

THE JERRY SANDUSKY EFFECT: CHILD ABUSE  
REPORTING LAWS SHOULD NO LONGER BE  
“DON’T ASK, DON’T TELL”

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# THE JERRY SANDUSKY EFFECT: CHILD ABUSE REPORTING LAWS SHOULD NO LONGER BE “DON’T ASK, DON’T TELL”

Erica M. Kelly\*

## I. INTRODUCTION

Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky’s child victims by the most senior leaders at Penn State. The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized. Spanier, Schultz, Paterno and Curley never demonstrated, through actions or words, any concern for the safety and well-being of Sandusky’s victims until after Sandusky’s arrest.

—*Louis Freeh*<sup>1</sup>

On November 5, 2011, headlines splashed across every major news network in the country: “SANDUSKY INDICTED ON OVER 40 COUNTS OF CHILD ABUSE.” Retired defensive coordinator Gerald (“Jerry”) Sandusky was accused of sexually abusing at least eight young boys between 1994 and 2009, during which time he served as an assistant football coach at the Pennsylvania State University (“Penn State” or “PSU”) and ran a charity for underprivileged children: The Second Mile.<sup>2</sup> Following these shocking allegations, Penn State President Graham Spanier, Senior Vice President Gary Schultz, and Athletic Director Tim Curley

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<sup>1</sup> Louis Freeh, Penn State Press Conference (July 12, 2012) (transcript available at <http://progress.psu.edu/the-freeh-report>).

<sup>2</sup> Jeff Anderson & Sarah Odegaard, Addressing Institutional Failure: Necessary Changes to Ensure Our Children Are Protected (December 2011) (unpublished article) (on file with author).

were eventually forced to resign, and head football coach Joe Paterno was subsequently fired.<sup>3</sup> In June of 2012, 68-year-old Sandusky was found guilty of 45 of the 48 counts against him and sentenced to 30 to 60 years in prison.<sup>4</sup> Joe Paterno unexpectedly passed away before Sandusky's trial, but criminal cases are currently pending against Spanier, Schultz, and Curley involving several charges connected with the scandal, including failure to report suspected child abuse.<sup>5</sup>

After such a troubling and highly publicized situation, state legislatures across the country were prompted to analyze their own child abuse reporting laws. At the time of the Penn State scandal, most state laws included a statutory section covering the duty to report child abuse, which typically listed a group of "mandated reporters" who were required by law to report instances of child abuse. This list usually included teachers, medical professionals, and law enforcement officials. Notably missing from the list: coaches or athletic staff. Following the Penn State child abuse scandal, however, many states took immediate action, and the laws imposing a duty to report child abuse began to evolve on a national level.

This note provides an overview of the Penn State scandal and the reporting failures of the coaching and administrative hierarchy at Penn State in connection with the allegations against Jerry Sandusky. Part II examines the child abuse reporting laws in Pennsylvania before the Penn State scandal. Part III analyzes the "Jerry Sandusky Effect," or the triggering of changes in reporting requirements and child abuse law in Pennsylvania and a majority of the states following the allegations against Sandusky. Part IV of this note examines several bills that have been introduced in the 2011, 2012, and 2013 legislative sessions in nearly 30 states in response to the Penn State scandal, what changes these bills propose, and what role the Sandusky case played in signaling a need for these changes. Next, Part V analyzes the role of the courts in protecting children against sexual abuse. Finally, Part VI recommends additional changes that should be made to current and pending legislation, as well as common law, that can further protect children against the reoccurrence of a similar situation to that at Penn State.

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<sup>3</sup> Associated Press, *Joe Paterno, Graham Spanier Removed*, ESPN (Nov. 10, 2011), [http://espn.go.com/college-football/story/\\_/id/7214380/joe-paterno-president-graham-spanier-penn-state](http://espn.go.com/college-football/story/_/id/7214380/joe-paterno-president-graham-spanier-penn-state).

<sup>4</sup> Dashiell Bennett, *Jerry Sandusky Sentence to 30 to 60 Years in Prison*, THE ATLANTIC WIRE (Oct. 9, 2012), <http://www.theatlanticwire.com/national/2012/10/jerry-sandusky-sentenced-30-60-years-prison/57760>.

<sup>5</sup> Charles Thompson, *Cases Against Penn State's Graham Spanier, Tim Curley and Gary Schultz May See Action After Long Wait*, PENN LIVE (Mar. 8, 2013), [http://www.pennlive.com/midstate/index.ssf/2013/03/criminal\\_cases\\_against\\_graham.html](http://www.pennlive.com/midstate/index.ssf/2013/03/criminal_cases_against_graham.html).

## II. THE PENN STATE SCANDAL

Following the media sensation covering the allegations against Sandusky and several other prominent PSU staffers including Paterno, Spanier, Schultz, and Curley, came over seven months of investigation.<sup>6</sup> The grand jury report detailed the allegations against Sandusky by several victims over many years, including an incident in 2002 when then-graduate assistant Mike McQueary walked into the Penn State locker room and witnessed Sandusky raping a boy that appeared to be ten years old.<sup>7</sup> According to the report, McQueary did not call the police, but instead reported the incident to his father that night and head football coach Joe Paterno the following day.<sup>8</sup> Paterno allegedly followed up by calling his immediate supervisor, Athletic Director Tim Curley, who met with Senior Vice President Gary Shultz and McQueary a few weeks later.<sup>9</sup> Curley purportedly assured McQueary that he would look into the incident, that Sandusky's locker room keys had been taken away, and that the incident had been reported to The Second Mile, Sandusky's charity.<sup>10</sup> Schultz also testified that he informed Penn State President, Graham Spanier, about McQueary's allegations.<sup>11</sup> Neither McQueary, Paterno, Curley, Shultz, nor Spanier reported Sandusky to the police or child protective services.<sup>12</sup>

On July 12, 2012, Louis J. Freeh, a former director of the F.B.I. hired by Penn State trustees, issued a report, later widely known as "The Freeh Report on Penn State," explaining the failures of top officials in the chain of command at Penn State.<sup>13</sup> The Freeh Report detailed a timeline of significant events, including the very first accusation of child abuse in 1998, and a thorough discussion of the alleged reporting deficiencies within the PSU hierarchy.<sup>14</sup> Freeh and his team of

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<sup>6</sup> Richard Perez-Pena, *In Report: Failures Throughout Penn State*, N.Y. TIMES, July 12, 2012, <http://www.nytimes.com/2012/07/13/sports/ncaafootball/in-freeh-report-on-sandusky-failures-throughout-penn-state.html>.

<sup>7</sup> Anderson & Odegaard, *supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See* Perez-Pena, *supra* note 6.

<sup>14</sup> *See id.*

investigators found “a legendary football coach bending his supposed bosses to his will, a university staff that was mostly unaware of its legal duties to report violence and sexual abuse, and a university president who hid problems from the board of trustees and was guided by a fear of bad publicity.”<sup>15</sup> In light of this daunting report, Anne D. Neal, President of the American Council of Trustees and Alumni, noted:

This really should be a clarion call to trustees across the country to ask questions, to demand answers, to insist that the president is responsible to them, not the other way around. For too long, the boards have been viewed more as boosters than as legal fiduciaries. And where athletics are involved, I think there is an urgent question whether some institutions have lost touch with their purpose.<sup>16</sup>

The Freeh Report also made over 120 recommendations to Penn State, including recommending that the university create a comprehensive and stringent Compliance Program with Board oversight through a Compliance Committee, appoint a highly qualified Chief Compliance Officer, and adopt two new policies for the protection of children—one that provides for annual training on child abuse and mandatory reporting for all employees, and another that revises and strengthens the University’s background check process.<sup>17</sup> The recommendations urged, “the goal should be to create a more open and compliant culture, which protects children and not adults who abuse them.”<sup>18</sup>

On June 22, 2012, a jury in State College, Pennsylvania, where Jerry Sandusky was once a praised defensive coordinator, found Sandusky guilty of 45 counts of child abuse.<sup>19</sup> He was sentenced to 30 to 60 years in prison, which likely constitutes the equivalent of a life sentence, as Sandusky was 68-years-old at the

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Freeh Report: Press Release Details Findings of Penn State Investigation*, AOL NEWS (Oct. 26, 2013), <http://aol.sportingnews.com/ncaa-football/story/2012-07-12/penn-state-report-press-release-joe-paterno-role-sandusky-scandal-free-investiga>.

<sup>18</sup> *Id.*

<sup>19</sup> Ana M. Valdes, *Sex Abuse Reporting Requirements Taking Effect Nationwide, In Wake of Sandusky Case*, PALM BEACH POST, Oct. 26, 2013, <http://www.palmbeachpost.com/news/news/national-govt-politics/sex-abuse-reporting-requirements-taking-effect-nat/nPjL3/>.

time of his sentencing.<sup>20</sup> Sandusky was also classified as a sexually violent predator, mandating that he register as a sex offender if he is ever released from prison.<sup>21</sup> However, Sandusky's conviction was just the tip of the iceberg for what was to come for Penn State and for child abuse laws nationwide.

### III. PRE-PENN STATE SCANDAL CHILD ABUSE REPORTING LAWS IN PENNSYLVANIA

Pennsylvania's Child Protective Services law is codified in Title 23, Chapter 63 of the Pennsylvania Consolidated Statutes.<sup>22</sup> These statutes prominently govern the duty to report suspected child abuse in Pennsylvania and detail the persons required to report suspected child abuse and the reporting procedure those persons must follow in sections 6311 and 6313, respectively. The law in Pennsylvania currently imposes mandatory reporting requirements on individuals that come into contact with children in the course of their employment or occupation and have "reasonable cause" to suspect that a child is the victim of sexual abuse based on their "medical, professional, or other training and experience."<sup>23</sup>

According to Pennsylvania law, the persons required to report abuse include: 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.<sup>24</sup> It is notable that Pennsylvania is currently one of 32 states that limits who is required to report suspected abuse by including this list of "mandated reporters."<sup>25</sup>

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<sup>20</sup> Candice Smith, Beth Loyd & Colleen Curry, *Jerry Sandusky Gets 30 to 60 Years for Sex Abuse After Tearful Victim Statements*, ABC NEWS (Oct. 9, 2012), <http://abcnews.go.com/US/jerry-sandusky-sentenced-30-60-years-prison/story?id=17427234#.UUyW2WCSS0c>.

<sup>21</sup> *Id.*

<sup>22</sup> 23 PA. CONS. STAT. §§ 6301–6385 (2013).

<sup>23</sup> *Id.*

<sup>24</sup> 23 PA. CONS. STAT. ANN. § 6311(b) (2010).

<sup>25</sup> *Are You a Mandated Reporter of Child Abuse?*, OWM NEWSLETTER (O'Donnell, Weiss & Mattei, P.C., Pottstown, Pa.), Feb. 2012, available at <http://www.owmlaw.com/newsletter/2012February.html>.

The proper reporting procedure in Pennsylvania requires these mandated reporters to make oral reports of the suspected abuse as well as detailed written reports, including information such as:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child if known; (2) Where the suspected abuse occurred; (3) The age and sex of the subjects of the report; (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child; (5) The name and relationship of the person or persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by that person or persons; (6) Family composition; (7) The source of the report; (8) The person making the report and where that person can be reached; (9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner; and (10) Any other information which the department may require by regulation.<sup>26</sup>

Furthermore, the statute requires that the report “shall be made immediately by telephone and in writing within 48 hours after the oral report.”<sup>27</sup> However, these laws only require that the person report to the individual in charge of the institution or a designated agent, who then assumes the responsibility and has the obligation to make a report of the suspected child abuse to the proper authorities or law enforcement officials.<sup>28</sup> This is significant because at Penn State, the initial reporting problem occurred when McQueary reported the suspected abuse to Paterno, who then only reported to his supervisor Curley, but not to the police.

#### IV. THE JERRY SANDUSKY EFFECT

The occurrence of the Penn State scandal has had a nationwide effect, prompting proposed legislation to change child abuse reporting laws not only in Pennsylvania, but also in a majority of other states across the country. In wake of the Sandusky accusations, Penn State itself instituted a policy requiring employees to report suspected child abuse to state authorities.<sup>29</sup> More notably, however,

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<sup>26</sup> 23 PA. CONS. STAT. ANN. § 6311 (2010); 23 PA. CONS. STAT. ANN. § 6313(c) (2010).

<sup>27</sup> *Id.* § 6313(a).

<sup>28</sup> Anderson & Odegaard, *supra* note 2.

<sup>29</sup> Valdes, *supra* note 19.

legislators nationwide have acted in response to the Penn State scandal.<sup>30</sup> As of June 2012, approximately 105 bills had been introduced in 30 states and the District of Columbia.<sup>31</sup> Since then, many states have continued to introduce and amend several bills, and Florida, Kentucky, Louisiana, the District of Columbia, Montana, and New York have enacted laws to prevent similar instances of child abuse.<sup>32</sup> Several other states, including Pennsylvania, Oregon, West Virginia, Virginia and South Dakota, have taken action by proposing to expand their lists of professions whose members are required to report suspected abuse.<sup>33</sup> As discussed *infra*, for some child advocates, the answer to avoiding a situation like the Jerry Sandusky scandal lies within doing just that: increasing the number of mandated reporters of child abuse.<sup>34</sup>

In Pennsylvania, legislators are attempting to develop a more stringent law. Under the state's current law, for example, the once famed and now deceased football coach Joe Paterno may have only had a duty to report to someone above him in the school's hierarchy.<sup>35</sup> In an article discussing the recent changes in child abuse reporting laws, Anna Stolley Persky notes that Pennsylvania lawmakers are discussing not only changing the requirements of to whom a report must be made, but they also are looking at tougher penalties for individuals who have a duty to report, but fail to do so.<sup>36</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See H.R. 1355, 114th Leg., Reg. Sess. (Fla. 2012) (amending FLA. STAT. § 39.201 (2013)); S. 186, 2012 Reg. Sess. (Ky. 2012) (amending KY. REV. STAT. ANN. §§ 620.030 and 620.040 (2013)); S. 357, 38th Reg. Sess. (La. 2012) (proposing to amend LA. REV. STAT. ANN. 14:403 (2013)) and LA. CHILD CODE ANN. art. 603 (2013); D.C. CODE § 4-1321.02 (2013); H.R. 131, 63d Leg., 2013 Reg. Sess. (Mont. 2013) (amending MONT. CODE ANN. § 41-3-201 (2009)); and S. 7749, 235th Sess., 2012 N.Y. LAWS ch. 501.

<sup>33</sup> Valdes, *supra* note 19.

<sup>34</sup> Anna Stolley Persky, *Beyond the Penn State Scandal: Child Abuse Reporting Laws*, WASH. LAW., June 2012, [http://www.dcbar.org/for\\_lawyers/resources/publications/washington\\_lawyer/june\\_2012/childabuse.cfm](http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/june_2012/childabuse.cfm).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



*A. Proposed Changes to Pennsylvania Law*<sup>37</sup>

In Pennsylvania, there have been several proposed revisions to the statute enumerating mandated reporters of child abuse since November 15, 2011 (notably 10 days after Sandusky was arrested). On that date, the Senate proposed to add “school staff member,” “school faculty,” and “coach” to § 6311(b).<sup>38</sup> Later, on December 7, 2011, the House of Representatives proposed an amendment that would add the following to § 6311:

Whenever a person is required to report under subsection (a) 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 have the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313 if that person has personally witnessed an act or acts the person reasonably believes constitutes suspected child abuse.<sup>39</sup>

In June of 2012, the legislature proposed further changes to § 6311, clarifying the language of the amendment:

A person who 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 may, in lieu of providing notification to the person in charge of the institution, school, facility or agency or the designated agent of the person in charge, assume the responsibility and the legal obligation to report in accordance with section 6313. Subsection (d) shall apply to a person who makes a report under this paragraph.<sup>40</sup>

Furthermore, on September 26, 2012, the House proposed to add a provision to § 6311(c) stating that:

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<sup>37</sup> The bills cited herein are current as of the writing of this note.

<sup>38</sup> H.R. 1990, 2011 Leg., 195th Gen. Assemb., Reg. Sess. (Pa. 2011) (proposing to amend 23 PA. CONS. STAT. § 6311 (2013)).

<sup>39</sup> H.R. 2046, 2011 Leg., 195th Gen. Assemb., Reg. Sess. (Pa. 2011) (proposing to amend 23 PA. CONS. STAT. § 6311 (2013)).

<sup>40</sup> S. 1413, 2012 Leg., 196th Gen. Assemb., Reg. Sess. (Pa. 2012) (proposing to amend 23 PA. CONS. STAT. § 6311 (2013)).

[u]pon 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] for facilitating the cooperation of the institution, school facility or agency with the investigation of the report.<sup>41</sup>

In 2013, the Pennsylvania legislature continued to make minor updates and changes to the amendments in an attempt to make the modifications as clear as possible.<sup>42</sup>

The legislature also proposed a revision to the reporting procedure in § 6313 in June of 2012, suggesting to add, “Reports to law enforcement required under section 6311(c) shall be made immediately by telephone and in writing within 24 hours after the person required to report is notified under section 6311.”<sup>43</sup> While these proposed bills are a step in the right direction, they have all yet to be enacted as of November 2013, over two years after the Penn State scandal.

### B. *Overview of Proposed Changes in Other States*<sup>44</sup>

#### i. States Proposing to Modify Their List of Mandated Reporters

The most drastic change in the law following the Penn State scandal occurred in Florida, where legislators approved what many child advocates consider the toughest mandatory reporting legislation in the country for sexual abuse in universities and other schools.<sup>45</sup> On October 1, 2012, the “Protection of Vulnerable Persons” law took effect, which states that anyone who suspects a child is being abused must report it, effectively eliminating the “mandated reporters” approach.<sup>46</sup> Previously, Florida law only mandated the reporting of child abuse when the suspect is a parent or caretaker.<sup>47</sup> In addition to changing the reporting

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<sup>41</sup> H.R. 2641, 2012 Leg., 196th Gen. Assemb., Reg. Sess. (Pa. 2012) (proposing to amend 23 PA. CONS. STAT. § 6311 (2013)).

<sup>42</sup> H.R. 297, 2013 Leg., 197th Gen. Assemb., Reg. Sess. (Pa. 2013); H.R. 436, 2013 Leg., 197th Gen. Assemb., Reg. Sess. (Pa. 2013); S. 21, 2013 Leg., 197th Gen. Assemb., Reg. Sess. (Pa. 2013).

<sup>43</sup> S. 1413, 2011 Leg., 196th Gen. Assemb., Reg. Sess. (Pa. 2011) (proposing to amend 23 PA. CONS. STAT. § 6313 (2013)).

<sup>44</sup> The bills cited in this section are current as of the writing of this note.

<sup>45</sup> See Valdes, *supra* note 19.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

requirements, failure to report suspected child abuse is now a third-degree felony in Florida, not just a misdemeanor, and universities could face fines of \$1 million per violation if officials do not report the abuse.<sup>48</sup> Universities could also lose state funding for two years.<sup>49</sup>

Furthermore, Nebraska also introduced much stricter reporting requirements. The Nebraska legislature proposed adding a very specific provision to their child abuse laws, which provides:

If a student reports an allegation of sexual contact or sexual penetration, as those terms are defined in section 28-318, or of acts described in subdivision (2)(a)(v) or (vi) of section 28-710, on the part of a teacher or other school employee to another school employee required to report such allegation pursuant to subsection (1) of this section, the school employee to whom the allegation is reported and the superintendent of the school district shall report such misconduct pursuant to such subsection within twenty-four hours after receiving the allegation. A report made under this subsection shall be investigated in accordance with the Child Protection Act for the purpose of determining whether or not the allegation is substantiated as described in subdivision (3) of section 28-720. The school district shall not investigate the report for purposes of substantiating the allegation, but the district may investigate the allegation for purposes of making a decision regarding the employment of the teacher or school employee against whom the allegation was made.<sup>50</sup>

Additionally, several other states have proposed bills that would modify or abolish their current list of “mandated reporters” of child abuse. In Connecticut, the Senate proposed a bill on February 14, 2013 to add:

any paid coach or director of intramural or interscholastic athletics at a school who is eighteen years of age or older, any paid coach or director of a private sports organization or team who is eighteen years of age or older, any paid administrator, faculty, staff, athletic director, athletic coach or athletic trainer employed by a constituent unit of the state system of higher education or private

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Legis. 839, 102d Leg., Second Reg. Sess. (Neb. 2011) (proposing to amend NEB. REV. STAT. § 28-711 (2008)).

institution of higher education who is eighteen years of age or older . . . to their list of mandated reporters.<sup>51</sup>

Similarly, in February of 2013, the Michigan House proposed a bill to amend their reporting laws by adding, “An athletic coach or other coach at a school or institution of higher education who has reasonable cause to suspect child abuse or child neglect shall make a report of the suspected child abuse or child neglect to the department in the same manner as required under subdivision (a)” and “A volunteer at a school or institution of higher education who has reasonable cause to suspect child abuse or child neglect shall make a report of the suspected child abuse or child neglect to the department in the same manner as required under subdivision” to their child abuse reporting statute.<sup>52</sup>

In February of 2013, Kansas proposed a new version of their child abuse reporting law, clarifying who is considered a mandated reporter, reporting procedures, and the result of a violation of the reporting law.<sup>53</sup> Furthermore, the Missouri legislature has been working on changing their duty to report laws since December 2011, recently proposing to add a provision stating, “Any person eighteen years or older who observes a child being subjected to sexual abuse shall immediately report to the division in accordance with sections 210.109 to 210.183 or to any law enforcement agency.”<sup>54</sup>

In January of 2012, Virginia proposed to add “any person employed by a public or private institution of higher education,” as well as “any other person having responsibility for the care, custody, or control of children” to the list of individuals required to report suspected child abuse or neglect.<sup>55</sup> The legislature also proposed a provision seeking to increase the penalty for any person who fails to report child abuse within 72 hours of the first suspicion of abuse or neglect to a

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<sup>51</sup> H.R. 6400, 2013 Gen. Assemb., Jan. Sess. (Conn. 2013) (proposing to amend CONN. GEN. STAT. § 17a-101 (2013)).

<sup>52</sup> H.R. 4199, 96th Leg., Reg. Sess. (Mich. 2012) (proposing to amend MICH. COMP. LAWS § 722.623 (2013)).

<sup>53</sup> Kan. S.B. 304, 84th Leg., Reg. Sess. (Kan. 2012) (proposing to amend KAN. STAT. ANN. § 38-2223 (2006)).

<sup>54</sup> S. 113, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2013) (proposing to amend MO. REV. STAT. § 210.115 (2012)).

<sup>55</sup> S. 622, 2012 Reg. Sess. (Va. 2012) (proposing to amend VA. CODE ANN. § 63.2-1509 (2013)).

Class 1 misdemeanor.<sup>56</sup> Further, in cases involving sexual abuse of a child that results in severe bodily injury to or the death of a child, a person who fails to make a report within 72 hours is guilty of a Class 6 felony.<sup>57</sup>

The Hawaii House and Senate have proposed several changes to their mandated reporting laws. In January of 2013, they proposed to amend the definition of child abuse and child neglect to include acts or omissions of any person or legal entity and to require mandatory reporting when there is reasonable suspicion of child abuse or neglect.<sup>58</sup> Additionally, in January of 2013, the Indiana House proposed several amendments to their laws governing the duty to report child abuse, including clarifying their list of mandated reporters and reporting procedures, and defining “victim of child abuse or neglect,” for purposes of the duty to report child abuse.<sup>59</sup> Similarly, in June of 2013, Mississippi proposed amendments to its child abuse reporting laws, updating and clarifying the list of mandated reporters.<sup>60</sup> However, this bill died in committee.

In California, the legislature has been working since January of 2012 to modify their list of mandated reporters, as well as to whom this group of persons is required to report. California’s existing reporting law, under the Child Abuse and Neglect Reporting Act, requires a mandated reporter

to make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.<sup>61</sup>

The changes proposed in January of 2012 would “require any person to report to a peace officer a known or suspected instance of a child being the victim of sexual

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> H.R. 700, 27th Leg., Reg. Sess. (Haw. 2013) (proposing to amend HAW. REV. STAT. § 350-1.1 (2013)).

<sup>59</sup> H.R. 1086, 118th Gen. Assemb., 1st Reg. Sess. (Ind. 2013) (proposing to create IND. CODE ch. 35-42-6 (2013)).

<sup>60</sup> H.R. 237, 128th Leg. Sess. (Miss. 2012) (proposing to amend MISS. CODE ANN. § 43-21-353 (2013)).

<sup>61</sup> CAL. PENAL CODE § 11166(a) (West 2013).

abuse.”<sup>62</sup> This bill died in committee, however, the California legislature has continued its efforts to improve their child abuse reporting laws by proposing new amendments.<sup>63</sup>

New Jersey has proposed substantial amendments to their duty to report law, doing away with the “mandated reporters” list and instead adding: “Any person having reasonable cause to believe that a child has been subjected to an act of sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) or any sexual offense as defined in chapter 14 of Title 2C of the New Jersey Statutes shall immediately report the act or offense to law enforcement officials.”<sup>64</sup>

Throughout 2012 and 2013, the Kentucky House and Senate introduced several bills proposing changes to their child abuse reporting laws, ultimately enacting updated versions of their child dependency, neglect, and abuse statutes in June of 2013.<sup>65</sup> Furthermore, in March of 2012, Louisiana proposed a bill that would add a new detailed section to its child abuse reporting laws, stating:

Any person who, pursuant to Children’s Code Article 609(A), is required to report the sexual abuse of a child, or the abuse or neglect of a child which results in the serious bodily injury, neurological impairment, or death of the child, and the person knowingly and willfully fails to so report shall be fined not more than three thousand dollars, imprisoned, with or without hard labor, for not more than three years, or both. For purposes of this Subparagraph, “serious bodily injury” means injury involving protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or substantial risk of death.<sup>66</sup>

Additionally, the proposed bill adds “bus driver, coach, professor, technical or vocational instructor, technical or vocational school staff member, college or

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<sup>62</sup> Assemb. 1438, 2012 Reg. Sess. (Cal. 2012) (proposing to amend CAL. PENAL CODE § 11166 (West 2013)).

<sup>63</sup> Assemb. 790, 2013 Reg. Sess. (Cal. 2013) (proposing to amend CAL. PENAL CODE § 11166 (West 2013)).

<sup>64</sup> S. 2850, 215th Leg., 2d Ann. Sess. (N.J. 2013) (proposing to amend N.J. STAT. ANN. § 9:6-8.10 (West. 2013)).

<sup>65</sup> *See, e.g.*, S. 186, 2012 Reg. Sess. (Ky. 2012) (amending KY. REV. STAT. ANN. §§ 620.030 and 620.040 (2013)).

<sup>66</sup> S.B. 357, 38th Reg. Sess. (La. 2012) (proposing to amend LA. REV. STAT. ANN. 14:403 (2013) and LA. CHILD CODE ANN. art. 603 (1991)).

university administrator, college or university staff” to the list of mandated reporters of child abuse.<sup>67</sup> In June of 2012, Louisiana enacted a new child abuse reporting law, incorporating many of these proposed changes.<sup>68</sup>

ii. States Proposing to Increase Penalties

Several states have taken the approach of increasing the penalties for failure to report child abuse. Along with amending its mandated reporters list, the New Jersey legislature also proposed to add a section increasing the penalty for failing to report suspected sexual abuse to a crime in the fourth degree.<sup>69</sup> Moreover, Wyoming introduced an amendment in January of 2013, seeking to impose penalties for failing to report child abuse and to increase the penalty for falsely reporting child abuse.<sup>70</sup>

In August of 2012, the Illinois House proposed a bill amending the Abused and Neglected Child Reporting Act by increasing the criminal penalties for persons who knowingly and willfully violate certain reporting requirements.<sup>71</sup> Specifically, the proposed amendments seek to increase the penalties such that a first violation would be a Class 4 felony (rather than a Class A misdemeanor) and a second or subsequent violation would be a Class 3 felony (rather than a Class 4 felony).<sup>72</sup> Further, if the person who failed to report the abuse acted as part of a cover-up to protect any person or entity from arrest or prosecution, a first violation would be a Class 3 felony (rather than a Class 4 felony) and a second or subsequent violation would be a Class 2 felony (rather than a Class 3 felony).<sup>73</sup> This provision speaks directly to the ongoing cover-up allegations against Penn State higher-ups Spanier, Curley, and Shultz.

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<sup>67</sup> *Id.*

<sup>68</sup> *See* LA. REV. STAT. ANN. 14:403 (2013).

<sup>69</sup> S. 2850, 215th Leg., 2d Ann. Sess. (N.J. 2013) (proposing to amend N.J. STAT. ANN. § 9:6-8.10 (West. 2013)).

<sup>70</sup> H.R. 0039, 62d Leg., 2013 Gen. Sess. (Wyo. 2013) (proposing to amend WYO. STAT. ANN. § 14-3-205 (2013)).

<sup>71</sup> H.B. 6207, 97th Gen. Assemb., Second Reg. Sess. (Ill. 2012) (proposing to amend 325 ILL. COMP. STAT. 5/4 (1975)).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

On May 2, 2013, the Maryland legislature approved a law that revised their notice and reporting requirements, as well as increased the civil and criminal penalties for failure to report abuse.<sup>74</sup> Maryland's duty to report laws now include a section that provides:

(a) An individual may not intentionally prevent or interfere with the making of a report of suspected abuse or neglect required by § 5-704 or § 5-705.1(c)(2) of this subtitle. (b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.<sup>75</sup>

Moreover, in June of 2012, the West Virginia legislature approved legislation relating to reporting suspected child abuse and neglect.<sup>76</sup> The new law adds certain persons to the mandatory reporting list for all abuse or neglect of children, creates a requirement that certain adults report sexual abuse of children when observed or when credible reports are received, requires law enforcement who receive a report of sexual abuse to alert the Department of Health and Human Resources, increases the criminal penalties for failure to report, and requires certain educational programs and trainings.<sup>77</sup>

New Hampshire has proposed substantial changes to its duty to report law, clarifying the law by adding two sections concerning mandated reporting and penalties, providing:

Any employee or volunteer of an organization who has reason to suspect that a child has been sexually abused by another employee or volunteer of the organization shall report the same in accordance with this chapter. Any supervisor of an employee or volunteer who has reason to suspect that a child has been sexually abused by the employee or volunteer shall report the same in

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<sup>74</sup> 2013 MD. LAWS ch. 380 (amending MD. CODE ANN., FAM. LAW, §§ 5-704 to 5-705 (2012)).

<sup>75</sup> *Id.*

<sup>76</sup> S. 161, 80th Leg., Reg. Sess. (W.Va. 2012) (amending W. VA. CODE § 49-6A-2 (2009 & Supp. III 2012)).

<sup>77</sup> *Id.*



accordance with this chapter. A supervisor who knowingly violates this subparagraph shall be guilty of a class B felony.<sup>78</sup>

In the District of Columbia, an amendment to the Child Abuse Reporting Act was proposed on November 15, 2012 that sought to work towards increasing the penalty for those who fail to report child abuse.<sup>79</sup> After several amendments, a new child abuse reporting law was enacted in June of 2013.<sup>80</sup>

### iii. Other Proposed Changes

In Montana, a bill was approved in April 2013 that adds a provision stating:

When a professional or official required to report makes a report, the department may share information with that professional or official regarding: whether an investigation into the report occurred or will occur; the timeframe in which the investigation occurred or will occur; and information about the investigation, limited to its outcome, the factual basis for the outcome, and any subsequent action that will be taken on behalf of the child who is the subject of the report.<sup>81</sup>

This provision was likely proposed to respond to situations like that at Penn State, where suspected child abuse was reported to head football coach Joe Paterno, which he in turn reported to his supervisor, but claimed he did not follow up on whether further investigation on the matter would take place. This updated Montana law went into effect on October 1, 2013.<sup>82</sup>

Furthermore, South Carolina has proposed changes to modify and clarify its duty to report law throughout 2012 and 2013.<sup>83</sup> Texas has also proposed several changes throughout 2012, clarifying definitions and reporting procedures in their

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<sup>78</sup> H.R. 1249, 162d Gen. Ct., Reg. Sess. (N.H. 2012) (proposing to amend N.H. REV. STAT. § 169-C:29 (2002)).

<sup>79</sup> Council of D.C. B19-0647, Council Period 19 (D.C. 2013) (codified as D.C. CODE § 2-1831.03 (2013)).

<sup>80</sup> *Id.*

<sup>81</sup> H.R. 131, 63d Leg., 2013 Reg. Sess. (Mont. 2013) (amending MONT. CODE ANN. § 41-3-201 (2009)).

<sup>82</sup> See MONT. CODE ANN. § 41-3-201 (2013).

<sup>83</sup> H.R. 3371, 120th Sess., First Reg. Sess. (S.C. 2013) (proposing to amend S.C. CODE ANN. § 63-7-310 (2010)).

child abuse laws.<sup>84</sup> Vermont proposed an act in January of 2012 relating to bail in cases of lewd conduct with a child and relating to the inclusion of headmasters of schools as mandatory reporters of child abuse and neglect.<sup>85</sup>

Finally, New York is one of the few states that has enacted proposed legislation thus far, amending their current duty to report laws by enacting the Protection of People with Special Needs Act in December of 2012, which includes protecting children against child abuse and updating reporting procedures.<sup>86</sup>

These proposed changes in a majority of the states illustrate that legislators across the country have recognized the inadequacies in the current child abuse reporting requirements and are progressively working toward improving these laws in wake of the Jerry Sandusky scandal. This on-going effort shows that legislators are dedicated to changing the law to better protect children, which is a meaningful step toward preventing a reoccurrence of a scandal like that involving Sandusky and Penn State.

## V. THE ROLE OF THE COURTS

While proposed legislation seems to be a step in the right direction, the judicial system also plays a role in preventing child abuse. On July 12, 2012, ironically the same day the investigative Freeh report on the Jerry Sandusky sex scandal at Penn State was released, the Commonwealth Court of Pennsylvania issued a decision in the case of *G.V. v. Department of Public Welfare*.<sup>87</sup> Rachel Berger and Mary M. Carrasco of the *Pittsburgh Post-Gazette* aptly note that while

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<sup>84</sup> H.R. 135, 83d Leg., Reg. Sess. (Tex. 2012) (proposing to amend TEX. FAM. CODE ANN. § 261.101 (West 2008)).

<sup>85</sup> H.R. 628, 2011-2012 Leg. Sess. (Vt. 2012) (proposing to amend VT. STAT. ANN. tit. 33 § 4913 (2007)).

<sup>86</sup> See S. 7749, 235th Sess. (N.Y. 2012), 2012 N.Y. LAWS ch. 501.

<sup>87</sup> *G.V. v. Dep't of Pub. Welfare*, 52 A.3d 434 (Pa. Commw. Ct. 2012). As of the writing of this note, the Pennsylvania Supreme Court granted an allowance of appeal on the issue of “whether Commonwealth Court erred in requiring a ‘clear and convincing’ evidentiary standard of proof in child abuse expunction cases under the Child Protective Services Law (CPSL), 23 Pa. C.S. §§ 6301–6386, where the legislature had established substantial evidence as the required standard of proof?” *G.V. v. Dep't of Pub. Welfare*, 66 A.3d 252 (Pa. 2013). However, the Court has yet to hear oral arguments or render a decision on this issue as of the publication date of this note.

this decision received scant attention, it has the potential to change the lives of children in Pennsylvania far more than the findings in the Freeh report.<sup>88</sup>

In this case, the Commonwealth Court determined that there was “substantial evidence” that G.V. had sexually abused his great niece, who lived in his home under a court order.<sup>89</sup> As a result, G.V. was identified as a child abuser and his name was placed on the ChildLine Registry.<sup>90</sup> However, G.V.’s attorneys claimed that the “substantial evidence” required to indicate that a child had been abused was not a high enough legal standard to place an individual on the ChildLine Registry.<sup>91</sup> They argued that the evidence should meet a much higher “clear and convincing” legal standard, and the court unfortunately agreed.<sup>92</sup> The judges opined that when a child is determined to have been abused, the best interests of the child need to be balanced against the right of the perpetrator to be gainfully employed and not be labeled as a child abuser.<sup>93</sup> Berger and Carrasco reason that “what the judges failed to recognize is that each case of child abuse is not just about a single child and his or her abuser, but about all the children in our communities, who have a right to be safe.”<sup>94</sup>

In their article, appropriately titled “A Post-Sandusky Let Down,” Berger and Carrasco make a convincing argument that raising the standard of proof for placing a perpetrator’s name on the ChildLine Registry higher than the standard for indicating a case of child abuse has the potential to allow numerous perpetrators of sexual and physical abuse to remove their names from the ChildLine Registry.<sup>95</sup> If this occurs, it will degrade our ability to prevent these perpetrators from having access to children.<sup>96</sup> They further note that requiring clear and convincing evidence puts the burden overwhelmingly on the child, who may have been too traumatized

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<sup>88</sup> Rachel Berger & Mary M. Carrasco, *A Post-Sandusky Let Down*, PITTSBURGH POST-GAZETTE, Oct. 21, 2012, at B1, available at <http://www.post-gazette.com/stories/opinion/perspectives/a-post-sandusky-letdown-658430> (discussing *G.V.*, 52 A.3d 434).

<sup>89</sup> *G.V.*, 52 A.3d at 439.

<sup>90</sup> *Id.* at 436.

<sup>91</sup> *Id.* at 439.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Berger & Carrasco, *supra* note 88.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

or too young to provide details of the abuse.<sup>97</sup> They contend that it is because of decisions like *G.V.* that Pennsylvania grossly under-reports child abuse, and note that Pennsylvania's child abuse reports are among the lowest rates in the country.<sup>98</sup> Berger and Carrasco conclude their argument by making a strong point: if Pennsylvania law is trying to protect adults rather than children, this will allow for perpetrators to victimize even more children, as was the case in the Sandusky scandal, where at least 20 victims have come forward since the first allegation.<sup>99</sup>

Since the *G.V.* decision, several cases have come before the Commonwealth Court in which the "clear and convincing evidence" rule adopted in *G.V.* was applied.<sup>100</sup> In *T.T. v. Department of Welfare*, which was decided the day after *G.V.*, a public school teacher, "T.T.," was accused of sexually abusing his minor stepdaughter from 2000 through 2007.<sup>101</sup> Children and Youth Services ("CYS") conducted an interview with the child during which she stated that her stepfather abused her from the time she was 12 years old until she was 16 or 17 years old.<sup>102</sup> The child also testified extensively about the abuse at a hearing before the Administrative Law Judge ("ALJ").<sup>103</sup> The ALJ found the testimony to be credible, noting that it was "straight forward, detailed and consistent with the initial report which was received by ChildLine, the interview with CYS, and the disclosure to her mother on December 23, 2008."<sup>104</sup> However, despite all of the evidence of abuse, the Commonwealth Court remanded the issue of whether the evidence against T.T. was clear and convincing such that expungement of the child abuse report summary from the ChildLine Registry was not warranted.<sup>105</sup>

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*; Associated Press, *Jerry Sandusky Receives 30 to 60-year Sentence*, CBS NEWS (Oct. 26, 2013), [http://www.cbsnews.com/8301-201\\_162-57528616/jerry-sandusky-receives-30-to-60-year-sentence](http://www.cbsnews.com/8301-201_162-57528616/jerry-sandusky-receives-30-to-60-year-sentence).

<sup>100</sup> *T.T. v. Dep't of Pub. Welfare*, 48 A.3d 562 (Pa. Commw. Ct. 2012); *J.M. v. Dep't of Pub. Welfare*, 52 A.3d 552 (Pa. Commw. Ct. 2012).

<sup>101</sup> *T.T.*, 48 A.3d at 564.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 565.

<sup>105</sup> *Id.* at 567.

The court opined that, in accord with the rule set out in *G.V.*,

an order maintaining the indicated child abuse report summary on the ChildLine Registry against T.T., a Pennsylvania public school teacher, results in a significant impact not only on his personal and professional reputation, but also on his ability to continue practicing his profession. Such an impact demonstrates the need to apply the stricter clear and convincing evidence standard in expungement proceedings.<sup>106</sup>

The *T.T.* case reinforces the argument that despite changes in legislation, the courts also play a role in protecting children from abuse, and the clear and convincing evidence standard for child abusers to be placed on the ChildLine Registry wrongly focuses on protecting adults, not the children who they were found, by substantial evidence, to have sexually abused.

## VI. RECOMMENDATIONS

### A. Stricter Legislation

The first and most crucial step toward preventing a similar situation to the Penn State scandal is to implement stricter legislation. While Pennsylvania and several other states have made meaningful advances toward changing their reporting requirements to better protect children, including updating and editing their mandated reporters list, many argue that the real answer lies within something more drastic: eliminating the mandated reporters list all together. Like in Florida, where the legislature has done away with the mandated reporters list and instead, implemented that any person having reasonable cause to believe that a child is being sexually abused must immediately report the offense law enforcement officials, other states, including Pennsylvania, should follow suit. It is only logical that any person who witnesses such an act should be liable to report it, not only to their boss or superior, but to a law enforcement official. In making this change, there will never be a question about whether one has a legal duty to report child sexual abuse to authorities, because everyone will be considered a “mandated reporter,” or what would be more appropriately named a “mandated protector.”

As Sofiya Nozhnik of the Family Law blog JustFamilies.org notes, “As a society, we are reluctant to burden so-called innocent bystanders with duties to act. At the same time, today we are collectively outraged that these abuses [referring to

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<sup>106</sup> *Id.*

the Penn State scandal] went on for so long and the perpetrators were not reported to the authorities.”<sup>107</sup> Further, Arizona criminal defense attorney Vladimir Gagic proposes that child abuse reporting laws be as simple as stating that “if you have good reason to believe that another adult is sexually abusing a minor, you must report it to the police within 24 hours or you will be prosecuted for failing to report that abuse.”<sup>108</sup>

There is a debate among child advocates and academics about whether increasing mandatory reporting would help protect our children or worsen situations where abuse is suspected.<sup>109</sup> Some child experts contend that increasing the number of mandated reporters would result in “frivolous allegations, more children being needlessly separated from their parents, and a clogged child welfare system.”<sup>110</sup> Thomas L. Hafemeister, an associate professor specializing in health care law and policy at the University of Virginia School of Law, expresses concern that if everyone is a mandatory reporter, people might start seeing child abuse everywhere.<sup>111</sup> While these counterarguments present valid points, these concerns are risks worth taking if it will protect even a small number of innocent children from being subjected to sexual abuse.

It is also important that state legislators continue to push to enact the proposed legislation that has been in the works in the aftermath of the Sandusky scandal. While the process of passing a bill is a slow one, it is vital that state legislators do not lose sight of the goal as the passage of time causes them to become further removed from the Penn State scandal. However, the highly publicized pending criminal cases against Spanier, Curley, and Shultz should help to keep the focus on passing these meaningful changes to the law.

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<sup>107</sup> Sofiya Nozhnik, *How Far Should the Legal Duty to Report Suspected Child Sexual Abuse Be Extended?*, JUST FAMILIES (Nov. 21, 2011), <http://www.justfamilies.org/how-far-should-the-legal-duty-to-report-suspected-child-sexual-abuse-be-extended/>.

<sup>108</sup> Vladimir Gagic, *How to Stop the Next Jerry Sandusky: A “Person” Under Arizona’s Duty to Report Law Should Mean Everyone*, ARIZONA CRIM. L. & SEX CRIMES POST (Nov. 13, 2011), <http://www.azcriminallawsexcrimes.com/criminal-procedure-and-trials/evidence-rules-and-statutes/it-goes-without-saying-the>.

<sup>109</sup> See Persky, *supra* note 34.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

### B. *Increasing the Penalty for Failure to Report Child Abuse*

Increasing the institutional and individual penalties for failing to report child abuse would also serve as a deterrent to the reoccurrence of situations like the Penn State scandal. As discussed *supra*, Florida has set a high bar for implementing stricter penalties, making failure to report suspected child abuse a third-degree felony and increasing university fines to \$1 million per failure. Universities in Florida also run the risk of losing state funding for up to two years if officials do not report the abuse.<sup>112</sup>

While Florida has taken drastic measures to ensure child abuse reporting is not taken lightly, even milder changes in penalties and fines would be effective. In Pennsylvania, for example, those who fail to report suspected child abuse are guilty of a third-degree misdemeanor for the first violation and a second-degree misdemeanor for a subsequent violation.<sup>113</sup> A third-degree misdemeanor currently carries a maximum fine of \$2,000 and imprisonment of one year, while a second-degree misdemeanor carries a maximum fine of \$5,000 and imprisonment of two years.<sup>114</sup> As Attorney Jeff Anderson, a pioneer in sexual abuse litigation, and Attorney Sarah Odegaard point out in their article “Addressing Institutional Failure: Necessary Changes to Ensure Our Children Are Protected,” in terms of the Penn State situation, a school employee who willfully violated the child abuse reporting requirement is guilty of only a summary offense, which carries only a maximum fine of \$300 and imprisonment of 90 days.<sup>115</sup> Thus, in order to meaningfully deter individuals from concealing sexual abuse or from avoiding responsibility by delegating the duty to another person, punishments must include harsher financial penalties and threaten the possibility of long-term imprisonment.<sup>116</sup> This can be accomplished by, for example, increasing the status of failure to report child abuse to a low-grade felony instead of a misdemeanor, like several states have proposed. As child abuse reporting laws continue to evolve, enhancing the penalties for failure to report will be crucial in ensuring that institutions and individuals take these laws seriously.

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<sup>112</sup> See Valdes, *supra* note 19.

<sup>113</sup> See Anderson & Odegaard, *supra* note 2, at 4 (citing 23 PA. CONS. STAT. ANN. § 6319).

<sup>114</sup> *Id.* at 5 (citing 101 PA. CODE § 15.66(b) (7–8)).

<sup>115</sup> *Id.* (citing 23 PA. CONS. STAT. ANN. §§ 6352(c)(1), 6353(d) and 101 PA. CODE § 15.66(b)(9)).

<sup>116</sup> *Id.*

### C. *Accessibility and Uniformity*

Another way to enforce laws imposing a duty to report child abuse is to make reporting requirements more accessible. In an article about the Sandusky scandal, executive director of the Protect Our Children Committee, Cathleen Palm, notes that “if you go to the [Pennsylvania] Department of Welfare website today, you still can’t easily find information about reporting child abuse in PA.”<sup>117</sup> This is enigmatic, because in the post-Sandusky era, this information should be more accessible than ever. By making reporting requirements easily accessible, state legislatures can raise awareness and consciousness of child abuse and stress the importance of reporting a child abuse offense.

Furthermore, state legislatures should work together to create uniformity among child abuse reporting laws. As previously discussed, it is clear that child abuse laws between states differ greatly and can create even more ambiguity within statutes that may already be confusing.<sup>118</sup> By striving to make state reporting laws more uniform, there will be more clarity as to what is expected of adults who witness child abuse, thereby eliminating much of the ambiguity about what is the proper reporting procedure.

### D. *Lowering the Standard to Require Abusers to Register for ChildLine Registry*

State courts also play an important role in protecting children against sexual abuse. As the *G.V.* and *T.T.* cases in Pennsylvania illustrate, raising the standard for child abusers to be placed on the ChildLine Registry to clear and convincing evidence accomplishes what constituted the main problem in the Penn State scandal: protecting adults and not the children who were sexually abused. In order to shift the focus back to protecting the victims, Pennsylvania courts, and courts across the nation facing this same issue, should strongly consider making the standard for registering for ChildLine the same as the standard for finding that the child abuse occurred: substantial evidence. It seems only reasonable that if there is substantial evidence that a person has sexually abused a child, then that should be enough to constitute registering for ChildLine in order to protect against future instances of abuse, no matter the impact on the abuser. The real impact the courts should be concerned with is the impact on potential future victims.

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<sup>117</sup> Sara Ganim, *Jerry Sandusky Scandal One Year Later: A Lot Has Happened in a Year, and There’s More to Come*, THE PATRIOT NEWS, Nov. 4, 2012, [http://www.pennlive.com/midstate/index.ssf/2012/11/jerry\\_sandusky\\_scandal\\_one\\_yea.html](http://www.pennlive.com/midstate/index.ssf/2012/11/jerry_sandusky_scandal_one_yea.html).

<sup>118</sup> See Persky, *supra* note 34.



### *E. Statute of Limitations Reform*

Lastly, in addition to making changes to the child abuse reporting requirements, state legislators can work toward further protecting children by considering amending the statute of limitations period for child sex abuse claims. Currently, the statute of limitations for child sex abuse cases in most states is relatively short, and therefore, victims are unable to pursue criminal or civil legal remedies against the perpetrators or the institutions that conceal and enable perpetrators.<sup>119</sup> Instead, “perpetrators are granted legislative benevolence and allowed to continue to abuse while remaining unaccountable” since they cannot be brought to trial.<sup>120</sup> In Pennsylvania, for example, a victim must be not older than 50 years of age for criminal prosecution, or 30 years old for civil cases, to bring suit.<sup>121</sup> This presents a serious problem in cases where the survivors of child sex abuse do not process the abuse, do not remember the abuse, or do not tell anyone what happens until adulthood, like many of the victims in the Sandusky case, who did not come forward until the first allegations against Sandusky brought back suppressed or painful memories.<sup>122</sup>

Attorneys Jeff Anderson and Sarah Odegaard persuasively argue that to solve this problem, “the statute of limitations needs to be abolished or at least extended to ensure that perpetrators and institutions are held accountable [...] This includes incorporating tolling provisions and discovery rules into the statute of limitations and opening windows for those survivors whose claims expired prior to amendment of the statute.”<sup>123</sup> Implementing this statute of limitations reform will serve to not only to protect past victims of child abuse, but also to prevent against future abuse by alerting the public to the identities of child abusers, who without the reform may remain unaccountable.

## VII. CONCLUSION

The proposed changes in legislation, in Pennsylvania and across the nation, are certainly a step in the right direction to avoid a situation like the Penn State scandal from reoccurring. However, a majority of these proposed laws have yet to

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<sup>119</sup> Anderson & Odegaard, *supra* note 2, at 5.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* (citing 42 PA. CONS. STAT. ANN. §§ 5552(c)(3), 5533(b)(2)(i)).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 8.

be enacted, over two years after the Sandusky allegations were first reported. Further, addressing and implementing these recommended changes in child protection law, such as stricter legislation and other corrective measures, like lowering the standard that must be met in order for child molesters to be placed on the ChildLine Registry, will allow for even greater protection of children against sexual abuse, especially in vulnerable relationships such as those between coaches and students.