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A Review of Pennsylvania's Child Abuse Reporting Law

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A Review of Pennsylvania's Child Abuse Reporting Law

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I. Introduction

In recent years, child sexual abuse scandals have rocked the national conscience. These cases have gained national notoriety because of the large number of children abused and because of the high profile positions of the abusers. In these nationally known cases, the scandals have taken place at institutions that are both nationally and world-wide renowned, including the Catholic Church,¹ The Boy Scouts of America,² and the Pennsylvania State University [Penn State].³ In each of these circumstances, the abuser was someone the community and the children trusted: priests,⁴ scout masters,⁵ and mentors.⁶

In many of these cases, the child abuse was discovered but not reported to Child Protective Services [CPS] or law enforcement, thus resulting in more children being placed at risk of being abused.⁷ In each case, state laws existed that required either enumerated individuals or the general public as a whole to report suspected cases of child abuse.⁸ This is because all 50 states have statutes that require enumerated individuals to report cases of suspected child abuse.⁹ These statutes are the result of a federal grant program intended to help states fund “child abuse or neglect prevention

1. See e.g. Jennifer Medina, Los Angeles Archdiocese to Pay \$10 Million in Abuse Case, The N.Y. Times, A18 (March 14, 2013) (available at http://www.nytimes.com/2013/03/14/us/los-angeles-archdiocese-to-pay-10-million-in-abuse-case.html?ref=romancatholicchurchsexabusecases&_r=0).

2. See e.g. William Yardley, \$18.5 Million in Liability for Scouts in Abuse Case, The N.Y. Times, A12 (April 24, 2010) (available at <http://www.nytimes.com/2010/04/24/us/24scouts.html?ref=boyscouts>).

3. See e.g. Tim Rohan, Sandusky Gets 30 to 60 Years for Sexual Abuse, The N.Y. Times, A1 (October 10, 2012) (available at http://www.nytimes.com/2012/10/10/sports/ncaafootball/penn-state-sandusky-is-sentenced-in-sex-abuse-case.html?ref=jerrysandusky&_r=1&).

4. Medina, supra n. 1.

5. Yardley, supra n. 2.

6. Rohan, supra n. 3.

7. Pa. Atty. Gen., Sandusky Grand Jury Presentment 10 (unpublished grand jury presentment, Nov. 5, 2011) (available at <http://www.attorneygeneral.gov/uploadedFiles/Press/Sandusky-Grand-Jury-Presentment.pdf>) [hereinafter Grand Jury].

8. Child Welfare Info. Gateway, Mandatory Reporters of Child Abuse and Neglect, 1 (August 2012) (available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf) [hereinafter CWIG] (all 50 states and the District of Columbia have statutes that specify who must report cases of child abuse); see Appendix D.

9. Id.

and treatment programs.”¹⁰ The federal statute that created these grants states that its purpose is “assisting the States in improving the child protective services system.”¹¹

In Pennsylvania, the most high profile case of child abuse revolves around Jerry Sandusky, the former Penn State assistant football coach and the founder of the Second Mile.¹² The Pennsylvania statute, Persons Required to Report Suspected Child Abuse [Reporting Statute],¹³ mandates enumerated persons to report cases of suspected child abuse.¹⁴ Unfortunately, in 2001, this statute failed because there was no report of suspected child abuse made to CPS against Jerry Sandusky.¹⁵ Because a report was never made to CPS, Sandusky was free to abuse children for years until his arrest in 2011.¹⁶

The Sandusky case has identified weaknesses in the Reporting Statute, prompting this review of it. The aim of this proposal is to strengthen the Reporting Statute by expanding the list of enumerated mandatory reporters, streamlining the reporting process, and increasing the mandatory reporters’ knowledge of child abuse, including what constitutes child abuse and how to make a report to CPS.¹⁷ The intended effect of these changes is to ensure that individuals who are placed in a position to identify child abuse will be able to identify the abuse before greater harm can be caused to the child. This proposal accomplishes that goal because a larger pool of individuals will be better

10. 42 U.S.C.A. § 5106a (West 2010).

11. Id.

12. Rohan, supra n. 3. The Second Mile was a multimillion dollar charity that was intended to help under privileged youths. Grand Jury, supra n. 7, at 1.

13. 23 Pa. Consol. Stat. Ann. § 6311 (West 2013); see Appendix B.

14. 23 Pa. Consol. Stat. Ann. § 6311(b); see Appendix B.

15. Sandusky Found Guilty on 45 of 48 Sex Abuse Charges, 24 No.6 WJENT 1, 2 (Daniel Trotta, Peter Cooney & Lisa Shumaker eds., July 5, 2012).

16. Pa. Atty. Gen., Child Sex Charges Filed Against Jerry Sandusky; Two Top Penn State University Officials Charged With Perjury & Failure to Report Suspected Child Abuse,

<http://www.attorneygeneral.gov/press.aspx?id=6270> (November 5, 2011).

17. See Appendix A.

educated on detecting abuse, and the reporting process will require all reports to be made immediately to CPS. Therefore, more children will be protected by individuals who are educated on detecting abuse, and who are required to make a report to authorities.

This review of the Reporting Statute will examine the case of Jerry Sandusky and what exactly in that case prompted the need for this review. By examining the Sandusky case, deficiencies in the law will be exposed. Based on these deficiencies, changes can be made to prevent this from happening again. Further, this review will also examine child abuse statistics and their effects on the victim. These statistics are important because they represent the need to always be vigilant in preventing this type of abuse. These statistics will also reveal the need for reporting statutes and the effect they can have on protecting children. This review will expose the holes in the Reporting Statute which have driven the changes being recommended here.¹⁸

II. Jerry Sandusky

This review of the Reporting Statute has been prompted by Jerry Sandusky's actions and the inaction of others. Understanding the events that took place leading up to Sandusky's arrest is important to understand why it is necessary to conduct this review. By reviewing the Sandusky case, it is possible to point out the shortcomings of the existing Reporting Statute and, from these observations recommendations can be made to strengthen the statute.

Jerry Sandusky's name resonates throughout Pennsylvania as a person who betrayed the trust of the vulnerable children who came to him for help. Sandusky was the longtime assistant football coach at Penn State and the founder of the highly respected

18. Id.

and successful Second Mile charity.¹⁹ The Second Mile was a statewide multimillion dollar charity with a mission to “help children who need additional support and would benefit from positive human interaction.”²⁰ Sandusky used his time at these two institutions to prey on young boys and sexually abuse them.²¹ Over the years, Sandusky’s abuse was discovered, but was not always immediately reported to authorities.²²

In 1998, the first known allegation of child abuse was made against Sandusky.²³ The report was made by the mother of an 11-year-old boy who discovered that Sandusky was showering with her son in the Penn State football locker room.²⁴ This allegation led to an investigation of Sandusky and his actions with this boy.²⁵ The investigation included members of the Penn State and State College Police Departments, the Department of Public Welfare, and Ray Gricar, the Centre County District Attorney. Following an investigation, Gricar decided not to file criminal charges against Sandusky.²⁶

In 1999, Sandusky retired as a Penn State football coach.²⁷ Sandusky’s retirement did not prevent him from having continued access to Penn State and its football facilities.²⁸ As a part of his retirement, Sandusky was granted emeritus status.²⁹ This status came with many perks, including a campus office, access to recreational facilities, and unlimited access to the Penn State football facilities and locker room.³⁰

19. Grand Jury, *supra* n. 7, at 1.

20. Id.

21. Id.

22. Id. at 10.

23. Id. at 19.

24. Id.

25. Id. at 19-20.

26. Id. at 19.

27. Id. at 11.

28. Id.

29. Id.

30. Id.

In 2002, Mike McQueary, a graduate assistant with the Penn State football team, discovered Sandusky in the Penn State football locker room showering with a young boy.³¹ This boy would later be known to the public through the Sandusky Grand Jury Presentment as Victim 2.³² McQueary believed that he witnessed Sandusky sexually abusing the boy.³³ After witnessing this, McQueary went home and informed his father of what he saw.³⁴ The next day, McQueary reported what he saw to Joe Paterno, Penn State's head football coach.³⁵ Paterno followed McQueary's report by relaying this information to his superiors, the athletic director, Tim Curley, and Gary Shultz, the senior vice-president for Finance and Business.³⁶ McQueary later met with Curley and Shultz and told them that he witnessed Sandusky sexually abusing a child in the football team locker room showers.³⁷ Curley and Shultz promised McQueary that they would investigate the incident.³⁸ Curley later informed McQueary that the Second Mile was informed of the incident and that Sandusky's keys were taken from him.³⁹ Throughout this investigation, McQueary was never interviewed by the police, and neither Child Protective Services nor the police were notified.⁴⁰

In 2011, Sandusky was investigated for a second time.⁴¹ This investigation was led by the Pennsylvania Attorney General's office, which utilized Pennsylvania's Thirty-Third Investigative Grand Jury [Grand Jury] to gather facts in determining if Sandusky

31. *Id.* at 6; Pa. Atty. Gen., *supra* n. 16.

32. *Grand Jury*, *supra* n. 7, at 6.

33. *Id.*

34. *Id.* at 7.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 7-8.

41. *Id.* at 1.

abused children.⁴² The Grand Jury determined that Sandusky committed numerous sex crimes against children resulting in Sandusky having over 40 charges brought against him.⁴³ The most high-profile incident of child abuse revealed by the Grand Jury presentment was the case of Victim 2. This case made national headlines because of where it took place and the number of high-profile mandated reporters at Penn State that did not report to the case to CPS,⁴⁴ including then university president Graham Spanier, Paterno, Curley, and Shultz.⁴⁵

In 2012, Jerry Sandusky was tried and convicted of 45 counts of abuse against children and has been sentenced to 30-60 years in prison.⁴⁶ Since this incident, Curley, Shultz, and Spanier have been charged with perjury for their testimony during the Grand Jury investigation and for failing to report child sexual abuse.⁴⁷ Curley, Shultz, and Spanier are currently awaiting trial.⁴⁸

My interest in reviewing and revising the Pennsylvania child abuse reporting law is a result of the inaction taken in this case. Curley and Shultz failing to report Sandusky's actions with Victim 2 to CPS was completely the opposite of what was supposed to happen.⁴⁹ The Reporting Statute was not designed for institutions such as Penn State to determine whether there is a reason to suspect abuse, or give them the right to conduct an investigation.⁵⁰ Curley and Shultz should have immediately reported McQueary's

42. *Id.*

43. Pa. Atty. Gen., *supra* n. 16.

44. See e.g. Paula Reed Ward, [Spanier Facing Charges in Sandusky Child Abuse Case at Penn State: Perjury, Obstruction Announcement Due](#), Pitt. Post-Gazette, (Nov. 1, 2012) (available at <http://www.post-gazette.com/stories/local/state/spanier-facing-charges-in-psu-abuse-case-660125/>); Rohan, *supra* n. 3.

45. *Grand Jury*, *supra* n. 7, at 6-7.

46. Rohan, *supra* n. 3.

47. *Id.*; Pa. Atty. Gen., *supra* n. 16.

48. Rohan, *supra* n. 3.

49. *Grand Jury*, *supra* n. 7, at 12.

50. *Id.*

allegation of abuse against Sandusky.⁵¹ The Reporting Statute was designed for an institution to receive reports of child abuse from its employees, and then follow that up with a report from the institution to CPS.⁵² In this case, Curley and Shultz did not make a report to CPS. Instead, they determined on their own whether a report was necessary.⁵³ This demonstrates a serious breakdown in how the Reporting Statute was meant to work. Because of Curley's and Shultz's inaction in 2001, Sandusky was free for years to potentially abuse more children.⁵⁴

III. Child Abuse Statistics and Who is at Risk of Abuse

Child abuse is a national problem that affects thousands of children across the country.⁵⁵ It wasn't until 1962, when physician Henry Kempe published a paper on battered child syndrome that state governments started to develop child abuse and neglect reporting laws.⁵⁶ Since this time, reports of suspected child abuse have risen significantly from only 150,000 reports of suspected child abuse in 1963⁵⁷ to over 5.7 million reports of suspected child abuse in 2007.⁵⁸ From those 5.7 million reports, authorities were able to confirm 735,000 cases of child abuse.⁵⁹ More recently, the Centers for Disease Control and Prevention reported 695,000 confirmed cases of abuse in 2010, including 1,560 children who died as a result of abuse and neglect.⁶⁰ These

51. Id.

52. 23 Pa. Consol. Stat. Ann. § 6311(c).

53. Grand Jury, supra n. 7, at 8.

54. Id. at 10.

55. Centers for Disease Control and Prevention, Understanding Child Maltreatment: Fact Sheet, 1 (2012) (available at http://www.cdc.gov/violenceprevention/pdf/cm_factsheet2012-a.pdf) [hereinafter CDC 2012].

56. Andrea E. Pelochino, Chapter 842: Extending Provisions of the Child Abuse and Neglect Reporting Act, 36 McGeorge L. Rev. 831, 832 (2005).

57. Lorna Bell & Patrick Tooman, Mandatory Reporting Laws: A Critical Overview, 8 Int. J.L. & Fam. 337, 342 (1994).

58. Benjamin H. Levi & Sharon G. Portwood, Reasonable Suspicion of Child Abuse: Finding a Common Language,

39. J.L. Med. & Ethics 62, 63 (2011).

59. Id.

60. CDC 2012, supra n. 46, at 1.

numbers are a decrease from 2008, during which 772,000 children were abused, including 1,740 who died.⁶¹

In 2011, Pennsylvania's Department of Public Welfare [DPW] received 24,378 reports of suspected child abuse.⁶² From these reports, the DPW was able to substantiated 3,408 cases of abuse.⁶³ These cases involved 3,292 children, including 269 children who are known to have been previously abused.⁶⁴ Girls were more likely than boys to be abused, as 2,274 girls were abused compared to 1,134 boys.⁶⁵ Unfortunately, 34 children died as a result of the abuse in 2011.⁶⁶

The abuse that these thousands of children have gone through can result in many different types of physical and psychological injuries that can negatively affect the child for the rest of his or her life.⁶⁷ These injuries include bruises, cuts, burns, broken bones, sexually transmitted diseases, pregnancy, brain injury and even death.⁶⁸ Lifelong problems that a victim of abuse may experience include the disruption of early brain development, alcoholism, drug abuse, high-risk sexual behavior, post-traumatic stress disorder, chronic somatic disorders, and suicide.⁶⁹ Further, there can be significant financial costs associated with child abuse.⁷⁰ Recent estimates have put costs at greater than \$33 billion annually.⁷¹

61. Centers for Disease Control and Prevention, Understanding Child Maltreatment: Fact Sheet, 1 (2010) (available at <http://www.cdc.gov/ViolencePrevention/pdf/CM-FactSheet-a.pdf>).

62. Pa. Dept. of Pub. Welfare, Annual Child Abuse Report, 7 (2011) (available at http://www.dpw.state.pa.us/ucmprd/groups/webcontent/documents/report/p_012532.pdf) [hereinafter Pa. DPW].

63. Id.

64. Id. at 8.

65. Id.

66. Id. at 7.

67. CDC 2012, supra n. 46 at 1; Levi & Tooman, supra n. 49 at 63.

68. Id.

69. Id.

70. Levi & Tooman, supra n. 49, at 63.

71. Id.

Many different circumstances can lead to certain children being at a greater risk for abuse. These circumstances can include age, family income, and isolation from loved ones.⁷² Children under the age of three have the highest documented rate of abuse.⁷³ This can be attributed to young children requiring constant care and their small size.⁷⁴ Statistics have shown that girls are more likely to be abused than boys.⁷⁵ A child that lives in a home where there is a history of drug and alcohol abuse is at a higher risk for abuse,⁷⁶ as are children whose families do not live near any close friends or relatives.⁷⁷ Children in families that are isolated from other relatives and friends may experience higher levels of abuse because the parents lack positive parenting role models or may lack the pressure to conform to normal parenting standards.⁷⁸ Children that live under the poverty line have a greater chance of being abused.⁷⁹ This can be attributed to many factors, such as the child's parents being unable to provide adequate care, or a combination of a parent having a substance abuse problem while living under the poverty line which may result in abusive behavior towards their children.⁸⁰ Children in single parent households are also at greater risk for abuse.⁸¹ This can be contributed to things such as the likelihood that single parent families are more likely to live under the

72. CDC 2012, *supra* n. 46 at 1.

73. Jill Goldman, Masha K. Salus, Deborah Wolcott, & Kristie Y. Kennedy, A Coordinated Response to Child Abuse and Neglect: The Foundation for Practice, 32 (2003) (available at <https://www.childwelfare.gov/pubs/usermanuals/foundation/foundation.pdf>) [hereinafter Coordinated Response].

74. *Id.*

75. Pa. DPW, *supra* n. 59, at 8 (reporting that in 2011 there were 2,274 substantiated cases of abuse involving girls compared to 1,134 for boys).

76. CDC 2012, *supra* n. 46, at 1.

77. *Id.*

78. Coordinated Response, *supra* n. 70, at 34.

79. *Id.*

80. *Id.* at 33.

81. CDC 2012, *supra* n. 46, at 1.

poverty line, increased stress of that the single parent may feel as the sole provider, and a lack of a support system in the family.⁸²

Based on these statistics and the harm that child abuse causes, it is easy to see the importance of a clear and concise reporting statute. By having a statute that clearly identifies who is required to make a report to CPS and how a report is to be made, more children who are being harmed will be protected. Further, a statute that trains mandatory reporters on how to identify child abuse may decrease the time it takes before a mandatory reporter realizes a report must be made. To accomplish these goals, the Pennsylvania Reporting Statute will require some changes.

IV. The Current State of Pennsylvania's Law on Reporting Child Abuse

To better understand what changes need to be made to the Reporting Statute, it is important to understand how it was intended to work. At this time, the Reporting Statute is the current law in the state of Pennsylvania for reporting child abuse and neglect.⁸³ However, this statute does not function alone in the reporting process. The process of reporting cases of child abuse requires the Reporting Statute to be used along with the Reporting Procedure Statute,⁸⁴ and the Immunity Statute.⁸⁵ Understanding how these statutes work together is important in understanding how the entire Pennsylvania child abuse reporting process works.

The Reporting Statute came into effect on May 29, 2007, and is broken down into four parts: (a) the general rule, (b) enumeration of persons required to report abuse, (c) staff members of institutions, etc., and (d) civil action for discrimination against persons

82. Coordinated Response, *supra* n. 70, at 33.

83. 23 Pa. Consol. Stat. Ann. § 6311.

84. 23 Pa. Consol. Stat. Ann. § 6313 (West 2012).

85. 23 Pa. Consol. Stat. Ann. § 6318 (West 2012).

filing the report.⁸⁶ Section (a) of the Reporting Statute lays down the general rule of the law and how the statute is supposed to work.⁸⁷ The general rule requires a report to be made when a mandatory reporter:

who, in the course of employment . . . comes into contact with children shall report or cause a report to be made . . . when the person has reasonable cause to suspect . . . that a child under the care, supervision, guidance or training of that person or of an agency . . . is a victim of child abuse, including child abuse by an individual who is not a perpetrator.”⁸⁸

This section specifies that reports are to be made in accordance with the procedures stated in the Reporting Procedure Statute.⁸⁹ The Reporting Procedure Statute states the steps that need to be taken to report of child abuse.⁹⁰ These requirements include making a report by “telephone and in writing within 48 hours after the oral report.”⁹¹ The Reporting Procedure Statute also requires that reports be made to CPS.⁹²

The rule in Section (a) is not absolute, as there are a few exceptions.⁹³ These exceptions apply to confidential information disclosed to members of the clergy and attorneys.⁹⁴ However, there is no exception for privileged communication between any professional person and a client or patient.⁹⁵ The privileged nature of the communication will not be a defense for the mandatory reporter if that reporter fails to make a report of suspected child abuse.⁹⁶

86. 23 Pa. Consol. Stat. Ann. § 6311.

87. Id. at § 6311(a).

88. Id.

89. Id.

90. 23 Pa. Consol. Stat. Ann. § 6313.

91. Id.

92. Id.

93. 23 Pa. Consol. Stat. Ann. § 6311(a).

94. Id.

95. Id.

96. Id.

Section (b) of the Reporting Statute lists the enumerated reporters who are required to report suspected cases of child abuse.⁹⁷ Every state has a list of enumerated persons who are required to report.⁹⁸ In fact, some states require all of their citizens to be mandatory reporters.⁹⁹ States that do not require everyone to report enumerate specific persons to report, and in most cases, those persons include doctors, teachers, social workers, and law enforcement officers.¹⁰⁰ Pennsylvania is no different; the state has a long list of enumerated reporters who are required by law to report suspected cases of child abuse:

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, Christian Science practitioner, member of the clergy, 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.¹⁰¹

Many of these individuals see children every day because they are teachers, day-care center workers, or physicians.¹⁰² By interacting with children daily, these enumerated reporters will be in a position to easily identify cases of abuse.

The next section of the Reporting Statute, section (c), requires enumerated reporters in section (b) who are staff members, of “a medical or other public or private institution, school, facility or agency”¹⁰³ to report directly to the person in charge at his or her institution or to a designated person.¹⁰⁴ This person will then assume the

97. *Id.* at § 6311(b).

98. *CWIG*, *supra* n. 8 at 1.

99. *Id.* at 3; *see* Appendix D.

100. *CWIG*, *supra* n. 8 at 2.

101. 23 Pa. Consol. Stat. Ann. § 6311(b).

102. *Id.*

103. *Id.* at § 6311(c).

104. *Id.*

responsibility for making a report of child abuse to CPS.¹⁰⁵ This designated person is required to follow the same steps that are laid out in the Reporting Procedure Statute.¹⁰⁶

In the Sandusky Case, section (c) was followed as intended by both McQueary and Paterno.¹⁰⁷ This was accomplished when McQueary reported to Paterno that he saw Sandusky abusing a boy in the locker room showers, and when Paterno reported this information to Curley, who, as Athletic Director, was the person in charge.¹⁰⁸ It was Curley and Shultz's responsibility under section (c) to make the report to CPS.¹⁰⁹ Unfortunately, neither Curley nor Shultz made a report to CPS, which demonstrates a significant flaw in the statute.¹¹⁰ This flaw is what has prompted this review, and the recommendations that are provided below.

The last portion of the Reporting Statute, section (d), protects any person who makes a report in good faith of suspected child abuse from discrimination.¹¹¹ The section makes it illegal for an employer to dismiss an employee who reports a case of child abuse.¹¹² This statute also makes it illegal for anyone to discriminate against a reporter of child abuse with regard to that person's "compensation, hire, tenure, terms, conditions or privileges of employment."¹¹³ If a reporter of child abuse is discriminated against, that person is provided a cause of action under this section.¹¹⁴

105. Id.

106. Id.

107. Grand Jury, *supra* n. 7, at 7.

108. Id.

109. Id. at 12.

110. Id.

111. 23 Pa. Consol. Stat. Ann. § 6311(d).

112. Id.

113. Id.

114. Id.

Lastly, good faith reporters of child abuse are immune from liability because of the Immunity Statute.¹¹⁵ Although the Reporting Statute does not specifically mention the Immunity Statute in its text, the Immunity Statute does directly reference reports of child abuse made under the Reporting Statute.¹¹⁶ This statute provides immunity from liability any report made in good faith of suspected child abuse.¹¹⁷ This protects the reporter for liability for any damage the report may have cause as long as the report was made in good faith.

V. Recommendations

A. Expand the Reporting Statute

The intent of a reporting statute is to require individuals who are in a position to detect child abuse and to report child abuse.¹¹⁸ Child abuse statutes originally required only doctors to report, but over time, these statutes have grown significantly to incorporate a larger array of professionals.¹¹⁹ Today, over 70 million people are required to report child abuse.¹²⁰ Professions who are often designated as mandatory reporters include, teachers, physicians, social workers and law enforcement.¹²¹ However, some states have required other professions that are not commonly required to report child abuse such as members of the clergy, animal control officers, and university administrators.¹²² As previously mentioned, some states have even gone as far as

115. 23 Pa. Consol. Stat. Ann. § 6318.

116. *Id.* at § 6318(b) (stating, “[f]or the purpose of any civil or criminal proceeding, the good faith of a person required to report pursuant to section 6311 . . . shall be presumed”).

117. *Id.* at § 6318(a).

118. Angelita Martinez, Parents as Mandatory Reporters of Child Abuse and Neglect: Establishing an Explicit Duty to Protect, 51 Wayne L. Review 467 (2005).

119. Donald T. Kramer, Mandatory Reporting, 2 Leg. Rights Children 2D, §16:17 (2d ed.), 1 (Nov. 2012).

120. Levi & Tooman, Supra n. 49 at 63.

121. CWIG, supra n. 8, at 2.

122. *Id.* at 2-3.

requiring every person to report cases of child abuse.¹²³ This proposal will not go as far as those states. The recommendations being offered in this review for the Reporting Statute will require that administrators, faculty, staff, athletic coaches, and volunteers at private and public colleges and universities, as well as a child's parents or legal guardians, be made mandatory reporters. This proposal will also recommend that any other person may report child abuse under the Reporting Statute.

The main reason to expand the Reporting Statute to include university employees and parents is due to their responsibility for children who are in their care. Expanding the Reporting Statute to include these two groups of people will be a positive step toward improving the number of substantiated reports of child abuse. Statistics have shown that mandated reporters have a higher percentage of substantiated reports, compared to non-mandated reporters.¹²⁴ This may be because mandatory reporters are notified of their responsibility to report suspected child abuse.¹²⁵ It has also been shown that once a group of individuals has been designated as mandatory reporters, reports made from that group increase substantially.¹²⁶ These trends should continue with the addition of university employees and parents as mandatory reporters.

The Pennsylvania Reporting Statute has a long list of enumerated reporters who are required by law to report suspected cases of child abuse.¹²⁷ These professions include "school administrator, school teacher, and school nurse."¹²⁸ However, the list of mandatory reporters does not mention university and college employees.¹²⁹ At this time,

123. *Id.* at 3; *see* Appendix D.

124. Bell & Tooman, *supra* n. 55, at 346.

125. *Id.* at 347.

126. *Id.*

127. 23 Pa. Consol. Stat. Ann. § 6311(b).

128. *Id.*

129. *Id.*

only four states identify university employees as mandatory reporters.¹³⁰ Nevertheless, many universities have taken it upon themselves to require its employees to report suspected child abuse.¹³¹ If the intent of reporting statutes is to require professionals to report abuse, it is only logical then that the Pennsylvania Reporting Statute should include administrators, faculty, staff, athletic coaches, and volunteers at private and public colleges and universities.

By expanding the Reporting Statute to include these individuals as enumerated reporters, a larger group of professions, who regularly come into contact with children, will be required to report abuse. Many universities are entrusted by thousands of parents every summer to protect their children from harm when they send them to camps located at these universities.¹³² These camps are run by university employees who should be held responsible for the safety of the thousands of children who attend these camps.¹³³ Therefore, the university employees who work at these camps are responsible for protecting the campers from potential abuse, and should be required to report child abuse. If the goal of reporting statutes is to require individuals to report abuse, it is only logical that universities employees are amongst this group. Because the intended purpose of reporting statutes is to protect children against abuse, it is imperative to require that administrators, faculty, staff, athletic coaches, and volunteers at private and public colleges and universities be made mandatory reporters. These professionals can have extensive interaction with children and should be required to report abuse.

130. CWIG, *supra* n. 8, at 3.

131. See Policy Manual from Penn St. U., Policy AD72 – Reporting Suspected Child Abuse, AD72 (Mar. 13, 2013) (available at <http://guru.psu.edu/policies/AD72.html>) (Mar. 13, 2013); Policy from U. of Pitt., Protection of Children from Abuse, 06-04-01 (Jan. 3, 2013) (available at <http://cfo.pitt.edu/policies/documents/Policy06-04-01webdocument.pdf>).

132. Penn. St. Athletics, Camps and Clinics, <http://www.gopsusports.com/camps/home.html> (accessed Apr. 16, 2013).

133. *Id.*

It is equally imperative that parents and legal guardians be included as mandatory reporters. Though the law typically does not require individuals to protect others from harm, a special relationship can exist that establishes a duty to act.¹³⁴ In Pennsylvania, parents and legal guardians share a special relationship, recognized by law, with their children.¹³⁵ This special relationship establishes a legal duty to protect their children from harm.¹³⁶ This special relationship exists because children rely on their parents for comfort, health and safety.¹³⁷ In this special relationship, parents already have a legal duty to report any abuse against their child. It is therefore only logically then that parents should be included as a mandatory reporter. Further, designating parents as mandatory reporters may make them more aware of their responsibility to protect their child from harm.

By requiring parents to become mandatory reporters, Pennsylvania will join a number of other states have already done so.¹³⁸ Designating parents as mandatory reporters may make parents aware of their responsibility to protect their child from harm. In states where parents have been designated as reporters of child abuse, they often report child abuse at higher rates than doctors and day care providers in that state.¹³⁹ This just shows that when parents are compelled to report child abuse, they do, making parents that much more important to the reporting processes.

134. Martinez, *supra* n. 116, at 470-471.

135. *Reardon v. Wilbur*, 272 A.2d 888, 890 (Pa. 1971) (stating, “[p]arents have a duty to exercise reasonable care to protect their small children and keep them from danger”).

136. *Goldberg v. Philadelphia Rapid Transit Co.*, 149 A. 104, 107 (Pa. 1930).

137. Martinez, *supra* n. 116, at 477.

138. See Ariz. Rev. Stat. Ann. § 13-3620 (West 2013); 22 Me. Rev. Stat. Ann. § 4011-A (2013); Minn. Stat. Ann. § 626.556 (2013); Miss. Code Ann. § 43-21-353 (West 2012); Mo. Rev. Stat. Ann. § 210.115 (2013); Wash. Rev. Code Ann. § 26.44.030 (West 2013).

139. Martinez, *supra* n. 116, at 483.

Parents are also in the best position to detect abuse of their child. When legislatures are determining whom to require as mandatory reporters, one of the most important factors is how often that person encounters children.¹⁴⁰ Considering this, parents probably spend more time with their children than anyone else, and therefore are most likely to be the first to detect abuse.¹⁴¹ Further, a parent is more likely to have personally witnessed or to suspect abuse because it “generally ‘occur[s] in a family setting where there are few or no witnesses . . . other than the parents themselves.’”¹⁴² In fact, over 77 percent of child abuse is inflicted in the home by a biological parent and another 3 percent comes from an in-home step-parent.¹⁴³ Overall, 87 percent of child abuse is perpetrated by a person that lives in the child’s home.¹⁴⁴ This information demonstrates why a parent’s proximity to the abuse, and the likelihood to be the first person to detect it, is so important for the reporting process. This is a prime reason for why parents should be mandatory reporters — because such proximity to the abuser and the child provides the parents with the majority of the information necessary to make a report and assist CPS.¹⁴⁵

Any reporting statute that does not enumerate parents as mandatory reporters of child abuse cannot be considered a practical approach to preventing child abuse. Such a statute ignores the already-existing duty of parents to protect their children from harm. Further, it overlooks the person whom children spend the most time with — their own parents. The only way to improve the reporting statute is to require those who have the

140. *Id.* at 479.

141. *Id.*

142. *Id.* (Quoting Homer H. Clark, *The Law of Domestic Relations in the United States*, § 9.4 at 357 (2d. ed. 1988).

143. Dept. of Health & Human Servs., *Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Report to Congress*, 6-2 (Jan. 15, 2010) (available at http://www.acf.hhs.gov/sites/default/files/opre/nis4_report_congress_full_pdf_jan2010.pdf).

144. *Id.*

145. Bell & Tooman, *supra* n. 55, at 338.

best opportunity to prevent further abuse to report that abuse. A child's parent is one of those people.

The reporting statute should also include a section that permits, but does not require, anyone to report suspected child abuse. The purpose of this section is to protect anyone that reports child abuse, who is not already a mandated reporter, from discrimination and liability for filing a report. The Pennsylvania Statute does not explicitly provide these protections. However, the Immunity Statute's general rule grants immunity from liability to "[a] person . . . that participates in good faith in making a report, whether required or not."¹⁴⁶ Because the Immunity Statute is never mentioned in the Reporting Statute,¹⁴⁷ reporters may not be aware that they are provided immunity from liability. This change would correct that misunderstanding. To emphasize that all good faith reporters of child abuse are immune from liability, a section should be added to reference the Immunity Statute.

The intent of this section is not meant to make everyone a mandatory reporter. Requiring everyone to be a mandatory reporter could potentially overwhelm the staff of CPS. This would hurt efforts to help abused children and could be counterproductive.¹⁴⁸ Therefore, to mandate everyone as a mandatory reporter could be detrimental to the overall process. This proposal avoids that problem, but does provide good faith reporters the protections that every mandated reporter is given.

These proposals have one purpose: to allow more people who are in a position to identify child abuse to report child abuse to CPS. By requiring administrators, faculty, staff, athletic coaches, and volunteers at private and public colleges and universities, as

146. 23 Pa. Consol. Stat. Ann. § 6318.

147. 23 Pa. Consol. Stat. Ann. § 6311.

148. Andrew Longstreth, Analysis: Mandatory Reporting Laws Could Harm Children, Reuters, (Dec. 1, 2011) (available at <http://www.reuters.com/article/2011/12/01/us-usa-crime-reporting/laws-idUSTRE7B01NZ20111201>).

well as a child's parents or legal guardians to report child abuse, the Reporting Statute will grow to include large groups of people who have extensive interaction with children. By requiring these people to report child abuse, they will be more compelled to do so, resulting in more children being protected.¹⁴⁹ Further, by permitting anyone to report child abuse and by including them under the Reporting Statute, all reporters of child abuse will be protected from discrimination and liability. This may encourage more people to make a report of child abuse knowing that they are protected from any repercussions. If the intent of a reporting statute is to encourage more people to report child abuse,¹⁵⁰ these changes accomplish that and make the Pennsylvania Reporting Statute much stronger.

B. Streamline the Reporting Process

The Pennsylvania Reporting Statute under Section (c) requires enumerated reporters who are staff members of “a medical or other public or private institution, school, facility or agency” to report cases of suspected child abuse to either the person in charge or a designated person.¹⁵¹ This section of the Reporting Statute needs to be changed to ensure that all cases of suspected child abuse are reported directly to CPS. The need for this change is highlighted by the Sandusky case, in which the person in charge did not pass on the report of suspected child abuse to CPS.¹⁵² Nowhere in the Reporting Statute is the person in charge given the choice to conduct his or her own investigation or decide whether a report needs to be made.¹⁵³ A report to CPS should always be made when a mandatory reporter reasonably suspects that a child has been abused. To remedy this

149. Bell & Tooman, *supra* n. 55, at 342.

150. *Id.*

151. 23 Pa. Consol. Stat. Ann. § 6311(c).

152. *Grand Jury*, *supra* n. 7, at 12.

153. 23 Pa. Consol. Stat. Ann. § 6311.

problem, the reporting processes needs to be streamlined so that all reports of suspected child abuse move directly from the original source to CPS.

Requiring all reports of suspected child abuse to go directly to CPS is a standard used by a vast majority of states.¹⁵⁴ A statute that no longer requires an employee to report abuse directly to his or her boss removes the middleman from the reporting process. The change recommended here, however, will not eliminate the requirement of reporting suspected cases of child abuse to one's boss. Reporting to one's boss will become a secondary step after a report has been made to CPS. This is not a new approach to reporting suspected child abuse, but is one that has been adopted by a number of states.¹⁵⁵

West Virginia, for example, has adopted this approach as law.¹⁵⁶ West Virginia requires that all reports initially be made within 48 hours to the Department of Health and Human Resources.¹⁵⁷ The statute then requires any mandated reporter who is a member of an institution to also inform the institution.¹⁵⁸ The purpose for this aspect of the statute is to have the institution supplement the initial report, or if necessary, make its own report.¹⁵⁹ However this section does not relieve the mandatory reporter from reporting suspected child abuse to CPS.¹⁶⁰ Reporting to the institution is only an additional step.¹⁶¹

154. See Appendix D.

155. See Haw. Rev. Stat. § 350-1.1 (2012); Md. Fam. Law Code Ann. § 5-704 (2013); Mich. Comp. Laws Ann. § 722.623 (West 2013); N.Y. Soc. Serv. Law § 413 (McKinney 2013); W. Va. Code Ann. § 49-6A-2 (West 2013).

156. W. Va. Code Ann. § 49-6A-2.

157. Id.

158. Id.

159. Id.

160. Id.

161. Id.

There are many advantages to this approach. The primary advantage is that the report is made immediately to CPS from the source. This allows CPS to investigate the allegations immediately and gather all the facts directly from the source of the allegations. This also removes the possibility that an institution first conducts its own investigation, and then decides whether to inform CPS. This kind of policy presents many problems, including the fact that not every institution has the resources to conduct its own investigation. For example, a doctor's office will not have its own police force, compared to a university such as Penn State.¹⁶² And in the case of Sandusky, Penn State officials were informed of child abuse but still decided not to inform CPS.¹⁶³ By following the West Virginia model, McQueary would have been required to immediately notify CPS, and then also be required to inform Paterno.¹⁶⁴

Another advantage to adopting the West Virginia standard of reporting is that it immediately involves all parties. Under this standard, CPS would have been able to begin its investigation, with Penn State supplementing CPS efforts. A few things that Penn State could have done to supplement CPS include retrieving any relevant surveillance video, preserving any useful records on the matter, and taking action to prevent against any potential future harm to the victim.

To ensure that an employer cannot interfere or discourage an employee from directly making a report CPS, the Reporting Statute will make it against the law for an employer to enact any policy that requires an employee to receive permission to make a report or delays the reporting process. Other states have similar provisions in their reporting

162. Penn. St. U., University Police and Public Safety, <http://www.police.psu.edu/> (updated Feb. 19, 2009).

163. Grand Jury, *supra* n. 7, at 12.

164. W. Va. Code Ann. § 49-6A-2 (mandating that all reports of abuse shall be made immediately to the Department of Health and Human resources and if the mandatory reporter is a staff member of a public or private institution a report shall also be made to the person in charge of that institution).

statutes.¹⁶⁵ This measure prevents employers from having any say on whether a report should be made, and gives the reporter the freedom to decide for themselves if a report is need. It may also prevent an employer from trying to influence a reporter to not make a report.

C. Employers of Mandatory Reporters Must Provide Educational Training

To enhance the effectiveness of the Reporting Statute anyone that employs or contracts out employment to a mandatory reporter shall be required to provide no less than two hours of training annually on how to identify child abuse and how to properly report it to CPS. This is the most important recommendation being made because it can make a significant difference on whether a report is made or not. It is unreasonable to expect the average person to understand what child abuse is and how to report it.¹⁶⁶ An in-depth training program would help resolve this problem. It is undisputed that there are thousands of unsubstantiated reports of child abuse made every year.¹⁶⁷ These reports take time and resources away from cases that can be substantiated.¹⁶⁸ To improve a reporting statute so that it is more effective it is vital to increase the accuracy of the reports made.¹⁶⁹ This would result in reducing the number of cases that cannot be substantiated.

165. See e.g. N.Y. Soc. Serv. Law § 413.

166. Daniel Leddy, Advanced Legal Columnist: Who Should be Mandated to Report Child Abuse, http://www.silive.com/opinion/danielleddy/index.ssf/2012/07/who_should_be_mandated_to_repo.html (July 17, 2012).

167. Kramer, supra n. 17, at §16:17 (2d ed.).

168. Longstreth, supra n. 174.

169. Id.

To increase child abuse reporting accuracy, a reporter must determine what situations require a report to be made.¹⁷⁰ Failure to accurately determine if there was abuse can deprive a child the help he or she needs.¹⁷¹ An inaccurate belief that there was child abuse can also have the inverse effect. A child who is the center of an inaccurate report may become subject to needless and invasive questioning and medical procedures.¹⁷² Further, inaccurate reports can result in the misuse of CPS' limited resources.¹⁷³

There are many factors why child abuse may be under reported. Some of these factors include the reporter not understanding what child abuse is,¹⁷⁴ being unaware of the child abuse,¹⁷⁵ unwillingness to believe that the child's parent may be the abuser,¹⁷⁶ or concerns about being sued by the child's parents for making a mistaken report of abuse.¹⁷⁷ To correct these problems and to increase reporting accuracy, training programs for mandatory reporters must be implemented by employers. An education program can resolve many of these issues and remove any potential bias a reporter might have against making a report because the reporter will have a better understanding of what warrants a report.¹⁷⁸

Many states already require that employers provide training to mandatory reporters.¹⁷⁹ This training has proven to be effective at encouraging mandatory

170. Seth C. Kalichman & Cheryl L. Brosig, Mandatory Child Abuse Reporting Laws: Issues and Implications for Policy, 14 L. & Policy 153, 154, (1992).

171. Id.

172. Longstreth, supra n. 174.

173. Kalichman & Brosig, supra n. 168, at 154.

174. Id. at 155; Levi & Portwood, supra n. 49, at 65.

175. Levi & Portwood, supra n. 49, at 65.

176. Bell & Tooman, supra n. 55, at 344.

177. Id.

178. Levi & Portwood, supra n. 49, at 66.

179. See Ark. Code Ann. § 6-61-133 (West 2012); Iowa Code Ann. §232.69 (West 2013); Mo. Rev. Stat. Ann. § 162.069 (West 2013); N.Y. Soc. Servs. Law § 413.

reporters to report abuse. In fact, a 1992 study found that professionals who received two hours of training on child abuse were 80 percent more likely to report suspected cases of child abuse.¹⁸⁰ These professionals attributed this change in attitude to having a better understanding of their legal obligation.¹⁸¹ In fact, many other studies have shown that when mandatory reporters are aware of their responsibilities they are more likely to report suspected child abuse.¹⁸²

Educational programs make it clear to mandatory reporters of their responsibility to report.¹⁸³ This has resulted in an increase in the number of reports made,¹⁸⁴ which has also resulted in a decrease in the number of fatalities from abuse.¹⁸⁵ This just shows some of the positive side effects that an educational program can have. These programs will also inform reporters that they are immune from liability.¹⁸⁶ This can relieve many reporters' fears of having negative repercussions for incorrectly making a report. If a reporter does not have to worry about being sued if he or she is wrong in reporting suspected child abuse then that reporter may be more likely to report.

Educating reporters on child abuse can have other positive outcomes including increasing the effectiveness in the reporting process. This is because training programs teach reporters on how to make appropriate, complete and accurate reports.¹⁸⁷ When mandatory reporters can improve the quality of their reports it can reduce the rate of unsubstantiated reports.¹⁸⁸ This is significant because it allows CPS to focus their efforts

180. Bell & Tooman, supra n. 55, at 342.

181. Id.

182. Id.

183. Id. at 348.

184. Id. at 342.

185. Id.

186. Id. at 348.

187. Id.

188. Id.

on cases that can be substantiated. At a time when CPS cannot afford to stretch its resources any further,¹⁸⁹ it should be a priority to cut down on the rate of unsubstantiated reports from its current level of 85 percent.¹⁹⁰

The only exception to this requirement is that employers do not have to provide educational training on child abuse to employees who only are mandatory reporters because they are a parent or legal guardian. This is because parents and legal guardians are not mandatory reporters because their work places have them frequently interacting with children. Parents and legal guardians are on the list of mandatory reporters because of their already existing legal obligation to protect their children from harm¹⁹¹ and because the majority of abuse takes place in the home.¹⁹² It is therefore unreasonable to require an employer to spend money and provide educational training to parents and legal guardians when that employer would almost never have children in the work place.

Educating mandatory reporters must be a priority if a reporting statute is to be effective. To be sure that the Reporting Statute is effective it must require that employers provide at a minimum two hours of training yearly. Though two hours a year may not seem like much it has been shown to have a positive effect on increasing the likelihood that a mandatory reporter will make a report.¹⁹³ This cannot be underestimated on its impact on child safety. Further, an education program provides mandatory reporters a better understanding of what needs to be reported. Such

189. Longstreth, *supra* n. 147.

190. Pa. DPW, *supra* n. 162 at 7-8.

191. Reardon, 272 A.2d at 890.

192. Martinez, *supra* n. 116 at 483.

193. Bell & Tooman, *supra* n. 55, at 342.

knowledge can result in an abused child receiving the help it needs sooner.¹⁹⁴ Mandatory reporters will also know that they should not have to fear any type of repercussion for making a report in good faith.¹⁹⁵ Lastly, educating mandatory reporters has shown to increase the accuracy of reports.¹⁹⁶ The accuracy of these reports is invaluable to CPS which cannot afford to have its limited resources working on cases that cannot be substantiated.¹⁹⁷ All of these points demonstrate one thing, that there are only benefits to requiring education for mandatory reporters.

VI. Conclusion

The national prominence of recent child abuse cases and specifically the Sandusky scandal have created the need for this review of the Pennsylvania Reporting Statute. With over 3,000 confirmed cases of child abuse in Pennsylvania for 2011,¹⁹⁸ there is no question that there is a need for a strong reporting statute. Without it, thousands of children would be at risk of abuse. The current Pennsylvania Reporting Statute, 23 Pa. Consol. Stat. Ann. § 6311, was seen, during the Sandusky case,¹⁹⁹ to have significant problems that need to be resolved if the statute is to do a better job protecting children. These changes include enlarging the reporting statute, streamlining the reporting process, and requiring employers to educate their mandatory reporters. These measures should result in more cases of suspected child abuse being reported. At the same time these reports will be more accurate which will result in more cases being substantiated.

194. Kalichman & Brosig, supra n. 168, at 154.

195. Bell & Tooman, supra n. 55, at 348.

196. Id.

197. Longstreth, supra n. 147.

198. Pa. DPW, supra n. 59, at 7.

199. Pa. Atty. Gen., supra n. 16.

The changes to the Reporting Statute that are purposed in this review will have a significant impact on the children that they are intended to protect benefit.²⁰⁰

There are many reasons why these changes will improve the Reporting Statute. Since one of the primary reasons a person is made a mandatory reporter is because that person has frequent interaction with children, it is important to select people and professions that fall under this category.²⁰¹ Because of this, it is imperative that administrators, faculty, staff, athletic coaches, and volunteers at private and public colleges and universities are added to the Reporting Statute. These people often interact with children as a part of their work through on-campus summer camps and events.²⁰² This is evident by the fact that in the case of Sandusky, the reporter, Mike McQueary, was an athletic coach,²⁰³ which highlights the need to mandate these professionals.

Parents and legal guardians are another group of people that need to be added under the Reporting Statute as mandatory reporters. Parents and legal guardians already have a special relationship with their children.²⁰⁴ This special relationship creates a legal duty to protect the child from harm.²⁰⁵ Further, parents are most likely to be the first person to detect that their child is being abused because of their parental duties and because child abuse often takes place in the home.²⁰⁶ Based on their preexisting special relationship and their proximity to their children and most likely the abuse, parents and legal guardians are instrumental in the detection and reporting of child abuse and therefore should have to be mandatory reporters.

200. See Appendix A.

201. Martinez, *supra* n. 116 at 479.

202. Penn. St. Athletics, *supra* n. 130.

203. Grand Jury, *supra* n. 7, at 6.

204. Reardon, 272 A.2d at 890.

205. *Id.*

206. Martinez, *supra* n. 116 at 483.

The reporting processes for mandatory reporters can also be significantly improved. Reporting child abuse could be done faster and more accurately if the Reporting Statute required all reports to go to CPS. This would eliminate the requirement of employees at a “medical or other public or private institution, school, facility or agency” from having to immediately make a report to the person in charge or a designated agent.²⁰⁷ Only after a report was made to CPS would a report need to be made to the reporter’s employer. This approach would avoid the same mistake that took place at Penn State,²⁰⁸ and ensure that every report makes it to CPS. The process is further improved by preventing an employer from requiring mandatory reporters to inform or ask for permission to make a report. This will help make sure that all suspected cases of child abuse are being reported to CPS.

The last and most important new measure for the Reporting Statute is to require employers of mandatory reporters, with the exception of parents and legal guardians, to provide no less than two hours of education per year on how to report child abuse. Educating reporters on child abuse has been shown to increase the likelihood that the reporter will make a report in the future.²⁰⁹ It has also been shown that when a reporter is educated on the reporting process there is a greater chance that the report will be substantiated.²¹⁰ At a time when CPS has limited resources²¹¹ it is imperative that CPS work on more cases that can be substantiated so that resources are not being wasted on mistaken cases.

207. 23 Pa. Consol. Stat. Ann. § 6311(c).

208. Grand Jury, *supra* n. 7 at 10.

209. Bell & Tooman, *supra* n. 55, at 342

210. Id. at 348.

211. Kalichman & Brosig, *supra* n. 168, at 154.

These changes to the Reporting Statute will result in a strong, more effective statute that will protect a greater number of children from abuse. It cannot go without saying that the Sandusky case exposed numerous issues with the Reporting Statute. By requiring more people to report and make those reports directly to CPS, the victim of the abuse will receive immediate care. Further, the increase in accuracy of reports as a result of educating mandatory reporters will pay dividends by helping more children and cutting down on unsubstantiated reports. Ultimately, these changes to the Reporting Statute will result in improving child safety in Pennsylvania.

Appendix A

Proposed Statute-Final Version

Mandatory Reporters of Suspected Child Abuse and Neglect

(a) General rule.—A person enumerated as a mandatory reporter under subsection (b), shall make a report in accordance with 42 Pa. C.S. § 6313 (relating to reporting procedure) when the person has reasonable cause to suspect that a child, under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated, is a victim of child abuse or neglect. Privileged communications that may otherwise be protected shall not apply to situations involving child abuse and neglect, and shall not constitute grounds for a failure to report, unless provided an exception under subsection (f).

(b) Enumeration of mandatory reporters.—A person required to report under subsection (a) includes, but is not limited to:

1. administrators, faculty, staff, athletic coaches, and volunteers at private and public colleges and universities,
2. any licensed physician,
3. chiropractor,
4. Christian Science practitioner,
5. coroner,
6. day-care center worker or any other child-care or foster-care worker,
7. dentist,
8. funeral director,
9. hospital personnel engaged in the admission, examination, care or treatment of persons,
10. intern,
11. licensed practical nurse or registered nurse,
12. medical examiner,
13. member of the clergy,
14. mental health professional,
15. optometrist,
16. osteopath,
17. peace officer or law enforcement official
18. podiatrist,
19. school administrator,
20. school nurse,
21. school teacher,
22. social services worker,
23. the parent or legal guardian of a child.

(c) Other reporters. – Any other person may make a report in accordance with 42 Pa. C.S. § 6313 (relating to reporting procedure) when that person has reasonable cause to suspect that a child has been abused or neglected.

(d) Staff members of institutions, etc. – A reporter, while acting as a member of the staff of a medical or other public or private institution, school, facility or agency, shall immediately make a report in accordance with 42 Pa. C.S. § 6313 (relating to reporting procedure). The reporter shall also immediately notify the person in charge or a designated agent of a medical or other public or private institution, school, facility or agency. The person in charge or the designated agent of a medical or other public or private institution, school, facility or agency shall in no way exercise any control, restraint, modification, or other change to a report or the making of a report.

(e) Employers of mandatory reporters shall annually provide educational training on child abuse and neglect. – All mandatory reporters under subsection (b), except for (b)(23), the parent or legal guardian of a child, shall annually complete two hours of educational training related to the identification and reporting of child abuse and neglect, starting no less than six months from the start of employment. The employer of a mandatory reporter required to receive educational training under this section shall be responsible for providing the educational training on child abuse and neglect identification and reporting procedures.

(f) Exceptions to the general rule.

1. A member of the clergy who receives confidential communication is protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen) and is not required to report.
2. An attorney who receives confidential communications is protected by 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or § 5928 (relating to confidential communications to attorney) and is not required to report.

(g) Immunity from liability. – A person, medical or other public or private institution, school, facility or agency that makes a report of suspected child abuse in good faith shall be immune from liability in accordance with 23 Pa.C.S. § 6318 (relating to immunity from liability for good faith reports).

(h) Civil action for discrimination against person filing report. – A person who, in good faith, makes or causes the report to be made and, as a result thereof, is discharged from his employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, may commence an action in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred for appropriate relief. If the court finds that the person made in good faith a report of suspected child abuse and, as a result thereof, was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, the court may issue an order granting appropriate relief, including, but not limited to, reinstatement with back pay. The department may intervene in any action commenced under this subsection.

Appendix B

Pennsylvania's Current Child Abuse Reporting Statute

23 Pa. Consol. Stat. Ann. § 6311 (West 2013)

§ 6311. Persons required to report suspected child abuse

(a) General rule.--A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when the person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator. Except with respect to confidential communications made to a member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), and except with respect to confidential communications made to an attorney which are protected by 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or 5928 (relating to confidential communications to attorney), 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, Christian Science practitioner, member of the clergy, 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.

(d) Civil action for discrimination against person filing report.--Any person who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, makes or causes the report to be made and, as a

result thereof, is discharged from his employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, may commence an action in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred for appropriate relief. If the court finds that the person is an individual who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, made or caused to be made a report of suspected child abuse and, as a result thereof, was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, it may issue an order granting appropriate relief, including, but not limited to, reinstatement with back pay. The department may intervene in any action commenced under this subsection.

Appendix C

Changes Made to the Pennsylvania Statute Using Redline and strikeout

23 Pa. Consol. Stat. Ann. § 6311 (West 2013)

§ 6311. ~~Persons required to report suspected child abuse~~ Mandatory Reporters of Suspected Child Abuse and Neglect

(a) General rule.--A person enumerated as a mandatory reporter under subsection (b), ~~who, in the course of employment, occupation or practice of a profession, comes into contact with children~~ shall make a report ~~or cause a report to be made~~ in accordance with section 6313 (relating to reporting procedure) when the person has reasonable cause to suspect, ~~on the basis of medical, professional or other training and experience,~~ that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated, is a victim of child abuse, ~~including child abuse by an individual who is not a perpetrator. Except with respect to confidential communications made to a member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), and except with respect to confidential communications made to an attorney which are protected by 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or 5928 (relating to confidential communications to attorney), 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.--A person ~~Persons~~ required to report under subsection (a) includes, but is ~~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, Christian Science practitioner, member of the clergy, 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.

1. administrators, faculty, staff, athletic coaches, and volunteers at private and public colleges and universities,
2. any licensed physician,
3. chiropractor,
4. Christian Science practitioner,
5. coroner,
6. day-care center worker or any other child-care or foster-care worker,
7. dentist,
8. funeral director,

Comment [M1]: I removed this line because under these revisions to the statute not all of the mandatory reporters will have to come into contact with children in the work place. (i.e. parents).

Comment [M2]: Any reference to "or cause a report to be made" has been removed because the point of this statute is to require all reporters to go immediately to CPS and not have any intermediary person.

Comment [M3]: I moved these exceptions from the general rule to their own subsection. I believe that it will be easier to read the statute this way and allow the main purpose of the general rule to be read without confusion.

Comment [M4]: I created a list all of the individuals that are required to report instead of staying with a paragraph because I believe that it is easier to read this way.

Comment [M5]: These individuals were added to the list because of their potential to have frequent contact with children. This contact can be initiated in many ways including summer camps, which are very popular at many universities.

9. hospital personnel engaged in the admission, examination, care or treatment of persons,
10. intern,
11. licensed practical nurse or registered nurse,
12. medical examiner,
13. member of the clergy,
14. mental health professional,
15. optometrist,
16. osteopath,
17. peace officer or law enforcement official
18. podiatrist,
19. school administrator,
20. school nurse,
21. school teacher,
22. social services worker,
23. the parent or legal guardian of a child.

(c) Other reporters. – Any other person may make a report in accordance with 42 Pa. C.S. § 6313 (relating to reporting procedure) when that person has reasonable cause to suspect that a child has been abused or neglected.

(ed) Staff members of institutions, etc. -- A reporter, while acting as a member of the staff of a medical or other public or private institution, school, facility or agency, shall immediately make a report in accordance with 42 Pa. C.S. § 6313 (relating to reporting procedure). The reporter shall also immediately notify the person in charge or a designated agent of a medical or other public or private institution, school, facility or agency. The person in charge or the designated agent of a medical or other public or private institution, school, facility or agency shall in no way exercise any control, restraint, modification, or other change to a report or the making of a report. 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.

(e) Employers of mandatory reporters shall annually provide educational training on child abuse and neglect. – All mandatory reporters under subsection (b), except for (b)(23), the parent or legal guardian of a child, shall annually complete two hours of educational training related to the identification and reporting of child abuse and neglect, starting no less than six months from the start of employment. The employer of a mandatory reporter required to receive educational training under this section shall be responsible for providing the educational training on child abuse and neglect identification and reporting procedures.

Comment [M6]: Parents and legal guardians have been added to the list of mandatory reporters because they may have the most frequent contact with their children because their children rely on them for basic needs. This reliance is a part of the special relationship that creates a parent's legal duty to protect their children. *Goldberg v. Philadelphia Rapid Transit Co.*, 149 A. 104, 107 (Pa. 1930).

Comment [M7]: I thought that it was important to add this provision. This provision empowers people to report child abuse knowing that they will be provided all the same protections under this statute as mandatory reporters. Many other states already allow any other person to report. (See e.g., Ga. Code Ann. § 19-7-5 (West 2012)).

Comment [M8]: This follows the West Virginia approach. See W. Va. Code Ann. § 49-6A-2 (West 2013). It is my intent that all reports are made directly to CPS and no one else. Only after a report is made to CPS then a report should be made to where the person works so that they may take measures they find necessary to assist CPS.

Comment [M9]: This is to prevent the reporter's employer from trying to discourage a report being made. I used the language of the Illinois statute to accomplish this. Ga. Code Ann. § 19-7-5 (West 2012).

Comment [M10]: This requires all employers to provide educational training to its employees who are mandatory reporters to make the reporting processes even better. This will result in mandatory reporters knowing the reporting processes and being able to better identify abuse and. Other States already have similar requirements. See e.g., Ark. Code Ann. § 6-61-133 (West 2012).

Comment [M11]: I am not including parents or legal guardians here because their responsibilities towards their own children come from their parental responsibilities and not because the nature of their work. To require employers to train them would be expensive and unfair burden on the employer.

(f) Exceptions to the general rule.

1. A member of the clergy who receives confidential communication is protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen) and is not required to report.
2. An attorney who receives confidential communications is protected by 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or § 5928 (relating to confidential communications to attorney) and is not required to report.

Comment [M12]: These exceptions are placed in its own subsection to make the statute easier to read.

(g) Immunity from liability.— A person, medical or other public or private institution, school, facility or agency that makes a report of suspected child abuse in good faith shall be immune from liability in accordance with 23 Pa.C.S. § 6318 (relating to immunity from liability for good faith reports).

Comment [M13]: Pennsylvania already has a statute providing immunity to mandatory reporters. 23 Pa. Consol. Stat. Ann. § 6318 (West 2012). This will link the two statutes together. This measure will place all reporters on notice that they are immune from liability if they make a good faith report.

(d) Civil action for discrimination against person filing report.— Any A person who, ~~under this section, is required to report or cause a report of suspected child abuse to be made and who,~~ in good faith, makes or causes the report to be made and, as a result thereof, is discharged from his employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, may commence an action in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred for appropriate relief. If the court finds that the person made in good faith a report of suspected child abuse ~~and is an individual who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, made or caused to be made a report of suspected child abuse~~ and, as a result thereof, was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, ~~it~~ the court may issue an order granting appropriate relief, including, but not limited to, reinstatement with back pay. The department may intervene in any action commenced under this subsection.

Comment [M14]: These changes were made to protect everyone who makes a good faith reporter of child abuse. This rule should not be any different for a person who is a mandatory reporter than it is for someone that is not. A person not provided these protections may have second thoughts on reporting child abuse because they fear they may be sued or lose their job if they are wrong.

Appendix D

The 50 States and the District of Columbia's Mandatory Reporting Statutes

State:	Statute:	Requires Everyone as a Mandatory Reporter:
Alabama	Ala. Code § 26-14-3 (West 2013)	
Alaska	Alaska Stat. 47.17.020 (2013)	
Arizona	Ariz. Rev. Stat. Ann. § 13-3620 (West 2013)	
Arkansas	Ark. Code Ann. § 12-18-402 (West 2012)	
California	Cal. Penal Code Ann. § 11165.7 (West 2012)	
Colorado	Colo. Rev. Stat. Ann. § 19-3-304 (West 2013)	
Connecticut	Conn. Gen. Stat. Ann. § 17a-101 (West 2013)	
Delaware	Del. Code Ann. tit. 16 § 903 (West 2013)	Yes
District of Columbia	D.C. Code § 4-1321.02 (2012)	Yes
Florida	Fla. Stat. Ann. § 39.201 (West 2013)	Yes
Georgia	Ga. Code Ann. § 19-7-5 (West 2012)	
Hawaii	Haw. Rev. Stat. § 350-1.1 (2012)	
Idaho	Idaho Code § 16-1605 (2013)	Yes
Illinois	325 Ill. Comp. Stat. Ann. 5/4 (West 2013)	
Indiana	Ind. Code Ann. § 35-33-5-1 (West 2012)	Yes
Iowa	Iowa Code Ann. § 232.69 (West 2013)	
Kansas	Kan. Stat. Ann. § 38-2223 (2012)	
Kentucky	Ky. Rev. Stat. Ann. § 620.030 (West 2012)	Yes
Louisiana	La. Child. Code Ann. art. 609 (2012)	
Maine	22 Me. Rev. Stat. Ann. § 4011-A (2013)	Yes
Massachusetts	Mass. Gen. Laws ch. 119 § 21 (West 2013); Mass. Gen. Laws ch. 119 § 51A (West 2013)	
Maryland	Md. Fam. Law Code Ann. § 5-704 (2013); Md. Fam. Law Code § 5-705 (2013)	Yes
Michigan	Mich. Comp. Laws Ann. § 722.623 (West 2013)	
Minnesota	Minn. Stat. Ann. § 626.556 (West 2013)	
Mississippi	Miss. Code Ann. § 43-21-353 (West 2012)	Yes
Missouri	Mo. Rev. Stat. Ann. § 210.115 (West 2012)	
Montana	Mont. Code Ann. § 41-3-201 (2013)	
Nebraska	Neb. Rev. Stat. § 28-711 (2012)	Yes
Nevada	Nev. Rev. Stat. Ann. § 432B.220 (West 2011)	
New Hampshire	N.H. Rev. Stat. Ann. §169-C:29 (West 2013)	Yes
New Jersey	N.J. Stat. Ann. § 9:6-8.10 (West 2012)	Yes
New Mexico	N.M. Stat. Ann. § 32A-4-3 (West 2012)	Yes

State:	Statute:	Requires Everyone as a Mandatory Reporter:
New York	N.Y. Soc. Serv. Law § 413 (McKinney 2013).	
North Carolina	N.C. Gen. Stat. Ann. § 7B-301 (West 2013)	Yes
North Dakota	N.D. Cent. Code § 50-25.1-03 (2011)	
Ohio	Ohio Rev. Code Ann. § 2151.421 (West 2012)	
Oklahoma	Okla. Stat. Ann. tit. 10A § 1-2-101 (West 2012)	Yes
Oregon	Or. Rev. Stat. Ann. § 419B.010 (West 2013)	
Pennsylvania	23 Pa. Consol. Stat. Ann. § 6311 (West 2013)	
Rhode Island	R.I. Gen. Laws § 40-11-3 (West 2012)	Yes
South Carolina	S.C. Code Ann. § 63-7-310 (2012)	
South Dakota	S.D. Codified Laws § 26-8A-3 (2013)	
Tennessee	Tenn. Code. Ann. §37-1-403 (West 2012)	Yes
Texas	Tex. Fam. Code Ann. § 261.101 (Vernon 2011)	Yes
Utah	Utah Code Ann. § 62A-4a-403 (West 2012)	Yes
Vermont	Vt. Stat. Ann. tit. 33 § 4913 (2012)	
Virginia	Va. Code. Ann. § 63.2-1509 (West 2012)	
Washington	Wash. Rev. Code Ann. § 26.44.030 (West 2013)	
West Virginia	W. Va. Code Ann. § 49-6A-2 (West 2013)	
Wisconsin	Wis. Stat. Ann. § 48.981 (West 2013)	
Wyoming	Wyo. Stat. Ann. § 14-3-205 (West 2012)	Yes