
Leonard G Brown, III
Mandatory Reporting of Abuse: 
A Historical Perspective on the Evolution of States’ Current Mandatory Reporting 
Laws with a Review of the Laws in the Commonwealth of Pennsylvania

LEONARD G. BROWN, III  
KEVIN GALLAGHER

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1 Judge, 2nd Judicial District, Lancaster County, Pennsylvania Court of Common Pleas. I wish to thank University of Virginia law student and Blackstone Fellow, Kevin Gallagher for his excellent research assistance and drafting as well as Aaron Armstrong for his helpful comments and research.

2 University of Virginia School of Law.
I. Introduction

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

As the shift away from exploiting child labor and towards protecting children occurred over the last two centuries and various egregious cases of abuse arose, states began to implement laws requiring certain people to report suspected abuse of children. The first states passed laws in 1963, following the publishing of a seminal article titled, “The Battered Child Syndrome.” By 1967, all fifty states had passed some form of mandatory reporting law. The federal government’s first major foray into the area of child abuse prevention occurred on January 31, 1974, when Congress enacted the Child Abuse Prevention and Treatment Act (“CAPTA”). CAPTA has no federal mandatory reporting provision, but rather requires states to pass their own mandatory reporting provisions in order to receive federal grants.

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

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

The first state laws on mandatory reporting of child abuse came as a direct response to a call to action from the media and interest groups. This trend remained clear as both congress and state legislatures crafted and amended laws to prevent child abuse throughout history. Wanting to protect their children, each of the fifty states tailored unique mandatory reporting laws. Some

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3 Herbert Hoover, 31st President of the United States.


5 An internet search of news stories involving child abuse generates more than 25,000 results.

6 See 42 U.S.C. § 5101 et seq.

7 42 U.S.C. § 5106(a).
mandated large numbers of people report abuse and enacted strict penalties for failure to do so, while other states only required specific groups of professionals to report and had lenient or no statutory penalties for failure to report. Like other states, the Pennsylvania legislature enacted and amended its original mandatory reporting law in response to the media and pushes from interest groups. In comparison with comprehensiveness of other state laws, Pennsylvania’s law has always been on the middle ground. Though it is still uncertain how Pennsylvania will respond to the most recent child abuse scandal, it has always been certain that there is a clear need for communities to protect their children.

II. Historical Overview

A. The First State Laws and What Initiated Them

Just as child abuse is certainly not a new concept, neither are laws prohibiting child abuse. The Bible, for example, prohibited the sacrifice of children, considering the practice despicably pagan. However, prior to 1963, California was the only state in which child abuse was explicitly criminalized. It took the seminal medical study of C. Henry Kempe and his colleagues to goad American states to pass child abuse laws. Published in 1962, Kempe’s “The Battered Child Syndrome” caused the public to begin thinking about the pervasive problem of child abuse in America. It was “one of the first studies to point out the growing incidence of child abuse and its social and medical ramifications.” Scholarship written contemporaneous to the creation of the first mandatory child abuse reporting laws noted the distinct influence Kempe’s study had on the inception of these laws. The direct causal link between “The Battered Child Syndrome” and the subsequent passage of mandatory reporting laws has become something of a truism in modern scholarship, with many scholars noting that within three years of the study all fifty states had mandatory reporting laws.

However, mandatory reporting laws did not spring fully formed from “The Battered Child Syndrome,” as is often portrayed; rather, Kempe’s study worked to galvanize the American public to take action to combat the existing problem of child abuse. In 1963, the Children’s Bureau of the United States Department of Health, Education, and Welfare released a

8 See Leviticus 20:1-5.
11 Green, supra note 7, 115.
12 See, e.g. Recent Statute, 44 Tex. L. Rev. 584, 584 (1965-1966) (noting that “the attention of the medical profession was…drawn to (the) problem” by the study); Mario C. Ciano, Ohio’s Mandatory Reporting Statute for Cases of Child Abuse, 18 W. Res. L. Rev. 1406 (1966-1967) (noting that from Kempe’s study and other studies like it “facts were brought to light which awakened the public and legislative bodies to the realization that a problem existed whose solution challenges social, medical, and legal resources alike.”)
13 See, e.g. Gary B. Melton, Mandated reporting: a policy without reason, 29 Child Abuse & Neglect 9, 10 (2005).
publication noting that “child neglect and abuse are not new phenomena in our society, or in any society. What is new is the increase and violence in the attacks on infants and young children by parents and other caretakers.” The Children’s Bureau, along with three other organizations (the Council of State Governments, the American Humane Association, and the American Medical Association), proposed model statutes for state legislatures to help solve child abuse. It was the Children’s Bureau’s proposal that became the most influential. The model statutes were designed by “interested government and private groups” in order to “offer various alternatives to the state legislators on the issue of who should be required to report.”

More often than not, these child abuse reporting laws were passed quickly, perhaps even hastily. Monrad Paulsen, Graham Parker, and Lynn Adelman reported on a study conducted by the Columbia University School of Law in the mid 1960s and set out four primary influences on both the laws themselves and the speed at which they were created. First and foremost, they noted that calls to action from the press and broadcasters created an impetus for child abuse reporting laws because “several national magazines have run stories calling for legislative action and attracting public attention with eye-catching headlines and photographs of dreadfully abused children.” Second, they noted what they called the significance of the individual as many individual doctors were “consequential” in passing of legislation. Third, they noted the multiplicity and importance of voluntary associations, calling such groups “the vanguard of efforts to enact child abuse reporting legislation.” Finally, they noted the executive branches of various states and their cooperation with voluntary groups, writing that “in most states, agencies of the executive department have played strategic roles in the enacting of child abuse reporting legislation, either by initiating study of the problem and formulating the most important proposals or by giving support to those individuals or organizations that have taken the lead.” These four influences were crucial in ushering the Children’s Bureau proposal (or other models) into codified legislation, as most states did in fact use these models to frame their debates.

The Children’s Bureau proposal was unique because it placed the duty to report solely on physicians and other medical staff. From the beginning of the debates, the question of who should be required to report suspected child abuse was contentious. The Children’s Bureau

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16 Id. at 3.


18 Id. at 490.

19 Id. at 491.

20 Id. at 493.

21 Id. at 497.

22 Paulsen, Child Abuse Reporting Laws, supra note 13, 3.
chose the medical profession to the exclusion of others because they believed that abused children come to their attention when they seek medical assistance, physicians’ special skill and training make them uniquely qualified to diagnose potential instances of child abuse, and physicians had previously resisted reporting child abuse because they viewed it as “meddling” or a “violation of professional confidence.” Most states, when they finally passed mandatory reporting laws, followed this model, or something very close to it. For example, in 1963, Ohio, one of the first states to pass a mandatory reporting law, required “physicians and other medical personnel to report any case of child injury which they believed to have been caused by physical abuse.” Forty-six other states followed Ohio’s lead in the period between 1963 and 1965, including Pennsylvania (see Section IV).

Three states, however, went above and beyond the Children Bureau’s recommendation. Nebraska, Tennessee, and Utah passed laws that put an obligation on all citizens having evidence of child abuse to report. These states believed it was a moral obligation of all citizens to safeguard abused children. Universal application of the duty to report would “assure appropriate protection of the maximum number of children” by making “the obligation an unavoidable duty of all responsible persons with knowledge or suspicion of specific instances of child abuse.”

Donald Stuart wrote a contemporary analysis of Nebraska’s universal mandatory reporting law for the Creighton Law Review stating, “The any person approach reflects an unwillingness on the part of the Nebraska Legislature to exclude any potential source of information.” Similarly, in Indiana, a law modeling the Children’s Bureau proposal was passed in 1965 but repealed in 1971 in exchange for a universal mandatory reporting law, which purported to “facilitate the discovery of child abuse by requiring all persons to report suspected cases.” The desire to shed light on any and all cases of child abuse, rather than only the ones that might come to the attention of a doctor or other medical professional, drove a few states to adopt universal mandatory reporting laws during this initial period between 1963 and 1965.

The decision to adopt universal mandatory reporting laws was also fueled by a legislative rejection of two justifications that the Children’s Bureau used for focusing solely on medical professionals. First, the Nebraska legislature contended that “the duty of all does not become the

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23 Id. at 3-4.


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


27 Id.


duty of none,” pointing out that friends, relatives, and teachers would be likely to observe signs of abuse just as well as a doctor a child sees once a year.  

Second, the Nebraska legislature rejected the argument that only trained people can recognize battered child syndrome by defining child abuse in a way that it would be unmistakable even for non-professionals.  The Children’s Bureau’s proposal defined child abuse simply as “serious physical injury or injury or injuries inflicted upon him other than by accidental means by a parent or other person responsible for his care.” Nebraska came to the determination that that definition was not an effective way of curbing abuse and crafted its own definition. They defined abuse as “knowingly, intentionally, or negligently causing or permitting a minor child or an incompetent or disabled person to be: (a) placed in a situation that may endanger his life or health; (b) tortured, cruelly confined, or cruelly punished; (c) deprived of necessary food, clothing, shelter, or care; or (d) left unattended in a motor vehicle, if such minor child is six years of age or younger.” The specific nature of this definition, the Nebraska legislators believed, would allow everyone, not just doctors or other medical professionals, to understand what was a reportable offense and what was not.

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

Even the thirty states that did not adopt universal mandatory reporting laws still broadly expanded the group of professionals mandated to report. By 1974, thirty-four states required nurses to report, twenty-four required teachers to report, twenty-five required social workers to report, and nine required police officers to report. Just four years later, due to the passage of CAPTA (see discussion in Section B below), forty-eight states required nurses to report, forty-

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30 Id.
31 Stuart, supra note 25, 793.
32 Indiana’s Statutory Protection, supra note 26, 93-95.
34 Brian G. Fraser, A Pragmatic Alternative to Current Legislative Approaches to Child Abuse, 12 Am. Crim. L. Rev. 103, 110 n.28 (1974-1975)
35 Fraser, A Glance at the Past, supra note 30, 657.
nine required teachers and school officials to report, forty-nine required social workers to report, and forty required law enforcement officers to report.\textsuperscript{36} The general trend, therefore, was toward universal mandatory reporting rather than away from it, even for those states that ultimately rejected adopting a totally universal approach.

\textbf{B. The Child Abuse Prevention and Treatment Act}

As Justice Louis D. Brandeis opined, one of the benefits of federalism is that states can act as laboratories of experimentation.\textsuperscript{37} Left to their own devices, states can craft different solutions to the same problem and implement them in order to achieve the best possible system. As shown above, the states put this into practice in the late 1960s and early 1970s, weaving a patchwork quilt of varied attempts at achieving the best system, whether it was through a universal reporting requirement or through enumeration of certain groups of professionals. However, as often happens to large-scale issues of the day, the federal government looked to step into what it perceived not as a patchwork quilt, but as a void needing federal regulation. It attempted to impose national order on the situation.

In 1973, Senator Walter Mondale wrote, “Nowhere in the Federal Government could we find one official assigned full time to the prevention, identification, or treatment of child abuse and neglect.”\textsuperscript{38} In order to rectify this situation and fill the alleged void created by the hodgepodge of state legislation, Mondale authored and sponsored the Child Abuse Prevention and Treatment Act, presenting it to the Senate on March 13, 1973. The House summed up best the need for this law in its July 1973 report: “Each year in this country, thousands of innocent children are beaten, burned, poisoned, or otherwise abused by adults. One source…estimates that 60,000 cases of child abuse are reported annually. Barbara Blum, assistant administrator of the New York City Human Resources Administration, testified that in that city alone, more than 13,000 cases of child abuse or suspected abuse have been reported thus far during 1973. Witnesses agreed that most estimates of the incidence of child abuse represent only a small proportion of the number of children who are actually maltreated.”\textsuperscript{39} Hearings on the legislation took place almost immediately, from the end of March into April of 1973. Mondale continued to lead the charge for the passage of the bill, with the help of key witnesses.

Mondale contended, “It [was] pretty obvious that most child abuse is not reported at all.”\textsuperscript{40} To him, then, despite the fact that all fifty states had some sort of child abuse legislation, these laws were not adequate to solve the problem and federal intervention was necessary. The “timeliness” of the hearings was emphasized heavily. For instance, Mondale noted that “practically every day as we have held these hearings there has been a story [in the news].”\textsuperscript{41} He

\textsuperscript{36} \textit{Id.} at 657-58.

\textsuperscript{37} \textit{New State Ice Co. v. Liebmann}, 285 U.S. 262, 311 (1932)


\textsuperscript{41} \textit{Id.}
then introduced into the record an article from *The Washington Post* on March 27, 1973, recounting the story of a Marine and his wife who were convicted of gross negligence in the beating to death of their 2-month-old daughter. Therefore, just as during the initial onslaught of child abuse laws in the mid 1960s, the mass media played a role in spurring on child abuse legislation.

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

The Child Abuse Prevention and Treatment Act (“CAPTA”) was not a mandatory reporting law per se, but rather a broad law about child abuse generally. The Act’s purpose statement set forth Mondale’s mission: “to provide financial assistance for a demonstration program for the prevention, identification, and treatment of child abuse and neglect, to establish a National Center on Child Abuse and Neglect, and for other purposes.” Two large programs that CAPTA created are the Office on Child Abuse and Neglect and the National Clearinghouse on Child Abuse and Neglect Information. Both of those programs, however, are beyond the

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42 *Id.* at 138.

43 *See* supra note 15.

44 *See* Myers, *Child Protection in America* 95 (listing Vincent De Francis, Elizabeth Elmer, Vincent Fontana, and David Gil as expert witnesses at the hearings).

45 *See* CAPA Hearings, supra note 36, iii-v (listing representatives from the American Academy of Pediatrics, National Center for the Prevention and Treatment of Child Abuse and Neglect, and the National Institute of Mental Health, among others as testifying at the hearings).

46 Myers, *Child Protection in America*, 95.

47 *Id.* at 98.

48 *CAPA Hearings*, supra note 36, v.

More relevant to the matter at hand, despite the initial traction behind the law, CAPTA essentially abdicated the issue of mandatory reporting to the states.

CAPTA does not have a federal, uniform provision about mandatory reporting because the drafters of the Act decided that it was not purposed to create a federal strategy to deal with child abuse in its totality. Rather, the Act was simply supposed to meet the “critical need for increased funding for research, reporting, training, and treatment” of child abuse.\(^\text{50}\) The Act was not meant to create a comprehensive system of mandatory reporting, but rather to encourage states to shore up their policies via monetary incentives. Accordingly, the Act required states to pass a mandatory child abuse reporting statute in order to receive federal grants under CAPTA.\(^\text{51}\)

The relevant statutory text on both funding and mandatory reporting is Section 5106(a).\(^\text{52}\) This statute directs the Secretary to “make grants to the States...for purposes of assisting the States in improving the child protective services system of each such State....”\(^\text{53}\) To be eligible for a grant, the State must submit a “State plan that specifies the areas of the child protective services system...that the State will address with amounts received under the grant.”\(^\text{54}\) This State plan has to contain “an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law or has in effect and is operating a state program relating to child abuse and neglect that includes provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances.”\(^\text{55}\) The law therefore simply makes a condition for CAPTA funding be that the State pass its own mandatory reporting law, since the federal government ultimately decided that this issue was one to be dealt with by the states.

Although the issue was revisited in 1990 with a piece of legislation sponsored by Harry Reid entitled the Victims’ Bill of Rights, the federal law remained basically unchanged after 1974 except for one key addition to the scheme of reporting. In 1989, Harry Reid and Joe Biden called a hearing by the Committee on the Judiciary of the Senate on the subject of the treatment of child abuse allegations and victims in the judicial and victims services system. Reid cited as his reasoning for the necessity of the hearing his astonishment at reading “Justice Department findings that 90 percent of all child abuse cases do not go forward to prosecution.”\(^\text{56}\) As far as reporting goes, Patricia A. Toth, the Director of the National Center for Prosecution of Child Abuse who testified on behalf of the National District Attorneys Association, initially recommended that the federal government strengthen mandatory reporting laws by working


\(^{52}\) 42 U.S.C.A. § 5106(a)

\(^{53}\) Id.

\(^{54}\) 42 U.S.C.A. § 5106(a)(1)(A)

\(^{55}\) 42 U.S.C.A. § 5106(a)(2)(B)(i)

“together with state and local governments.”  However, as the hearing progressed, the testimony became increasingly less pro-federal. Wisconsin Circuit Court Judge Charles B. Schudson suggested that the federal government simply “help spur reform in the States” by giving more money through the already viable systems put in place by CAPTA.  Although not ever seriously argued by even the firmest proponents of child abuse reform, the 101st Congress decided ultimately not to adopt a federal mandatory reporting provision and continue to abdicate the issue to the states.

One fairly significant change that came out of the 1989-90 hearings, however, involved a mandatory reporting provision on federal property. Currently enshrined at 42 U.S.C.A. § 13031, this provision enumerates certain categories of people who must report child abuse on “Federal land or in a federally operated (or contracted) facility.” 42 U.S.C.A. § 13031(b)(1)-(8) lists the specific professions that must report, consisting of eight categories: medical professionals, mental health professionals, counselors, school officials, child care workers, law enforcement personnel, foster parents, and commercial film and photo processors. The federal government, therefore, passed a mandatory reporting law for people in its exclusive jurisdiction that was comparable to the various state provisions, without forcing that law on the entire nation. This situation has remained the status quo to this day, barring the passage of the Speak Up to Protect Every Abused Kid Act in the near future (see discussion below).

C. Recent Developments in State and Federal Law

1. Clergy Abuse

When the news broke about the grand jury report concerning Jerry Sandusky’s misconduct with multiple children and the failure of the people around him to report it, petitions for strengthened mandatory reporting laws arose from citizens, legislators, and pundits alike. Although mandatory reporting is at the forefront of the public consciousness at the present time in a way that it arguably has not been since the 1960s, developments in mandatory reporting law are not new to the last decade. In fact, the past ten years have seen significant changes in the mandatory reporting landscape. The general trend, as will be seen, is that recent changes to mandatory reporting legislation have come about in response to high-profile child abuse cases in a particular jurisdiction.

57 Id. at 105.

58 Id. at 147.


60 Specifically, the law lists the following professions in the appropriate subsections: (1) physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts; (2) psychologists, psychiatrists, and mental health professionals; (3) social workers, licensed or unlicensed marriage, family, and individual counselors; (4) teachers, teacher’s aides or assistants, school counselors and guidance personnel, school officials, and school administrators; (5) child care workers and administrators; (6) law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees; (7) foster parents; (8) commercial film and photo processors.
In 2003, the *Boston Globe* ran a series of exposés on criminal prosecutions of alleged child abusers within the Catholic Church. The newspaper ran stories of over nine hundred children who were sexually abused by priests or other persons affiliated with the Catholic Church, leading to the indictment of many high-profile leaders in the Church. The series received a 2003 Pulitzer Prize for Public Service for “its courageous, comprehensive coverage…an effort that pierced secrecy, stirred local, national, and international reaction, and produced changes in the Roman Catholic Church.”61 Part of the national reaction was the overhaul of mandatory reporting laws to include clergy in the groups of named professionals responsible for reporting.

Massachusetts, being in the epicenter, quickly moved to solve the problem as best it could. The Attorney General of Massachusetts issued a report in 2003 on child abuse in the Boston Archdiocese which “blamed its inability to prosecute more perpetrators of abuse on ‘weak’ state reporting statutes.”62 The Massachusetts general assembly thus sought to rectify the problem by considering several bills to shore up its child abuse laws and increase penalties on people who failed to comply with mandatory reporting statutes.63 In that same year, Massachusetts passed SB 2230, which added to the list of mandatory reporters priests, rabbis, ordained or licensed ministers of any church, religious society, or faith, or an accredited Christian Science practitioner, or any person or lay person in any church, religious society, or faith acting in a capacity as a leader, official, delegate or other designated function on behalf of any church, religious society or faith.64

However, because of the national attention that the Boston-centered scandal received, the ramifications of clergy abuse spilled beyond Massachusetts’s borders. After the Massachusetts Attorney General’s report was released, other state legislatures beyond Massachusetts began feeling increasing public pressure to strengthen their laws as well.65 Twelve states66 added clergy to the list of mandated reporters in the year or so following the *Globe*’s series on child abuse.67 There is little debate that these legislative changes were spurred on by the scandals that

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65 Id.

66 See id. (listing Colorado, Connecticut, Illinois, Massachusetts, and Missouri as changing their laws in 2002 and Alabama, Arkansas, Louisiana, Maine, New Mexico, South Carolina, and Vermont as changing their laws in 2003).

rocked the country during that time. In fact, the National Conference of State Legislatures in its report on child welfare legislation from 2002-2003 concluded that “in response to high-profile media reports of child abuse by clergy, many states continued the trend of enacting laws to require clergy reporting of child abuse.”68 Thus, these twelve states directly reacted to a high-profile child abuse event and changed their mandatory reporting laws to ensure that such a situation did not happen again.

It is likely that the clergy abuses were perpetuated when priests failed to report cases of abuse that were reported to them by penitents. This raises the question of whether priests should be required to report confessions of abuse in spite of the priest-penitent privilege. A law review article written by Christopher R. Pudelski at the time of the clergy abuse scandals argued that the recent changes to mandatory reporting statutes which included clergy in the list of mandated reporters “put the clergy-communicant privilege and mandatory child abuse reporting statutes on a collision course” because they pit “two of society’s most cherished beliefs and strongly held values, the right to free exercise of religion and the prevention of child abuse, against each other.”69 Many states, viewing the privilege as sacred to a degree, included an exemption from the mandatory reporting statute for communications covered by the priest-penitent privilege.70 However, due to the fact that many communications to and by priests were protected by the priest-penitent privilege, prosecutors prior to 2002 could only go so far against clerical abuse. This fact led at least one scholar to advocate for the abrogation of the privilege “in order to ensure that all complaints or allegations of indecent sexual acts on children are brought to the attention of the appropriate government agency.”71 This issue, and other evidentiary issues like it,72 remains contentious because both sides believe they are protecting indispensable rights. It will more than likely take a Supreme Court case on the issue to finally resolve the conflict.

2. Dr. Earl B. Bradley Scandal

As the dust was settling from the rampant clergy abuse scandals, the state of Delaware was struck with the news of a serial pedophile’s indictment. In December of 2009, Dr. Earl B. Bradley, a pediatrician from Lewes, was charged with raping nine of his female patients.

69 Pudelski, Constitutional Fate, supra note 59, 703.
70 See State Child Welfare Legislation, NCSL, supra note 61 (listing Illinois, Massachusetts, Missouri, New Mexico, and South Carolina as states which passed such an exemption in 2002-2003).
However, after news of this story broke and more victims came forward, the grand jury report that was released in February of 2010 indicted him on 471 counts of sexually assaulting 102 girls and one boy he had previously treated. After even more children came forward, these numbers eventually ballooned to 526 counts with 130 children, the youngest being three months old.

The governor of Delaware, Jack Markell, quickly pegged Widener Law dean Linda L. Ammons to create a report about the situation, especially the failings of various medical, police, and legal authorities to report Bradley along the way. Ammons recommended that the reporting laws be changed, particularly to clear up language on when law enforcement officers are mandatory reporters. The Delaware state legislature, however, went further than that, proposing nine bills to deal with the Bradley situation, seven of which came directly from the governor’s office.

Debate in the legislature was minimal. The Dover Post reported that although there were “acknowledged shortcomings” in the bills, the legislature placed the bills “on the de facto fast track and engaged in little debate on the measures as they came up for votes” because of the magnitude of the scandal. The bills covered a range of subjects, including accelerating the process to suspend a doctor’s license to practice in emergency situations, imposing fines for failure to report, requiring an adult to be in the room with a physician if the child is required to disrobe, mandating that physicians and police officers complete training to help them recognize child abuse, and providing for fingerprinting and background checks for all Delaware physicians.

Most interestingly, Senate Bill 229, which stated that people in a “position of trust, authority or supervision over a child” would be subject to “enhanced penalties,” mentioned Earl Bradley by name as the motivation for the creation of the law. The legislature thus quickly responded to an enormous scandal by updating its child abuse laws, much like what happened in Massachusetts after the clergy abuse.

The relevant mandatory reporting provision that emerged from the scandal is Senate Bill 297. The law clarified that any person or institution with reasonable knowledge of child abuse would be required to make a report, thus shoring up the perceived shortcomings of Delaware’s old laws. The law thrust Delaware into the realm of universal mandatory reporting, as it stated that “any person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report….”

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73 Cris Barrish, Delaware crime: Grand jury indicts Dr. Earl Bradley in sexual abuse of 103 child patients, Delaware Online (Feb. 23, 2010), http://www.delawareonline.com/article/20100223/NEWS01/100223004?nclick_check=1.


75 Law Dean Linda L. Ammons completes her independent review into the matter of Lewes pediatrician Dr. Earl Bradley, Widener Law (May 11, 2010), http://law.widener.edu/NewsandEvents/Articles/2010/de051110bradleyreport.aspx.


77 Raskauskas, Nine Delaware Bills, supra note 68.

78 Id.

79 Currently found at Del. Code Ann. tit. 16 § 903.
to “any physician, any other person in the healing arts including any person licensed to render services in medicine, osteopathy or dentistry, any intern, resident, nurse, school employee, social worker, psychologist, medical examiner, hospital, health care institution, the Medical Society of Delaware, or law enforcement agency.” Delaware thus tightened up the language in its child abuse reporting statute, ensuring that universal mandatory reporting would indeed be followed in the state. By doing this, it joined seventeen other states that had already passed universal mandatory reporting laws.

3. Sandusky Scandal

The most recent scandal that has sent shockwaves through state legislatures, prompting significant change in mandatory reporting laws, is the horrific instance of child abuse perpetrated by Jerry Sandusky, a former defensive coordinator for the Penn State football team. Although the ramifications of this scandal will likely be felt for years to come, we can already see that this situation has followed (and probably will continue to follow) the general trend of child sexual abuse leading to quick and significant changes to states’ mandatory reporting laws. Although the scandal erupted in Pennsylvania, the fury over Sandusky’s high profile abuse has spread beyond the borders of the Commonwealth, effecting change across the nation.

Jerry Sandusky, a former defensive coordinator for the Penn State football team, was charged in late 2011 with 48 counts related to the sexual abuse of young boys that he had met through his work with needy children under the auspices of his Second Mile Foundation. After the story gained national attention and created tumultuous outrage from the general public, it came to light that numerous Penn State officials had known about the abuse and had not reported it. The Christian Science Monitor rightly reports that “when the child sex abuse scandal at Penn State erupted last year, public anger was not only directed toward Jerry Sandusky…but toward the people around him who didn’t report their suspicions to police.” This outcry caused

80 Id.


83 Former FBI Director Louis Freeh stated as to his findings in his report about the scandal: “Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky’s child victims by the most senior leaders at Penn State. The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.” Quoted in Michael Muskal, Sandusky scandal: Freeh report condemns top Penn State officials, LA Times (Jul. 12, 2012), http://www.latimes.com/news/nation/nationnow/la-na-nn-penn-state-freeh-report-released-20120712,0,519370.story.

a significant amount of shifting in the legislative landscape in early 2012 and will probably only continue, since Sandusky was found guilty on 45 of 48 charges for sexually abusing ten young boys.\(^{85}\)

The grand jury report indicting Sandusky was released on November 4, 2011. Less than two weeks later, states were already attempting to fix their mandatory reporting laws. For instance, on November 15, 2011, Missouri Attorney General Chris Koster called for a law requiring “any person who witnesses sexual abuse of a child to report it to law enforcement.”\(^{86}\) Since Missouri’s law only enumerated certain professions, such as teachers, physicians, and clergy, Koster wanted reporting to change “in light of the recent child sex abuse scandal out of Penn State.”\(^{87}\) Missouri was not alone in its desire to change its laws. Thirty states and the District of Columbia introduced bills in the 2012 legislative year dealing with reporting of suspected child abuse and neglect, “many of them directly in response to the Sandusky case.”\(^{88}\) Once again, voluntary associations played a key role in agitating for changes in the laws. For instance, Pamela Pine, founder of the nonprofit Stop the Silence: Stop Child Sexual Abuse, prophesized that the Penn State scandal would be the “beginning of a wakeup call” and lead legislators to “close those loopholes” in their mandatory reporting laws.\(^{89}\) The work of Pine’s nonprofit as well as many other similar organizations, coupled with the mass media, once again provided an impetus for serious change in mandatory reporting laws.

As of August 2012, the thirty states mentioned above\(^{90}\) and the District of Columbia had proposed 105 bills, ten of which had passed as of the date of this article, just months after the Sandusky scandal broke. Of states that did not already have universal mandatory reporting, two broad trends can be seen in the bills that were proposed during this period. First, eight states proposed bills which would make all persons mandatory reporters in their states.\(^{91}\) Reacting to the shortcomings of laws like those enacted in Pennsylvania that had created the Sandusky


\(^{87}\) Id.

\(^{88}\) Loviglio, Sandusky child sex abuse scandal, supra note 81.


\(^{91}\) Id. (listing Alabama HB 676, California AB 1438, Georgia HB 1176, Hawaii HB 2233/SB 2575, Illinois HB 5584, Louisiana HB 577, Missouri HB 1102, and South Carolina HB 4428 as proposing a change to universal mandatory reporting).
situation, these states attempted to ensure that a similar situation would not happen in their territories. However, of the eight states that proposed these universal mandatory reporting bills, only one legislature passed a bill into law. On May 25, 2012, Louisiana Governor Bobby Jindal signed a universal mandatory reporting bill92 into law while declaring that “we have a moral duty to protect our children. This new law will ensure that suspected cases of abuse are reported to the proper authorities and will punish those who fail to report these monstrous acts.”93 Other than Louisiana, however, the states that attempted to create universal mandatory reporting laws ended up having more bark than bite, as the other seven bills either failed or remain pending in the legislature.94

The other notable trend in the 2012 onslaught of proposed legislation is the targeted nature of many of the bills toward the Sandusky scandal. As the people who failed to report Sandusky’s misdeeds were school employees and athletic officials, many of the bills specifically enumerated these categories of people as mandatory reporters.95 Once again, however, only two states actually passed bills that concretely affected these changes. Oregon passed a bill that added to the list of already enumerated professions employees of higher education institutions, coaches, assistant coaches or trainers of children athletes and individuals who provide guidance, instruction or training in youth development activities.96 Interestingly, an official Oregon governmental publication specifically noted that “this legislation is a response to the recent ‘Penn State’ event and publicity.”97 Oregon’s neighbor, Washington, similarly passed a bill enumerating categories specific to the scandal.98 Many states thus attempted to respond directly

92 Louisiana HB 577, now found at LSA-R.S. 14:403(A)(1)(b)(4)(a) (mandating that “any person who is eighteen years of age or older who witnesses the sexual abuse of a child and the person knowingly or willfully fails to report the abuse to law enforcement or to the Department of Children and Family Services as required by Children’s Code Article 610, shall be fined not more than ten thousand dollars, imprisoned, with or without hard labor, for not more than five years, or both.”)


94 See 2012 Introduced Legislation, NCSL, supra note 87.

95 See id. (listing the following bills and their accompanying enumerated categories: California AB 1434 (employees of a public or private institution of higher education), California AB 1435 (athletic coach, administrator, or director of a public or private organization), Connecticut SB 193 (coach or director of intramural, interscholastic, or youth athletics, coach or director of a private sports organization or team, administrator, faculty, staff, athletic director, coach, or trainer employed by a constituent unit of the state system of higher education or private institution of higher education, youth camp administrator), Illinois HB 3887 (personnel of institutions of higher education and athletic program or facility personnel), Kansas HB 2533 (any employee, contractor, or administrator of any public or private educational institution), New York AB 8901 (school athletic directors, school coaches, school assistant coaches), South Dakota SB 154 (employees or volunteers of a child advocacy organization or child welfare service provider), and West Virginia HB 4065 (youth camp administrators, camp counselors, employees and volunteers of entities that provide organized activities for children)).

96 Oregon HB 4016, now found at O.R.S. § 419B.005(4)(bb)-(dd).

to the Sandusky scandal by including categories of people into their mandatory reporting statutes that would prevent a similar situation from happening in their states in the future.

One state that deserves special mention is Virginia. Of the ten laws that were actually enacted nationwide dealing with child abuse, five of them came out of the Virginia legislature.\textsuperscript{99} These laws accomplished a broad range of objectives, from adding professionals to the list of mandatory reporters\textsuperscript{100} to reducing the time limit for reporting from 72 hours to 24 hours.\textsuperscript{101} Although not much research has been done on the motivations behind these new Virginian laws (or any of these new laws for that matter, because of how recent they are), it seems that Virginia has an especially strong child abuse advocacy lobbying group that may have contributed to the high number of laws passed in the first half of 2012. Prevent Child Abuse Virginia is an organization that seems to have much influence on Virginian politics. For instance, PCAV spearheaded the effort to raise awareness for the problem of child abuse by naming April Child Abuse Prevention Month, an effort that received support from the Virginia Department of Social Services.\textsuperscript{102} Their influence on the government can be seen in that Governor Robert F. McDonell recognized April officially as Child Abuse Prevention Month in 2012.\textsuperscript{103} PCAV predictably supported and lobbied for the mandatory reporting bills in the Virginia legislature.\textsuperscript{104} It is likely that through its influence and efforts, PCAV were able to affect significant change on Virginian politics. Another facet that could have had an impact on the success of the legislation is a report that was released in April 2012 by the Children’s Advocacy Institute at the University of San Diego that gave Virginia a B- for its child abuse reporting laws, ranking it better than only nineteen states in the country.\textsuperscript{105} The combination of pressure from PCAV and the state’s poor...

\textsuperscript{98} See Washington SB 5991, now found at RCW 26.44.030(1)(f) (enumerating “administrative and academic or athletic department employees, including student employees, of institutions of higher education…and of private institutions of higher education”) and RCW 28B.10(1) (enumerating “all employees of institutions of higher education, not considered academic or athletic department employees, who have reasonable cause to believe a child has suffered abuse or neglect…”).

\textsuperscript{99} See 2012 Introduced Legislation, NCSL, supra note 87 (noting that VA HBs 3, 74, 970, 1237 and SB 239 were passed into law in 2012).

\textsuperscript{100} See id. (reporting HB 3 as adding “athletic coach, director or other person employed by or volunteering with a private sports organization or team and administrators, employees, or volunteers of public or private day camps, youth centers, and youth recreation programs”; HB 970 as adding “any person employed by a public or private institution of higher education”; HB 1237 as adding “a law enforcement agency”; and SB 239 as adding “individuals employed by a public or private organization responsible for the care, custody, or control of children.”)

\textsuperscript{101} See id. (reporting HB 74 as reducing the time limit for reporting suspected child abuse or neglect by mandated reporters from 72 hours to 24 hours)

\textsuperscript{102} About Us, Prevent Child Abuse Virginia (last visited July 3, 2012), http://pcav.org/about-us/.

\textsuperscript{103} April is Child Abuse Prevention Month, Sussex County, Virginia (Apr. 11, 2012), http://www.sussexcountyva.gov/news/index/view/id/39/.

\textsuperscript{104} Bills we support, Prevent Child Abuse Virginia (last visited July 3, 2012), http://pcav.org/advocacy/bills-we-support/.

showing in this well-known ranking system more than likely prodded legislators to update Virginia’s mandatory reporting laws.

It is also interesting to note that although the general trend was towards universal mandatory reporting (by becoming universal or adding more categories of professions to the mandatory reporting statutes), half of the eighteen states that already had universal mandatory reporting systems in place prior to the Sandusky scandal still proposed legislation dealing with reporting. Despite having the most comprehensive type of mandatory reporting already, these states attempted to shore up perceived weaknesses in the system or otherwise close loopholes. This shows the wholesale manner in which the Sandusky scandal shook the entire nation, even those states that probably believed their mandatory reporting laws were strong.

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

Despite the bill being fairly far away from passage, the mere proposal of the Speak Up to Protect Every Abused Kid Act mobilized opponents of universal mandatory reporting. Various organizations began advocating for people to not get caught up in the frenzy of the Sandusky scandal.

106 See 2012 Introduced Legislation, NCSL, supra note 88 (listing Delaware, Florida, Idaho, Indiana, Maryland, Mississippi, Nebraska, New Hampshire, and New Jersey as states with proposed legislation).

107 See id. (listing the following bills and their proposed changes: Delaware HB 243 (simplifying mandatory reporting requirements), Florida HB 1355 (raising penalties for failure to report to $1 million for each failure), Idaho (mandating reports of abuse within 24 hours of the incident), Indiana SB 267 (creating educational materials on child abuse), Maryland HB 1067/SB 63 (adding a penalty to failures to report), Mississippi HB 943 (creating the Mandated Reporter Training Division), Nebraska LB 839 (mandating reports of abuse within 24 hours of the incident), Nebraska LB 993 (creating training programs for mandatory reporters), New Hampshire HB 1249 (establishing an enhanced criminal penalty for a supervisor who fails to report an employee or volunteer), New Jersey AB 4396/SB 3143 (mandating immediate reporting for mandatory reporters)).


110 Id.
scandal and pass laws that they may regret later. For instance, Richard Wexler, Executive Director of the National Coalition for Child Protection Reform, believes there are a number of problems with proposals like Senate Bill 1877. He writes that more mandated reporting will overload child protective service agencies, force people to call in cases that are “patently absurd” because they fear penalties, and subject more children to the trauma of child abuse investigations, which usually include a “visual inspection.”

Teresa Huizar, executive director of the National Children’s Alliance in Washington, D.C., believes that “the jury is still out as to whether states that require all adults to report suspected abuse have reporting rates higher than those without universal mandatory reporting requirements.” Similarly, in the organization’s analysis of Senate Bill 1877, the Family Defense Center, a child advocacy group based out of Chicago, posits that “making all adults mandated reporters will lead to a massive increase in the number of calls that are not likely to be deemed meritorious by authorities.”

The nation is not unanimous about whether the current trend toward universal mandatory reporting is the wisest path to take.

The question of whether universal mandatory reporting actually leads to an increase in the number of calls that are not likely to be deemed meritorious by authorities has caused much debate, but the numbers seem to support a conclusion to that effect. For instance, although Pennsylvania has not switched to a universal mandatory reporting statute, it has generally been trending in that direction. However, with significant steps toward universal reporting has come an increase in the number of unsubstantiated reports. After the passage of the PCSL, the number of reports that were substantiated fell from 44 percent in 1976 to 35 percent in 1977.

Similarly, in 2010, before the Sandusky scandal, the Department of Welfare reported that 3,656 of 24,615 reports (14.85%) were substantiated. In 2011, however, only 3,408 of 24,378 reports (13.98%) were substantiated.


114 See The Senate Committee on Aging and Youth and the House Committee on Health and Welfare by the staff of the Joint State Government Commission, Administration of Pennsylvania’s child abuse law: a legislative oversight evaluation (1979) (reporting that in 1976 2,851 of the 6,415 reports were substantiated and that in 1977 4,499 of 12,939 reports were substantiated).


III. National Overview

All fifty of the United States have a mandatory reporting law.\textsuperscript{117} The two areas of analysis integral to understanding a state’s mandatory reporting law are (a) the enumerated mandatory reporters and (b) the penalties for failure to report. This section will examine the most and least comprehensive states in each category, at least as they stand at the time of the writing of the article.

A. Most Comprehensive States – Mandated Reporters

The most comprehensive systems possible reside in the nineteen states that have universal mandatory reporting.\textsuperscript{118} Two states, New Jersey and Wyoming, still follow the original model for universal mandatory reporting that was adopted by Nebraska, Tennessee and Utah in the 1960s which simply places the duty for reporting on all persons without enumerating certain categories of professions as well.\textsuperscript{119} The other seventeen states, including the newest state to adopt universal mandatory reporting, Louisiana, follow the model that Indiana enacted in the mid 1970s by enumerating certain categories of professionals while also expecting all

\begin{footnotesize}

\textsuperscript{118} Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming.

\textsuperscript{119} See N.J.S.A. 9:6-8.10 (“any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse”) and W.S. 1977 § 14-3-205 (“any person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected or who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect”).
persons to report.\textsuperscript{120} Regardless of whether or not the state specifies certain categories, a universal mandatory reporting state has the most comprehensive scheme possible in that all of its citizens are mandated to report cases of child abuse.

Of the thirty-one states that do not mandate universal reporting, however, certain ones stand out as having more comprehensive requirements than others. California enumerates forty different categories of professions as mandated reporters, a quantity unparalleled in the United States.\textsuperscript{121} Arkansas’s statute features the next highest amount with thirty-seven categories of professions enumerated.\textsuperscript{122} The Pennsylvania Bar Institute, in its 2012 publication \textit{Protecting Our Children: The Responsibility of Organization}, analyzed all fifty of the mandatory reporting laws in the United States and placed the enumerated professions of each into broad categories.

\textsuperscript{120} The reasoning behind enumerating these categories while still requiring all individuals to report was discussed above (see Section II-A).

\textsuperscript{121} \textit{See} Ann.Cal.Penal Code § 11165.7 (enumerating teacher; instructional aide; teacher’s aide or teacher’s assistant employed by any public or private school; a classified employee of any public school, an administrative officer or supervisor of child care and attendance, or a certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a Head Start program teacher; a licensed worker or licensing evaluator employed by a licensing agency; a public assistance worker; an employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or local child support agency caseworker; a peace officer; a firefighter, except for volunteer firefighters; a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor; any emergency medical technician; a psychological assistant; a marriage and family therapist trainee; an unlicensed marriage and family therapist intern; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; a commercial film and photographic print processor; a child visitation monitor; an animal control officer or humane society officer; a clergy member; any custodian of records of a clergy member; any employee of any police department, county sheriff’s department, county probation department, or county welfare department; an employee of volunteer of a Court Appointed Special Advocate program; a custodial officer; any person providing services to a minor child; an alcohol or drug counselor; a clinical counselor trainee; and a clinical counselor intern)

\textsuperscript{122} \textit{See} A.C.A. § 12-18-402 (enumerating child care worker or foster care worker; coroner; day care center worker; dentist; dental hygienist; domestic abuse advocate; domestic violence shelter employee; domestic violence shelter volunteer; employee of the Department of Human Services; an employee working under contract for the Division of Youth Services of the Department of Human Services; a foster parent; a judge; a law enforcement official; a licensed nurse; medical personnel who may be engaged in the admission, examination, care, or treatment of persons; a mental health professional; an osteopath; a peace officer; a physician; a prosecuting attorney; a resident intern; a school counselor; a school official; a social worker; a surgeon; a teacher; a court-appointed special advocate program staff member of volunteer; a juvenile intake or probation officer; a clergy member; an employee of a child advocacy center or a child safety center; an attorney ad litem in the course of his or her duties as an attorney ad litem; a sexual abuse advocate or a sexual abuse volunteer; a rape crisis advocate or rape crisis volunteer; a child abuse advocate or child abuse volunteer; a victim/witness coordinator; a victim assistance professional or victim assistance volunteer; or an employee of the Crimes Against Children Division of the Department of Arkansas State Police).
After California (which had 23 of these broad categories) and Arkansas (which had 20 of these broad categories), the three states with the next highest amounts were Illinois, Oregon, and Washington, all of which had fourteen. These five states are the most comprehensive of the non-universal systems because of the sheer number of categories that they enumerate as mandatory reporters. This fact becomes especially evident when viewed in juxtaposition with the least comprehensive systems, some of which only enumerate four or five categories.

**B. Least Comprehensive States – Mandated Reporters**

When compared to the laundry lists featured in the laws mentioned above, the laws in six states seem rather inadequate, because they enumerate only four or five categories of professions. Although many of these states utilize an umbrella method (in that they attempt to fit many specific professionals into an overarching category), their laws still are not as comprehensive as the aforementioned states. The Pennsylvania Bar Institute’s publication lists the following five states as enumerating only four or five categories: Arizona, Georgia, Kansas, Illinois, Oregon, and Washington.

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123 Illinois is listed as requiring the following categories to report: medical professionals; funeral home directors or employees, coroners, or medical examiners; school administrators and employees, educational advocates, or truant officers; members of a school board or the Chicago Board of Education; members of the governing body of a private school; social workers, social services administrators, or domestic violence program personnel; law enforcement officers or probation officers; mental health professionals; field personnel of the Department of Healthcare and Family Services, Juvenile Justice, Public Health, Human Services, Corrections, Human Rights, or Child and Family Services; Supervisors and administrators of general assistance under the Illinois Public Aid Code; Animal control officers or Department of Agriculture Bureau of Animal Health and Welfare field investigators; Foster parents, homemakers, or child care workers; members of the clergy; commercial film and photographic print processors or computer technicians.

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

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

126 I use the Pennsylvania Bar Institute’s breakdown of these categories for these three statutes because the list of mandatory reporters is spread throughout the text of the statute, rather than being in one single section like in California and Arkansas.
South Dakota, and Vermont. The manner in which these states proceed in enumerating this small amount of categories, however, differs vastly.

For instance, Arizona has the most bare-bones mandatory reporting statute. The statute states that “any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse…shall immediately report or cause reports to be made of this information…” However, the statute specifically limits the definition of “person” to the following five categories: medical professionals; peace officers, members of the clergy, priest or Christian Science practitioner; parent, stepparent or guardian of the minor; school personnel or domestic violence victim advocate; and any other person who has the responsibility for the care or treatment of the minor. South Dakota similarly has a short list of mandatory reporters, listing “any physician, dentist, doctor of osteopathy, chiropractor, optometrist, mental health professional or counselor, podiatrist, psychologist, religious healing practitioner, social worker, hospital intern or resident, parole or court services officer, law enforcement officer, teacher, school counselor, school official, nurse, licensed or registered child welfare provider, employee or volunteer of a domestic abuse shelter, employee or volunteer of a child advocacy organization or child welfare service provider, chemical dependency counselor, coroner, or any safety-sensitive position.” Although this list appears rather long, it breaks down into four simple categories: medical and mental health professionals, school officials, law enforcement officers, and any safety-sensitive position. Having only four or five categories enumerated in just a few words stands out as not very comprehensive as compared to the average state, and especially considering the most comprehensive states listed above.

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

Graph A: Enumerated Categories in the First Wave of Mandatory Reporting Laws vs. Today

![Graph A](image)

127 A.R.S. § 13-3620

128 Specifically, “any physician, physician’s assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor, or social worker who develops the reasonable belief in the course of treating a patient.”

129 See K.S.A. § 38-2223. It enumerates: a) the following persons providing medical care or treatment: persons licensed to practice the healing arts, dentistry and optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed professional or practical nurses; and chief
the statutes of Georgia and Vermont, which each enumerate five broad categories of professionals in a middle-of-the-road manner.\textsuperscript{130} Although sometimes these statutes seem to have large lists of professionals, this fact is misleading as to their comprehensiveness. Rather than enumerate “medical professionals” like some statutes, these statutes list many individual types of medical professionals. When boiled down to core categories like the Pennsylvania Bar Institute does in its publication, it is evident that these statutes are not very comprehensive, as they only have a few categories enumerated.

\textbf{C. Most Comprehensive States – Penalties\textsuperscript{131}}

While most states carry a misdemeanor charge with failing to report, four states upped the ante by creating the potential for a felony offense in the event of such a failure. For instance, Arizona’s statute provides that a person who fails to report is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, in which case the person is guilty of a class 6 felony.\textsuperscript{132} A class 6 felony in Arizona carries a minimum jail sentence of six months with a maximum of 1.5 years.\textsuperscript{133} Illinois defines a failure to report as a Class A misdemeanor with a

\begin{itemize}
  \item administrative officers of medical care facilities.
  \item the following persons licensed by the state to provide mental health services: licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors.
  \item C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child.
  \item D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers and community corrections officers, case managers…mediators… E) any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including, but not limited to, counseling, adoption services and pregnancy education and maintenance.
\end{itemize}

\textsuperscript{130} See Ga. Code Ann. § 19-7-5(c)(1) (enumerating physicians licensed to practice medicine, interns, or residents; hospital or medical personnel; dentists; licensed psychologists; podiatrists; registered professional nurses or licensed practical nurses; professional counselors, social workers, or marriage and family therapists; school teachers; school administrators; school guidance counselors, visiting teachers, school social workers or school psychologists; child welfare agency personnel; child-counseling personnel; child service organization personnel; law enforcement personnel; or reproductive health care facility or pregnancy resource center personnel and volunteers) and 33 V.S.A. § 4913(a) (enumerating “any physician, surgeon, osteopath, chiropractor, or physician’s assistant…any resident physician, intern, or any hospital administrator…any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel…dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, headmaster of an approved or recognized independent school…school teacher, school librarian, school principal, school guidance counselor, and any other individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approve or recognized independent school to provide student services, mental health professional, social worker, probation officer, any employee, contractor and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy…”).

\textsuperscript{131} See Appendix A for comprehensive list of penalties by state.

\textsuperscript{132} A.R.S. § 13-3620(O).

\textsuperscript{133} A.R.S. § 13-702(D).
subsequent violation carrying a class 4 felony charge. A class 4 felony in Illinois carries a minimum jail sentence of one year with a maximum of three years. Minnesota’s statute features a provision that if the abused child dies because of lack of medical care, the person is guilty of a felony and “may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $4,000, or both.” Finally, a failure to report is normally a Class A misdemeanor in Texas, except that it carries a state jail felony if it is “shown on the trial of the offense that the child was a person with mental retardation…” A state jail felony in Texas carries a minimum jail sentence of 180 days and a maximum jail sentence of two years with a fine not to exceed $10,000. These states, considering the stigma attached to a felony offender as well as the longer prison sentences that come with such an offense, showcase the harshest penalties in the country, at least in those certain circumstances listed in the statutes.

Two other states are notable with respect to comprehensiveness, not because of jail sentences, but because of fines. Delaware’s mandatory reporting statute, while not carrying any jail sentence with its failure to report provision, has the strictest monetary punishment in the United States, without question. Any failure to report carries an automatic $10,000 fine, with a subsequent violation bringing about a $50,000 fine. The only state that might possibly have a claim to the most stringent monetary penalty is Florida due to its new mandatory reporting law that was passed in the wake of the Sandusky scandal. The new law, formerly House Bill 1355, threatens universities and colleges with $1 million fines if known or suspected abuse on campus or at school-sponsored functions goes unreported. The increase in penalties, along with other provisions in the law dealing with the staffing of the Department of Children and Families and allocations of funds to victims of abuse, caused the bill’s sponsor Chris Dorworth to call it the “most comprehensive child abuse reporting law in the nation.” Dorworth’s claim may be true; the one million dollar fine attached to a failure to report is unprecedented and far outstrips any previous penalty.

D. Least Comprehensive States – Penalties

Although every state has a mandatory reporting law, not every state has a penalty for failing to report under that law. Three states, Maryland, North Carolina, and Wyoming, currently do not have penalties put forth in their statutes for failing to report when mandated to do so. This may not be the case for long, as following the Sandusky scandal advocacy groups in these states clamored for a change in the laws by adding penalties. For instance, various

134 325 ILCS 5/4.02.
135 730 ILCS 5/5-8-1(a)(7)
136 M.S.A. § 626.556(6)(c)
137 V.T.C.A., Family Code § 261.109(b)
138 V.T.C.A., Penal Code § 12.35.
140 Maryland, North Carolina, and Wyoming
groups in Maryland, such as the Survivors Network of Those Abused by Priests and the Maryland Coalition Against Sexual Assault, as well as prominent politicians in the state legislature, advocated for the creation of at least some kind of penalty in the mandatory reporting statute. Although these efforts have not succeeded to date, it is likely that these states will eventually put forth some kind of penalty, especially in light of the aftereffects of the Sandusky scandal and the intense societal pressure for reform.

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

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

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144 I.C.A. § 232.75

145 I.C.A. § 903.1

146 Haw. Rev. Stat. § 350-1.2

147 HRS § 706-663

wide variety of penalties to individuals (for instance, a gross misdemeanor in Washington carries a penalty with a maximum of one year in jail, a $5000 fine, or both and a misdemeanor in Michigan carries a ninety-three day prison sentence), the fact that they are all misdemeanors and not felonies is the significant consideration as far as sentencing is concerned. The majority of states in America, therefore, categorize a failure to report as a misdemeanor.

### IV. Pennsylvania’s Law

#### A. The Original Mandatory Reporting Law

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

Spurred on by Kempe’s “Battered Child” study and news reports both locally and across the nation, Pennsylvania was one of the first states to pass a mandatory reporting law, doing so in 1963, just one year after the publication of Kempe’s study. Act No. 492 of 1963 had the title, “An act to consolidate, amend, and revise the penal laws of the Commonwealth, requiring physicians and persons conducting, managing or in charge of hospitals and pharmacies to report to the police when persons with injuries inflicted in violation of the law come or are brought to them; imposing penalties for failure to make such reports; absolving persons who make such

reports from civil or criminal liability; and eliminating the privilege against certain testimony.” The act’s text explicitly mandated reporting for some professions, and remained as the state’s mandatory reporting statute for about ten years.

More than any other factor, it seems that the Children’s Bureau’s model statute influenced Pennsylvania to pass a mandatory reporting law in the form that it actually did. The


150 The text of the act is as follows:

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

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

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

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

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

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

151 The text of the model act is as follows (quoted from Legislation as Protection for the Battered Child, 12 Vill. L. Rev. 313, 317-18 fn. 40 (1966-1967):

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

2. Reports by Physicians and Institutions. Any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern and resident, having reasonable cause to suspect that a child under the [maximum age of juvenile court jurisdiction] brought to him or coming before him for examination, care or treatment has had serious physical injury or injuries inflicted upon him other than by accidental means by a parent or other person responsible for his care, shall report or cause reports to be made in accordance with the provisions of
most convincing evidence of this fact is the verbatim quote of the model statute at the beginning of Section 330(a). Both the Model Statute (in Section 2) and Pennsylvania’s statute (at the beginning of section A) have the exact same phrase enumerating the categories of professionals who are now mandated reporters: “any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern and resident. . . .” Pennsylvania was obviously inspired by the Model Statute to the point that it borrowed the Model’s enumeration language wholesale for its own act.

Although this one line is the only significant use of the exact same language, the Pennsylvania statute noticeably borrows from the format of the model statute. The Model Statute has six sections: Purpose, Reports by Physicians and Institutions, Nature and Content of Report: to Whom Made, Immunity from Liability, Evidence not Privileged, and Penalty for Violation. Although not in the same order, the Pennsylvania statute covers all six of these areas. Like the Model Statute, the Pennsylvania law only mandates reports by physicians and medical institutions and, again, used the exact same language from the Model Statute to do so. Both statutes mandate that the person report to the law enforcement authorities and detail what the report should contain. Just like the Model Statute, the Pennsylvania law absolves the reporter from civil or criminal liability and limits the use of the physician-patient privilege on any information useful for reporting. Finally, the Pennsylvania law follows the Model Statute’s recommendation in making the offense a misdemeanor, which in Pennsylvania carries the penalty of a fine up to five hundred dollars, imprisonment of up to one year, or both.

Two observations are worth noting about Pennsylvania’s 1963 mandatory reporting law. First, the categories enumerated by the law as mandatory reporters are fairly sparse. Following the Model Statute’s recommendation, as mentioned above, Pennsylvania simply listed medical services as a member of the staff of a hospital or similar institution he shall notify the person in charge of the institution or his designated delegate who shall report or cause reports to be made in accordance with the provisions of this Act.

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

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

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

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

152 The Model Statute says “intern and resident” while the Pennsylvania statute says “intern or resident,” but I do not believe that the difference is significant.
professionals as mandatory reporters. It was not alone in doing so; twenty-two other states enumerated only medical professionals in their first mandatory reporting law.\textsuperscript{153} Although seemingly solving the problem as far as the Children’s Bureau was concerned, these laws paled in comparison with laws passed in other states that enumerated many more categories. Nevada, for instance, had the most comprehensive law at the time, at least in terms of the numbers of enumerated categories. Nevada’s statute pegged as mandatory reporters healing arts personnel, nurses, social workers, school officials, dentists, attorneys, and clergymen.\textsuperscript{154} When viewed against that background, the Pennsylvania law seems fairly bare bones, even by the standards of the 1960s.

Second, the penalty put forward by the statute was strong, especially when compared with other state statutes. As mentioned above, the penalty for failing to report is a misdemeanor, with a maximum fine of five hundred dollars or a maximum jail sentence of one year or both. This penalty, juxtaposed with Vermont’s twenty-five dollar fine and the twenty-five states that did not have any punishment for failing to report, is evidently one of the most stringent penalties at the time.\textsuperscript{155} This penalty was so strong that it is more severe than many statutory penalties in place in various states today.\textsuperscript{156} Thus, Pennsylvania at one time had, at least in one respect, the strongest mandatory reporting law in the nation. The evolution of the law from the 1960s shows how this state of affairs changed.

The first step in this evolution came about just four years later. In 1967, the Pennsylvania legislature, perhaps self-conscious of the extreme nature of their penalty, amended the newly minted child abuse law by removing the aforementioned penalty section and replacing it with the following language: “failure to make a report required by this section shall constitute a summary offense and shall be punishable by a fine not exceeding three hundred dollars ($300) and in default thereof, imprisonment not exceeding ninety (90) days.”\textsuperscript{157} Taking the enforcement factor away from an already narrow law left Pennsylvania in a state of underreporting.

\textbf{B. The 1975 Child Protective Services Law}

Fairly soon after the 1967 Amendment was passed, voluntary organizations and other interested parties began clamoring for a new law. The speed at which the Pennsylvania legislature had passed the original statute inhibited the amount of debate they had entertained over its terms. An influential article written in the \textit{Duquesne Law Review} in 1969 advocated for


\textsuperscript{154} See id.


\textsuperscript{156} See, e.g. Ala. Code § 26-14-13 (maximum 6 months imprisonment or $500 fine), Mich. Comp. Laws §§ 722.633(1), (2) (93 days imprisonment, $500 fine, or both), W. Va. Code § 49-6A-8 (10 days imprisonment, $100 fine, or both).

changes to the law immediately. It pointed out that a serious drawback to the legislation was the “increased hazard to the injured child” due to the fact that “parents who are aware of the statute are reluctant to bring in an injured child for treatment.”\footnote{Eger and Popeck, \textit{The Abused Child}, supra note (?), at 136.} The movement gained traction throughout the late 1960s and into the early 1970s, at which point the unrest began to be heard by the Pennsylvania legislature.

In 1975, the legislature responded to pressure from voluntary organizations and news reports by drafting and considering a bolstered child abuse bill. The media was especially vehement about child abuse in the mid 1970s, preying on what they perceived to be the weaknesses of the current law. As the \textit{Wellsboro Gazette} reported after the fact, “The accounts of children who are severely beaten, children who are locked in dark closets and isolated rooms, children who are blistered and scarred by burns and reports of children who are fatally beaten by angry adults increase daily. The grim, sad, and sordid statistics relate what is happening to children in communities not only in Pennsylvania but across the country.”\footnote{Shapp Announces Opening of a 24-Hour “Childline”, \textit{Wellsboro Gazette} (Apr. 15, 1976).}

Certain legislators had a different take on the media’s agenda. Representative Richardson from Philadelphia declared during the debate on the House floor, “We have been spanked into believing by the press and others that we need a child abuse bill, no matter how raggedy it is.”\footnote{Legislative Journal – Pennsylvania House of Representatives, October 15, 1975, p.3012.} Similarly, Representative Zeller from Lehigh County lamented that voting against the bill would be like “voting against motherhood and apple pie” because the “liberal press” had created such a circus around the issue that anyone who votes against the bill will “be labeled a real monster.”\footnote{Id. at 3013.} Nonetheless, both sides agreed that the media played a large role in moving the bill into the Pennsylvania legislature.

The proposed bill, Senate Bill No. 25, received lively debate on the floor of the House of Representatives. For instance, Representative Dreibelbis from Centre County cited statistics from the Department of Welfare to show that a stronger mandatory reporting law was not needed because there were not very many cases of child abuse in Pennsylvania to begin with.\footnote{Id. at 3003 (“…in the last 5 years there were 53 counties which reported no cases of suspected child abuse. In 1974, there were four counties that had zero suspected cases. In 1973, there were nine counties that had zero suspected cases. In 1972, there were nine counties that had zero suspected cases; in 1971, 11; and in 1970, 22. In the last 5 years, there were 14 counties that had less than 10 suspected cases of child abuse.”)} Representative LaMarca from Berks County countered with the declaration that “the very reason for this bill is the fact that those figures are the ones that you cite. There has been no obligation and duty, and there has been no penalty imposed if people do not report child abuse.”\footnote{Id.} LaMarca effectively argued that Dreibelbis’ statistics showed that there was a vast underreporting problem in Pennsylvania due to the lack of concrete punishment for failing to report, not that child abuse did not exist in Pennsylvania. Representative DiCarlo from Erie supported LaMarca, stating that the new law would make it “much more feasible and much easier to have child abuse cases reported,” which would solve “one of the problems in the
Debate raged over many other issues not relevant to mandatory reporting, but it is interesting to note that mandatory reporting was certainly not an ignored issue during the debate over a comprehensive child abuse law.

Ultimately, the proponents of the bill had the stronger arguments. Representative DiCarlo argued, “The individuals who have worked with the problem of child abuse for the last year and a half have looked at the problem; all interested parties have gotten together. We feel that the bill we have in front of us is the best possible piece of legislation that can be passed.” As Representative McLane from Lackawanna County declared on the Floor, since Pennsylvania essentially had “no child abuse legislation” at the time, a “good” solution was better than nothing. The House ended up passing the bill by a vote of 169 to 22 in October of 1975.

In the Senate, the bill was not so contentious. Senator O’Pake led the charge for the bill when it was first introduced, pulling on his fellow senators’ heartstrings by showing the need for a stronger child abuse bill through the use of a current event anecdote. Responding to a charge that the bill would remove protections on family privacy, Senator O’Pake declared, “This morning, at about 4:00 o’clock, in Philadelphia, a six-month old baby was found dead in a bureau or dresser drawer, well protected in the isolation of family privacy, protected to the point that the baby is now dead.” As the bill came to a vote in November 1975, O’Pake again promoted it, telling his fellow senators, “Last year the cries of over 2,200 children-victims in Pennsylvania were heard and reported. How many more went undetected, causing severe and permanent scarring of young human beings we will never know. Perhaps this law will permit Pennsylvania to hear and respond to their cries.” O’Pake’s testimony was quite persuasive. The Senate passed the bill unanimously, and it was signed into law by the governor of Pennsylvania on November 26, 1975.

The Child Protective Services Law, as it was called in its short title, became the foundation of Pennsylvania’s current child abuse law. With the exception of a few revisions, its

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164 Id.


166 Id.


168 Legislative Journal – Pennsylvania Senate, November 15, 1975, p.927


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

(b) Whenever any person is required to report under subsection (c) in his capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, he shall immediately notify the person in charge of such institution, school, facility, agency, or the designated agent of the person in charge. Upon notification, such person in charge of his designated agent, if any, shall assume the responsibility and have the legal
basic form remains intact even today. The first notable feature of the new law is that it bolstered the penalties for failing to report. As noted, the penalties prior to the passage of the CPSL were a maximum jail sentence of 90 days or a maximum fine of three hundred dollars. The new law formally defined a failure to report as a summary offense, which also carried a ninety day jail sentence.\textsuperscript{170} Where the new law really increased the penalties was in regards to subsequent violations. Whereas the old law had a ninety day maximum jail sentence regardless of whether the violation was a first-time incident or a subsequent violation, the new law enlarged the potential penalty to one year, if the person was a repeat offender.\textsuperscript{171} This subtle difference served the purpose of ensuring that child abuse cases would not habitually go unreported. A failure to report one time might be an honest mistake, but subsequent failures mark a pattern of irresponsibility.

The second notable feature of the 1975 Act is that it greatly expanded the group of mandatory reporters by enumerating many more types of professionals besides medical personnel. Although many of the listed professions can be grouped under the heading of “medical professionals,” the list also includes coroners, dentists, school officials, social services and day care workers, and law enforcement officers, among a few others. This expansion of the class of mandatory reporters served as what a 1977 law review article said “the main thrust” of the new law was “more complete reporting of cases of suspected child abuse.”\textsuperscript{172} By adding more mandatory reporters to the current pool, the legislators certainly accomplished this goal.

The question may arise whether the new law should have included a universal mandatory reporting provision. However, observers looking back in a post-Sandusky world must remember that, in 1975, universal mandatory reporting was a minority view. At no point during the debates on the Pennsylvania Senate and House of Representatives floors was the idea of universal mandatory reporting even mentioned. Even a few years after the passage of the law, when the Pennsylvania General Assembly conducted an oversight evaluation of the perceived triumphs and shortcomings of the new law, not one of the thirty-six proposals to strengthen the law

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

Section 12. Penalties for failure to report. A person or official required by this chapter to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

\textsuperscript{170} See 18 Pa.C.S.A. § 1105 (1972).

\textsuperscript{171} See 18 Pa.C.S.A. § 1104 (enumerating a misdemeanor of the third degree as carrying a maximum one year jail sentence).

suggested a switch to universal reporting. At the time of the creation of the Pennsylvania Child Protective Services Law, it did not seem to cross the drafters’ minds to make the law universally apply to all adults.

The Joint State Government Commission, while finding certain aspects about which to recommend change, generally praised the law when it conducted its evaluation. The Commission concluded, “The Child Protective Services Law encourages public reporting of suspected child abuse by requiring the State and counties to receive reports 24 hours a day, 7 days a week, and to undertake comprehensive public education activities. Since enactment of the law, reporting of suspected child abuse has risen dramatically.” The report found that the number of reports of suspected child abuse from all sources increased by over 100 percent, from 6,415 in 1976 to 12,939 in 1977. The generally positive review of the Commission, coupled with the overall success of the law in terms of the increase in reporting, contributed to its staying in power. Since 1975, only minute amendments have been made to the Law.

C. The PCSL in Title 23

In 1990, the Pennsylvania Child Protective Services Law was incorporated into Title 23 of the Pennsylvania Consolidated Statutes, as it is currently codified at 23 Pa.C.S.A. §§ 6303 et seq. Although some minor changes were made to the language of the statute at this time, it remained for all intents and purposes identical to the statute found formerly in Title 11. The

173 See The Senate Committee on Aging and Youth and the House Committee on Health and Welfare by the staff of the Joint State Government Commission, Administration of Pennsylvania’s child abuse law: a legislative oversight evaluation (1979).

174 Id. at 13.

175 Id.

176 The relevant sections of 23 Pa.C.S.A. §§ 6303 et seq. are as follows:

§6311. Persons required to report suspected child abuse

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

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

(c) Staff members of institutions, etc.—Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated
statute has been amended a few times since being incorporated into Title 23 with three amendments being particularly notable, one in 1994 and two passing in 2006. Two amendments occurred in response to clergy abuse scandals and the other further bolstered penalties for failing to report.

Act 151 of 1994 amended the mandatory reporting law to include clergy.\footnote{23 Pa.C.S. §6311(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, \textbf{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.} After 1994, members of the clergy were included as mandatory reporters in §6311 of the law. Pennsylvania again amended the law in 2006.

In 2005, a grand jury report uncovered cases of dozens of priests who had sexually abused hundreds of children under the watch of the Philadelphia archdiocese. In 2006, the Pennsylvania Senate introduced Senate Bill 1054, which attempted to close any loopholes that may have contributed to the clergy abuse scandal and expanded mandatory reporting. The bill required people in charge of caring for children to report suspected abuse even if the caretaker did not hear about the abuse directly from the child.\footnote{Time to Revise Pathetic Sex-Abuse Laws. \textit{Pa. Senate Doesn’t Have Much Time to Approve SB 1054}, Philadelphia Inquirer (Nov. 20, 2006), http://articles.philly.com/2006-11-20/news/25407298_1_abuse-pennsylvania-senate-laws.} This specifically addressed problems that arose during the Philadelphia archdiocese scandal because some believed the church was not legally obligated to report child abuse to the police when a child’s parents, as opposed to the child herself, reported abuse to the archdiocese under the old law.\footnote{Angela Couloumbis, \textit{Pa. sex-abuse law is weaker than other states’}. \textit{Grand jurors say the law keeps them from pursuing charges in the clergy probe. Child advocates admit change is difficult.}, Philadelphia Inquirer (Sept. 25, 2005), http://articles.philly.com/2005-09-25/news/25428983_1_sexual-abuse-limitations-on-child-abuse-marci-hamilton.} More importantly, the bill made supervisors and employers of child abusers responsible for mandatory reporting by making all laws regarding the endangering of the welfare of children apply to them.\footnote{Id.} The bill received significant support from people who had been outraged by the clergy abuse scandal.

However, despite the charged emotions that usually led to expedient legislative processes, the bill stalled in the Pennsylvania legislature. Michael Piechuch, majority chief agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.

§6319. Penalties for failure to report

A person or official required by this chapter to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.
counsel for the Pennsylvania House Judiciary Committee, believed that the Catholic bishops were to blame for the quagmire. He opined that if Cardinal Justin Rigali, the Cardinal of Philadelphia, supported the bill, “it would probably be done.”  The Philadelphia Catholic Conference eventually issued a statement that it was not actively opposing the bills, which gave traction to the legislature in the summer of 2006. Although the bill almost died in the House in mid June of 2006, it was finally passed into law on November 29, 2006. Pennsylvania thus needed its own clergy abuse scandal to join the myriad of other states that had already attempted to avoid clergy abuse scandals through strengthened mandatory reporting legislation.

The second noteworthy change in the 2006 amendments to the original passage of the law was the further intensification of penalties. As amended in 2006, 23 Pa.C.S.A. § 6319 now reads “a person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities who willfully fails to do so commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation.” The maximum jail sentences for both a first-time failure and a subsequent failure were increased. The first-time failure sentence rose from ninety days to one year. The second-time failure sentence rose from one year to two years. This 2006 amendment was passed as part of a larger bill along with three other bills that were all aimed at bolstering penalties in situations dealing with child abuse. The bills were so strong that Pennsylvania Governor Edward G. Rendell declared as he signed them into law that “today is an extraordinary day for victims of sexual assault in Pennsylvania and especially for the youngest victims.” These penalties remained in place during the Sandusky scandal and remain in place to this day.

D. Potential Changes to the Current Law

In response to the Sandusky scandal, the Pennsylvania legislature introduced numerous bills, most likely due to the fact that the scandal took place on its soil. Although none of the eight bills have been passed as of the date of this article, they represent a level of outrage that is specifically targeted at the Sandusky events. First and foremost, House Bill 1895 allows exceptions to governmental immunity for child sexual abuse acts committed by individuals employed by a public institution, agency, or other legal entity. Similarly, House Bill 2046 declares that whenever a person is acting in an enumerated capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, that person shall have

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182 Id.

183 Act of Nov. 29, 2006, P.L. 1581, No. 179

184 See 18 Pa.C.S.A. 1104(2) (enumerating a misdemeanor of the second degree as carrying a sentence of imprisonment for not more than “two years”).

185 Edward G. Rendell, Governor Rendell Signs Bills to Protect Children, Aid Victims of Sexual Assault and Toughen Penalties for Sex Offenders, Governor of Pennsylvania (Nov. 30, 2006).

186 See 2012 Introduced Legislation, NCSL, supra note 87.
the legal obligation to report if he or she has personally witnessed an act he or she reasonably believes may constitute child abuse. In a more specifically targeted bill, House Bill 1990 adds a school staff member, school faculty, or coach to the list of mandatory reporters. Less relevant to mandatory reporting of child abuse, but still relevant to child abuse generally, is House Bill 2026 which requires that licensing boards for professionals mandated to report suspected child abuse or neglect require those professionals to submit documentation of the completion of at least two hours of approved continuing education training, per licensing cycle, on the identification and reporting of child abuse. These bills show that the Pennsylvania legislature certainly had the Sandusky scandal in the forefront of their consciousness while they were being written.

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

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

187 Id.
188 Id.
189 Id.
190 The bills differ in that HB 2048 allows a prosecution for failure to report to be commenced within three years after the discovery of a willful failure to report or refer while HB 2047 does not. See id.
191 Id.
192 Id.
Aside from the legislative aspect, the level of reporting dramatically increased following the Sandusky scandal. Child Line, Pennsylvania’s hotline for reporting suspected child abuse, averaged around 2,300 calls a week prior to the scandal.\textsuperscript{193} Between November 7th and November 11th, just days after Sandusky’s arrest, Child Line received 4,832 calls of suspected child abuse.\textsuperscript{194} Carey Miller, a spokeswoman for the Pennsylvania Department of Welfare, said that, while merely a “guess,” she believed that “when you have a high profile case such as the one that happened in Penn State” it gets “national attention” and “increases awareness.”\textsuperscript{195} The number of calls fell to an amount much closer to the average in the next week (2,866 calls were logged).

V. Conclusion

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

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

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


\textsuperscript{194} \textit{Id.}

\textsuperscript{195} Quoted in \textit{id.}
**APPENDIX A: States and Their Statutory Penalties for Failure to Report**

<table>
<thead>
<tr>
<th>State</th>
<th>Primary Penalty</th>
<th>Additional Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Misdemeanor (6 months, $500)</td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>Class A misdemeanor</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>Class 1 misdemeanor</td>
<td>Class 6 felony (reportable offense)</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Class C misdemeanor (reckless)</td>
<td>Class A misdemeanor (knowing)</td>
</tr>
<tr>
<td>California</td>
<td>6 months, $1000 (mandated reporter)</td>
<td>1 year, $5000 (willful failure)</td>
</tr>
<tr>
<td>Colorado</td>
<td>Class 3 misdemeanor</td>
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</tr>
<tr>
<td>Connecticut</td>
<td>$500-$2500 fine, education/training</td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>$10,000</td>
<td>$50,000 (subsequent)</td>
</tr>
<tr>
<td>Florida</td>
<td>1st degree misdemeanor (1 year, $1000)</td>
<td>3rd degree felony (live with child)</td>
</tr>
<tr>
<td>Georgia</td>
<td>Misdemeanor</td>
<td></td>
</tr>
<tr>
<td>Hawaii</td>
<td>Petty misdemeanor</td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>Misdemeanor</td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>Class A misdemeanor</td>
<td>Class 4 felony (subsequent)</td>
</tr>
<tr>
<td>Indiana</td>
<td>Class B misdemeanor</td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>Simple misdemeanor</td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td>Class B misdemeanor</td>
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<tr>
<td>Kentucky</td>
<td>Class B misdemeanor</td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>$10,000, 5 years</td>
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</tr>
<tr>
<td>Maine</td>
<td>$500</td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>NOT ADDRESSED IN STATUTE</td>
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</tr>
<tr>
<td>Massachusetts</td>
<td>$1000</td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td>Misdemeanor (93 days, $500)</td>
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</tr>
<tr>
<td>Minnesota</td>
<td>Misdemeanor</td>
<td>Felony (if child dies)</td>
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<td>Mississippi</td>
<td>1 year, $5000</td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>Class A misdemeanor</td>
<td></td>
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<tr>
<td>Montana</td>
<td>Misdemeanor</td>
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<tr>
<td>Nebraska</td>
<td>Class III misdemeanor</td>
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<td>Nevada</td>
<td>Misdemeanor</td>
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<td>New Jersey</td>
<td>Disorderly person</td>
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<tr>
<td>New Mexico</td>
<td>Misdemeanor (1 year, $1000)</td>
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<tr>
<td>New York</td>
<td>Class A misdemeanor</td>
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<tr>
<td>North Carolina</td>
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<tr>
<td>North Dakota</td>
<td>Class B misdemeanor</td>
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<td>Ohio</td>
<td>4th degree misdemeanor</td>
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<td>Oklahoma</td>
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<td>Oregon</td>
<td>Class A violation</td>
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<td>Pennsylvania</td>
<td>3rd degree misdemeanor</td>
<td>Misdemeanor 2 (subsequent)</td>
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<tr>
<td>Rhode Island</td>
<td>Misdemeanor (1 year, $500)</td>
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<tr>
<td>South Carolina</td>
<td>Misdemeanor (6 months, $500)</td>
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<tr>
<td>South Dakota</td>
<td>Class 1 misdemeanor</td>
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<tr>
<td>Tennessee</td>
<td>Class A misdemeanor ($2,500)</td>
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<td>Texas</td>
<td>Class A misdemeanor</td>
<td>State jail felony (retarded child)</td>
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<td>Utah</td>
<td>Class B misdemeanor</td>
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<tr>
<td>Vermont</td>
<td>$500</td>
<td>6 months, $1000 (cover up)</td>
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<tr>
<td>Virginia</td>
<td>$500</td>
<td>$100-$1000 (subsequent)</td>
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<tr>
<td>Washington</td>
<td>Gross misdemeanor (1 year, $5000)</td>
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<tr>
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<td>Misdemeanor (10 days, $100)</td>
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</tr>
<tr>
<td>Wisconsin</td>
<td>6 months, $1000</td>
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</tr>
<tr>
<td>Wyoming</td>
<td>NOT ADDRESSED IN STATUTE</td>
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</tbody>
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