the egregious circumstances of this particular case, what was lacking was not a statutory duty to report. Rather, what was lacking was an understanding of the moral imperative to protect children from obvious harm. This state of affairs, in the words of the Penn State Special Investigative Counsel, demonstrates “[a] striking lack of empathy for child abuse victims.” Despite nearly fifty years of mandated reporting, there continues to be reluctance on the part of individuals—both professionals who work closely with children and members of the lay public—who simply do not want to get involved. Until we change this attitude as it relates to the abuse and neglect of children, we will never be able to identify and properly respond to all incidences of child maltreatment.



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Enhancing the ability of professionals to respond to children and their families affected by abuse and violence.

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