

Summer 3-1-2013

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Jon M. Hogelin

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Recommended Citation

Jon M. Hogelin, *To Prevent and to Protect: The Reporting of Child Abuse by Educators*, 2013 BYU Educ. & L.J. 225 (2013).
Available at: <https://digitalcommons.law.byu.edu/elj/vol2013/iss2/3>

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TO PREVENT AND TO PROTECT: THE REPORTING OF CHILD ABUSE BY EDUCATORS

Jon M. Hogelin[†]

I. INTRODUCTION

A major responsibility of being an educator in the United States is providing for the well-being of the children in the educator's care. This is not limited to the actual supervision of the children during hours of the day where there is direct contact, but also includes the observance of signs of possible abuse occurring when outside of the educator's care. It is imperative that educators—which may include, but are certainly not limited to teachers, principals, school counselors, and school co-curricular leaders (e.g., coaches)—are properly trained to identify abuse and know the proper actions that they need to take when they suspect a child is being abused. Educators have an important role in stopping abuse because they have such quality contact and spend so much time, perhaps more than some parents, with children.

This Comment will identify and compare the different statutes, or codes, that exist in different states requiring educators to report child abuse. Most of these state laws are inspired by the Child Abuse Prevention and Treatment Act (CAPTA).¹ CAPTA allowed for the creation of the National Center of Child Abuse and Neglect, which focused on ascertaining accurate information, through research, regarding the extent of child abuse and neglect.² It also was created to give “technical assistance and training to states and local

[†] J.D., J. Reuben Clark Law School, Brigham Young University, B.A., Brigham Young University, A.S., Utah Valley University. The author expresses gratitude to his sixth-grade teachers Ms. Brown and Mr. Berry for having the courage to report child abuse. The author also expresses gratitude to his wife, Lisa, for her support and encouragement in addressing this sensitive issue. The author is grateful to the editors of this Journal for their hard work.

¹ 42 U.S.C. §§ 5101–5119c (2006).

² DANIEL C. SWINTON, CRIMINAL LIABILITY, FAILURE TO REPORT CHILD ABUSE, AND SCHOOL PERSONNEL: AN EXAMINATION OF HISTORY, POLICY AND CASELAW 8 (2005) (unpublished manuscript), *available at* <http://www.educationlawconsortium.org/forum/2005/papers/swinton.pdf>.

groups.”³ States may also receive federal grants under the provisions of CAPTA. This funding is to provide assistance for the costs associated with reporting and prevention programs, which can be very high. The federal funding is not an extraordinary amount—in the mid-1990s the funding was \$80,000—but it does provide states with a financial incentive to implement important programs.⁴ CAPTA also provides for immunity to individuals reporting child abuse. The immunity that is afforded to those who report child abuse, although not drastically different, can vary in certain states.⁵

This Comment will also discuss and compare requirements pertaining to the training and education of educators in dealing with the identification and reporting of child abuse. It will explain the standards for certification requirements and further education regarding recognizing and reporting child abuse. This is to set a foundation for possible theories of why there may be some child abuse that goes unreported. It may be possible to have consistent and thorough mandatory federal training for educators to ensure that any evidence of child abuse will not only be identified, but properly reported so that there can be proper intervention.

Presently, there is minimal direct authority from federal law with regard to educators reporting child abuse, however, and there needs to be some federal involvement. Since the protection of children is so crucial, it is important that we identify all possibilities available to accomplish these goals. Possibilities may involve requirements for training on how to identify abuse to protective legal provisions for educators who report abuse. For example, current state statutes or codes provide immunity, in most circumstances, from civil and criminal actions for those who report child abuse to the local police force. However, there may be social or political ramifications for educators who do report child abuse.⁶ This may be a reason that not all child abuse cases are reported. This Comment will discuss if a federal “whistleblower” statute for educators, which would insulate them from consequences

³ *Id.*

⁴ *Id.*

⁵ 42 U.S.C. §§ 5101-5106, 5111-5116 (2006).

⁶ See generally April Sikes et al., *Experiences of School Counselors During and After Making Suspected Child Abuse Reports*, 8 J. SCH. COUNSELING 1 (2010).

other than civil or criminal lawsuits, may be necessary.

II. FACTS ABOUT CHILD ABUSE

To understand the absolute necessity for educators to report child abuse, one only needs to look to the facts of child abuse. For the purposes of this Comment, “child abuse” and “child maltreatment” are treated synonymously. CAPTA recognizes five types of child abuse: physical abuse, neglect, sexual abuse, exploitation, and emotional abuse.⁷ It also defines abuse as “an act or failure to act which presents an imminent risk of serious harm.”⁸ Withholding of medical treatment is also included as a form of abuse.⁹

For the last decade, an average of 900,000 children in the country (including Puerto Rico and the District of Columbia) were victims of neglect and abuse annually.¹⁰ The number of children that were investigated in 2005 numbered approximately 3.5 million, with 25% determined to be neglected or abused.¹¹ Of those children, 62.8% experienced neglect, 16.6% were physically abused, 9.3% were sexually abused, and 7.1% were emotionally abused.¹² It was estimated that 1,460 children died of neglect or abuse—almost two children per 100,000 of the national population.¹³

Who are the individuals known to be major contributors to the abuse of a child? These individuals vary from parents, either collectively or individually, to other immediate and distant relatives and from trusted individuals to complete strangers. It is not always the case that child abusers act alone, as abuse may occur at the hands of multiple individuals at one time.¹⁴ Within the last decade, approximately 40% of child abuse victims were harmed by mothers acting alone, 18.3% by fathers acting alone, and 17.3% by both parents.¹⁵ Children that were abused by caregivers other than the parents made up 10.7%.¹⁶ These numbers clearly show that it is vital for

⁷ 42 U.S.C. § 5106g (2006).

⁸ *Id.*

⁹ *Id.*

¹⁰ See Sikes et al., *supra* note 6, at 1, 3 (citing similar child abuse statistics).

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.*

educators to be trained and prepared to recognize when a child is being abused. For the majority of children, going to school can be a sanctuary and a place where their cries for help are recognized and heard. It is likely that their cries for help are not always vocal or obvious, creating a need for trained observation for identification.

The effects that victims of child abuse endure, both in their adolescence and adulthood, are startling. Victims generally have lower IQs as a result of abuse.¹⁷ This likely can inhibit a child from obtaining a high level of education due to frustration and a lack of confidence.¹⁸ Mental health problems also result, including depression, eating disorders, sleep disruption, and sexual problems.¹⁹ Victims also have a higher rate of suicide attempts,²⁰ which may speak to the feelings of diminished self-worth among victims. They also experience more alcohol- and drug-related problems, including substance abuse.²¹ Additionally, a victim of child abuse is susceptible to being trapped in a vicious cycle since they are prone to becoming abusers themselves.²² This includes increased and often-demonstrated aggressive or violent behavior.²³

The loss of victims' stability during childhood, evidenced by these consequences, is disturbing. Childhood is likely the time where the foundation is laid for an individual's ability to make decisions, react to situations, and interact with others. Childhood cannot be replaced or recreated. Like a person who has a disability, victims of child abuse must learn to cope with the effects of abuse for the rest of their life, as they are unlikely to go away.

The consequences endured by abused children show the absolute need for early detection and reporting of child abuse. Educators who participate in doing so help to eliminate the negative consequences and "help prevent the continuing cycle of abuse."²⁴ They also can prevent a situation from becoming a

¹⁷ Linda L. Hale & Julie Underwood, *Child Abuse: Helping Kids Who Are Hurting*, 74 MARQ. L. REV. 561, 561 (1991).

¹⁸ Sikes et al., *supra* note 6, at 4.

¹⁹ *Id.*

²⁰ Hale & Underwood, *supra* note 17, at 561.

²¹ *Id.*

²² *Id.*

²³ Sikes et al., *supra* note 6, at 4.

²⁴ Hale & Underwood, *supra* note 17, at 561.

medical- or court-related situation.²⁵ Schools have more access to children than any other social institution, including health care providers.²⁶ Although health care providers may be able to inspect the physical well-being of a child more closely, they do not spend as much time with and contribute to the actual development of a child as do teachers and other educators. Outside of a child's family, schools are considered the most important influence on an individual's adolescence.²⁷ This reinforces the necessity that educators be taught to recognize and report child abuse. Furthermore, it is imperative that educators have significant ability to intercede in an abusive situation. Educators should be in the best possible position to help a child in an abusive situation, whether it is at home or elsewhere, without fear of retribution. This would include even the possibility of abuse existing at the school. Although there are some protections in place for educators, there should be more. If such added protections for educators means helping to save even one child from abuse, the better it is for society as a whole.

III. MANDATORY STATE STATUTES AND CODES FOR REPORTING CHILD ABUSE

Dr. C. Henry Kempe is credited with bringing attention to the need for mandatory reporting of child abuse by professionals.²⁸ Dr. Kempe's initial focus was mandatory reporting for physicians, stemming from his concern for the number of non-accidental injuries brought to his attention.²⁹ Beginning with a symposium that he initiated in 1961 through the American Academy of Pediatrics, Dr. Kempe was able bring enough attention to the problem that by 1965 all fifty states and the District of Columbia required physicians to report child abuse.³⁰ However, in 1967, of all the states that mandated that physicians report any suspected child abuse, only fourteen required the same of teachers.³¹ The number of states increased to twenty-four in 1974 and more than doubled

²⁵ *Id.* at 562.

²⁶ *Id.* at 561.

²⁷ *Id.* at 562.

²⁸ Robert J. Shoop & Lynn M. Firestone, *Mandatory Reporting of Suspected Child Abuse: Do Teachers Obey the Law?*, 46 W. EDUC. L. REP. 1115, 1116-1117 (1988).

²⁹ SWINTON, *supra* note 2, at 6.

³⁰ *Id.*

³¹ *Id.* at 9.

to forty-nine by 1977.³² Now, “[a]ll fifty states [and the District of Columbia] currently have laws or regulations that implicitly or explicitly mandate that teachers must act on their suspicions.”³³

A current example of the enforcement of one of these state’s mandatory reporting laws involves the controversy surrounding Pennsylvania State University.³⁴ A former assistant football coach, Jerry Sandusky, was convicted of sexual abuse, including sexual abuse of a child in the shower of the locker room—an act that was witnessed by current assistant football coach Mike McQueary, who at the time of

³² *Id.*

³³ Shoop & Firestone, *supra* note 28, at 111; *see also* ALA. CODE §§ 26-14-3, 26-14-4 (LexisNexis 2009); ALASKA STAT. §§ 47.17.020, 47.17.023 (2010); ARIZ. REV. STAT. ANN. § 13-3620 (2010); ARK. CODE ANN. § 12-18-401 (2009), § 12-18-402 (2009 & Supp. 2011); CAL. PENAL CODE §§ 11165.7, 11166 (West 2011); COLO. REV. STAT. ANN. § 19-3-304 (2005 & Supp. 2011); CONN. GEN. STAT. §§ 17a-101, 17a-103 (2006 & Supp. 2011); DEL. CODE ANN. tit. 16, § 903 (2003 & Supp. 2010); D.C. CODE § 4-1321.02 (2003 & Supp. 2011); FLA. STAT. § 39.201 (2010); GA. CODE ANN. §§ 16-12-100, 19-7-5 (2010); HAW. REV. STAT. ANN. §§ 350-1.1, 350-1.3 (1993 & Supp. 2009); IDAHO CODE ANN. § 16-1605 (2009); 325 ILL. COMP. STAT. ANN. 5/4, 720 ILL. COMP. STAT. ANN. 5/11-20.2 (2008 & Supp. 2011); IND. CODE §§ 31-33-5-1, 31-33-5-2 (2007); IOWA CODE § 232.69 (2006 & Supp. 2011), § 728.14 (2006); KAN. STAT. ANN. § 38-2223 (2000); KY. REV. STAT. ANN. § 620.030 (LexisNexis 2008); LA. CHILD. CODE ANN. art. 603 (2004 & Supp. 2011), art. 609 (2004); ME. REV. STAT. tit. 22, § 4011-A (2004 & Supp. 2010); MD. CODE ANN., FAM. LAW §§ 5-704, 5-705 (LexisNexis 2006 & Supp. 2011); MASS. GEN. LAWS ch. 119, §§ 21, 51A (2008 & Supp. 2011); MICH. COMP. LAWS §§ 722.623-624 (West 2011); MINN. STAT. § 626.556 (2009 & Supp. 2011); MISS. CODE ANN. § 43-21-353 (2009); MO. REV. STAT. § 210.115 (2010), §§ 352.400, 568.110 (2001 & Supp. 2011); MONT. CODE ANN. § 41-3-201 (2011); NEB. REV. STAT. § 28-711 (2008); NEV. REV. STAT. § 432B.220 (2009); N.H. REV. STAT. ANN. § 169-C:29 (2002); N.J. STAT. ANN. § 9:6-8.10 (West 2002); N.M. STAT. ANN. § 32A-4-3 (2009); N.Y. SOC. SERV. LAW § 413-14 (McKinney 2010); N.C. GEN. STAT. § 7B-301 (2009); N.D. CENT. CODE § 50-25.1-03 (2007 & Supp. 2011); OHIO REV. CODE ANN. § 2151.42.1 (LexisNexis 2008 & Supp. 2011); OKLA. STAT. tit. 10A, § 1-2-101, tit. 21, § 1021.4 (2009 & Supp. 2011); OR. REV. STAT. §§ 419B.005, 419B.010, 419B.015 (2009); 23 PA. CONS. STAT. §§ 6311-12 (2010); R.I. GEN. LAWS §§ 40-11-3, 40-11-6 (2006); S.C. CODE ANN. § 63-7-310 (2010 & Supp. 2010); S.D. CODIFIED LAW § 26-8A-3 (2004); TENN. CODE ANN. §§ 37-1-403, 37-1-605 (2010); TEX. FAM. CODE ANN. § 261.101 (West 2008); UTAH CODE ANN. § 62A-4a-403 (LexisNexis 2006 & Supp. 2011); VT. STAT. ANN. tit. 33, § 4913 (2001 & Supp. 2011); VA. CODE ANN. § 63.2-1509 (2007 & Supp. 2011), § 63.2-1510 (2007); WASH. REV. CODE § 26.44.030 (2005 & Supp. 2011); W. VA. CODE ANN. § 49-6A-2 (2009); WIS. STAT. § 48.981 (2011); WYO. STAT. ANN. § 14-3-205 (2011).

³⁴ FREEH SPORKIN & SULLIVAN, LLP, REPORT OF THE SPECIAL INVESTIGATIVE COUNSEL REGARDING THE ACTIONS OF THE PENNSYLVANIA STATE UNIVERSITY RELATED TO THE CHILD SEXUAL ABUSE COMMITTED BY GERALD A. SANDUSKY (July 12, 2012), *available* at http://media.pennlive.com/midstate_impact/other/REPORT_FINAL_071212.pdf [hereinafter REPORT].

the abuse in 2002 was a graduate assistant.³⁵ McQueary informed Joe Paterno, head coach of the football team, of the incident.³⁶ Paterno then informed the athletic director, who shared this information with a university vice president.³⁷

In the aftermath of the controversy in November 2011, the athletic director and vice-president were charged with a failure to report abuse of a child to proper authorities.³⁸ In accordance with Pennsylvania state law, school administrators, teachers, school nurses, social services workers, daycare center workers, or any other childcare or foster care workers are required to report when there is reason to suspect abuse or an observation or knowledge of a child being abused or neglected.³⁹ Based on this statute, both men face criminal prosecution, as well as the likelihood of future civil suits.

The athletic director and vice president were in a position not only to help the abused child, but also to prevent any further abuses by the former coach upon other children. There are currently seven other children alleged to have been abused by Sandusky after the incident in 2002.⁴⁰ Both the athletic director and the vice-president were in a position that, had they reported the 2002 abuse, it is quite possible that there would not have been seven other victims. This is why it so very important that child abuse be reported, especially when it involves a person of trust who works with children.

It is unclear why both the athletic director and vice president chose not to report the 2002 incident. Various theories involve money, reputation, and success. Perhaps they felt they could help the university avoid gaining a bad reputation, possibly believing that less money would be donated to the university's programs and appropriated by the state. Also, they may have thought that it would be much less difficult to recruit athletes to a university with a tradition of successful athletic programs. Whatever the reason for their failure to report the incident, it is clearly unacceptable on many different levels. Hopefully, the Pennsylvania State

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ 23 PA. CONS. STAT. ANN. § 6311 (West 2010).

⁴⁰ Mark Viera & Pete Thamel, *Penn State Said to Be Planning Paterno Exit Amid Scandal*, N.Y. TIMES (Nov. 8, 2011), http://www.nytimes.com/2011/11/09/sports/ncaaf/football/penn-state-said-to-be-planning-paternos-exit.html?_r=2&sq=paterno&st=cse.&scp=1&pagewanted=all.

University controversy will bring the issue of the necessity and legal obligations to report child abuse to not only a state stage, but a national one, as well.

The Pennsylvania State University issue aside, there are few cases where there is actual criminal action for educators not reporting child abuse. Research shows that fewer than ten cases had been filed by the mid-1990s.⁴¹ It is alarming that there are not more cases of record when it is known that not all suspected child abuses are reported by educators.⁴² It is very plausible that there are more instances where there is knowledge that a suspicion of child abuse has gone unreported by an educator. There may be many reasons for lack of prosecution for not enforcing a statutory or code requirement. Whatever the reason, a statute that is not enforced is almost the same as no statute at all.

Forty-eight states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands designate specific professionals who are mandated to report,⁴³ such as doctors, nurses, teachers, and school administrators. New Jersey and Wyoming, which do not have statutory language that requires for any specific professionals to report require all persons to report.⁴⁴ This includes educators, which in some states, are not specifically mentioned. Along with New Jersey and Wyoming, Utah is another example of a state that does not specifically state that educators are required to report child abuse in its mandatory child abuse reporting statute.⁴⁵ However, those in the medical professions have a mandatory obligation to report child abuse.⁴⁶

⁴¹ SWINTON, *supra* note 2, at 13; *see also, e.g.*, *People v. Beardsley*, 688 N.W.2d 304, 308 (Mich. Ct. App. 2004); *Commonwealth v. Allen*, 980 S.W.2d 278, 284 (Ky. 1998); *Morris v. State*, 833 S.W.2d 624, 626 (Tex. Ct. App. 1992); *State v. Grover*, 437 N.W.2d 60, 61 (Minn. 1989); *People v. Bernstein*, 243 Cal. Rptr. 363, 366 (Cal. App. Dep't. Super. Ct. 1987); *State v. Hurd*, 400 N.W.2d 42, 47 (Wis. Ct. App. 1986).

⁴² SWINTON, *supra* note 2, at 10-11; *see also* Hale & Underwood, *supra* note 17, at 565-67.

⁴³ CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT: SUMMARY OF STATE LAWS 2 (Apr. 2010), *available at* https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf [hereinafter MANDATORY REPORTERS].

⁴⁴ *Id.*

⁴⁵ UTAH CODE ANN. § 62A-4a-403 (West 2008).

⁴⁶ *Id.*

Utah requires any person who “has reason to believe that a child has been subjected to abuse or neglect, or . . . shall immediately notify the nearest peace officer, law enforcement agency, or office of the division.”⁴⁷ By this “catch all” requirement, any person “must” report child abuse, whereas most other states do not require persons other than the specified professionals to report.⁴⁸ These other states are summarized as merely being allowed to report, thereby alleviating any legal ramifications for those other than professionals if they do not report child abuse.⁴⁹ Some states use the term “may” for other persons, although most have a requirement specifically for educators to report.⁵⁰

Utah also has a mandatory reporting requirement under the Utah Educator Licensing and Professional Practices Act.⁵¹ This law states that educators, including volunteer and temporary employees, have a duty to report child abuse to local legal authorities and to “the school principal, superintendent, or to the office.”⁵² Thus an educator cannot report abuse to a school counselor only. Although an educator is not restricted from reporting to a school counselor any suspicion of a child being abused, they are required to also report abuse to the principal, superintendent, or office.

A. Mandatory Versus Optional

The term “may” in statutory law raises questions currently at issue in the Penn State University case. It is obvious that the Pennsylvania requirement for school administrators applies to the athletic director and vice president who were charged. However, it seems that Paterno and McQueary are not considered school administrators, teachers, or any of the other designated professionals listed in the statute.⁵³ Therefore, the state attorney general has chosen not to file charges against Paterno or McQueary;⁵⁴ because

⁴⁷ *Id.*

⁴⁸ MANDATORY REPORTERS, *supra* note 43, at 2-3.

⁴⁹ *Id.*

⁵⁰ *Id.* See also OKLA. STAT. tit. 10A, § 1-2-101 (West 2012) (“Any person who knowingly and willfully fails to promptly report suspected child abuse or neglect or who interferes with the prompt reporting of suspected child abuse or neglect may be reported to local law enforcement”).

⁵¹ UTAH CODE ANN. § 53A-6-502 (West 2012).

⁵² *Id.*

⁵³ 23 PA. CONS. STAT. ANN. § 6311 (West 2012).

⁵⁴ Viera & Thamel, *supra* note 40.

their occupations are not listed under the statute, they may report but are not required to do so.⁵⁵

There are many people who believe that even if it is not criminal for Paterno and McQueary to have not reported the child abuse, as per state statute, there is a moral and civil obligation for them to do so.⁵⁶ Both Paterno and McQueary work directly with young men and have a relationship of trust. Perhaps the circumstances of the Penn State incident will bring the legislature to change the term “may” to “must” so that individuals in these special relationships with children are held accountable.⁵⁷ Furthermore, it seems odd that the university administrators, who do not have the same relationship of trust with students as the coaches, are indicted and not the coaches.

Most states statutorily require, educators, or usually more specifically teachers, to report child abuse.⁵⁸ It seems surprising that not all states have direct language regarding educators, especially since educators likely have more direct contact with children than any other profession. Even though they are nevertheless required to report child abuse, it would seem that statutory language should directly identify educators in each state’s statute or code. Compared to members of other professions, educators are in the best position to subvert further abuse since “[c]hildren are required to attend school, but are generally not required to visit medical, dental, psychological, or other professional facilities.”⁵⁹ Because of the special relationship that exists between a child and teacher in the “school setting,” it is most likely that a teacher will be the individual to discover any abuse.⁶⁰ Therefore, it seems likely that there would be some uniformity between states in specifically requiring educators to report any suspicion of child abuse or neglect of any kind.

B. Standards for Making a Report

Each state has varying standards for making a report of

⁵⁵ 23 PA. CONS. STAT. ANN. § 6312 (West 2012).

⁵⁶ Viera & Thamel, *supra* note 40.

⁵⁷ 23 PA. CONS. STAT. ANN. § 6312 (West 2012).

⁵⁸ MANDATORY REPORTERS, *supra* note 43.

⁵⁹ Jody Aaron, *Civil Liability for Teachers’ Negligent Failure to Report Suspected Child Abuse*, 28 WAYNE L. REV. 183, 211 (1981) (internal citation omitted).

⁶⁰ *Id.*

child abuse outlined by statute or code.⁶¹ Even though there is some variance between each state, generally there is a requirement for a report upon suspicion or a reason to suspect that a child has been abused or neglected.⁶² Language frequently used between states is a rather obvious standard of the reporter either having knowledge or observing a child being subjected to conditions that would result in abuse.⁶³ States that do not mandate but allow non-professionals to report child abuse must follow the same standards.⁶⁴ Therefore, these standards apply to educators, regardless of whether a particular state statute or code specifically refers to them.

C. Confidentiality for Reporters

In an attempt to combat the under-reporting of child abuse, confidentiality of the reporter's identity may result in increased chances of identification of situations where abuse is occurring. Accordingly, there is language in most states' codes or statutes regarding confidentiality of the reporter of child abuse.⁶⁵ Eighteen states require that those required by the state's statute or code to report child abuse must provide their names and contact information.⁶⁶ Wyoming's statute only requires the identification of the reporter, whether a mandatory reporter or not, when they submit photographs or x-rays of the child.⁶⁷ However, there are thirty-nine states and the District of Columbia that specifically protect the identity of the reporter, whether a mandatory reporter or not, from the alleged perpetrator.⁶⁸

There are exceptions under certain circumstances for confidentiality of reporters of child abuse in some states. In California, Mississippi, Tennessee, and Texas, a reporter's identity may be released by the court if there is a compelling

⁶¹ MANDATORY REPORTERS, *supra* note 43.

⁶² *Id.* at 3.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* (the states with this requirement are California, Colorado, Florida, Illinois, Indiana, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nebraska, New Mexico, New York, North Carolina, Pennsylvania, and Vermont).

⁶⁷ MANDATORY REPORTERS, *supra* note 43, at 3.

⁶⁸ *Id.* at 5 n. 13 (Alaska, Arizona, Delaware, Idaho, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, West Virginia, and Wyoming do not specifically protect the identity of a reporter, but they do provide confidentiality in general).

reason.⁶⁹ In nine states, the identity of a reporter can be released if they knowingly filed a false report.⁷⁰ Although there are probably other state laws under different titles prohibiting the knowing filing of false reports, there are only nine states with specific language regarding the filing of suspected child abuse reports. Also, there are six states and the District of Columbia where a reporter of child abuse can waive any confidentiality requirement and give consent to have their name released.⁷¹

Given state laws, it is apparent that reporting child abuse is vital. There are standards for which those reports are to be made and protection for the identity of the reporters. This preserves the seriousness and delicacy of the matter of child abuse. It also requires and, to a certain extent, protects educators in the profession to pursue child welfare. The only question is whether existing requirements and protections are sufficient to encourage for the reporting of all abuses.

IV. IMMUNITY FOR CHILD ABUSE REPORTERS

There are several reasons to provide immunity from criminal and civil legal action for those who report child abuse. It may encourage individuals, whether mandated to report or not, to be more vigilant in recognizing and reporting to the local authorities, including law enforcement or social services. Recognition of the importance and necessity of reporting also demands provision of immunity for reporters of abuse.

Another reason is the opportunity for states to receive financial benefits under CAPTA, as CAPTA provides federal grants to states that establish immunity for child abuse reporters⁷² who make “good faith reports of suspected or known instances of child abuse or neglect.”⁷³ Although it is reasonable that most states would have such laws without financial incentives, the opportunity for additional financial

⁶⁹ *Id.* at 5.

⁷⁰ *Id.* (Alabama, Connecticut, Kentucky, Louisiana, Minnesota, South Dakota, Vermont, and Virginia). *See also* ARK. CODE ANN. § 12-18-502 (2009).

⁷¹ ARK. CODE ANN. § 12-18-502 (2009).

⁷² CHILD WELFARE INFO. GATEWAY, IMMUNITY FOR REPORTS OF CHILD ABUSE AND NEGLECT: SUMMARY OF STATE LAW I (Dec. 2008), *available at* https://www.childwelfare.gov/systemwide/laws_policies/statutes/immunity.pdf [hereinafter IMMUNITY FOR REPORTS].

⁷³ *Id.*; *see also* 42 U.S.C. § 5106a(b)(2)(A)(vii) (2006).

aid, especially for a state that may find itself cash-strapped, may push states to comply with CAPTA requirements for immunity of reporters.

Consequently, all fifty states plus the District of Columbia have some form of immunity for reporting child abuse.⁷⁴ This immunity is predicated upon the report being in good faith and extends to both mandatory and voluntary reporters.⁷⁵ The statutes and codes of different states serve to protect individuals from liability in civil and criminal capacities.⁷⁶ These immunity statutes are the basis for reporters' freedom from worry about legal liability in considering the welfare of children, particularly those being abused. It also allows for immediate reporting, which can be essential when a child may be in more danger than suspected.

Without laws that give reporters immunity, there may be individuals who feel it necessary to hire legal representation prior to informing authorities of the situation. Educators who suspect abuse, whether at home, school, or elsewhere, most likely do not know the extent of the situation. Time could be

⁷⁴ *Id.*; see also ALA. CODE § 26-14-9 (2009); ALASKA STAT. § 47.17.050 (2012); ARIZ. REV. STAT. ANN. § 13-3620(J) (2010), § 8-805(A) (2007); ARK. CODE ANN. § 12-18-107 (2009); CAL. PENAL CODE § 11172(a) (West 2011); COLO. REV. STAT. ANN. § 19-3-309 (West 2005); CONN. GEN. STAT. ANN. § 17a-101e(b) (West 2006); DEL. CODE ANN. tit. 16, § 908(a) (2003 & Supp. 2010); D.C. CODE § 4-1321.04 (LexisNexis 2009); FLA. STAT. ANN. § 39.203(i) (West 2010); GA. CODE ANN. § 19-7-5(f) (2010); HAW. REV. STAT. § 350-3 (West 1993); IDAHO CODE ANN. § 16-1606 (2009); 325 ILL. COMP. STAT. ANN. 5/9 (West 2008 & Supp. 2012); IND. CODE ANN. § 31-33-6-1 (LexisNexis 2007), § 31-33-6-3 (LexisNexis 2007), § 31-33-6-2 (LexisNexis 2007); IOWA CODE ANN. § 232.73 (West 2006); KAN. STAT. ANN. § 38-2223(f) (2000 & Supp. 2011); KY. REV. STAT. ANN. § 620.050(f) (LexisNexis 2008); LA. CHILD. CODE ANN. art. 611 (2004 & Supp. 2013); ME. REV. STAT. tit. 22, § 4014 (2004); MD. CODE ANN., FAMILY LAW § 5-708 (LexisNexis 2012); MASS. GEN. LAWS ch. 119, § 51A(g) (West 2008 & Supp. 2012); MICH. COMP. LAWS ANN. § 722.625 (West 2011); MINN. STAT. ANN. § 626.556 (West 2009 & Supp. 2013); MISS. CODE ANN. § 43-21-355 (2009); MO. ANN. STAT. § 210.135 (West 2010 & Supp. 2012); MONT. CODE ANN. § 41-3-203(i) (2011); NEB. REV. STAT. § 28-716 (2008); NEV. REV. STAT. § 432B.160 (2009); N.H. REV. STAT. ANN. § 169-C:31 (2002); N.J. STAT. ANN. § 9:6-8.13 (West 2002); N.M. STAT. ANN. § 32A-4-5(B) (LexisNexis 2009); N.Y. SOC. SERV. LAW § 419 (McKinney 2010); N.C. GEN. STAT. § 7B-309 (2009); N.D. CENT. CODE § 50-25.1-09 (2007); OHIO REV. CODE ANN. § 2151.421(G)(1)(a) & (2)(b) (LexisNexis 2011); OKLA. STAT. tit. 10A, § 1-2-104 (2009); OR. REV. STAT. § 419B.025 (2009); 23 PA. CONS. STAT. ANN. § 6318 (West 2010); R.I. GEN. LAWS § 40-11-4 (2006); S.C. CODE ANN. § 63-7-390 (2010); S.D. CODIFIED LAW § 26-8A-14 (2004); TENN. CODE ANN. § 37-1-410(a)(1), (4)(s)(A) (2010) § 37-1-410 (a)(s)(B), (6)-(8) (2010); TEX. FAM. CODE ANN. § 261.106 (West 2008); UTAH CODE ANN. § 62A-4a-410(i)-(4) (LexisNexis 2011); VT. STAT. ANN. tit. 33, § 4913(d)(1) (2001 & Supp. 2012); VA. CODE ANN. § 63.2-1512 (2012); WASH. REV. CODE ANN. § 26.44.060(i)-(2), (5) (West 2005 & Supp. 2013); W. VA. CODE ANN. § 49-6A-6 (LexisNexis 2009); WIS. STAT. ANN. § 48.981(4) (West 2011); WYO. STAT. ANN. § 14-3-209 (2011).

⁷⁵ IMMUNITY FOR REPORTS, *supra* note 72, at 2.

⁷⁶ *Id.*

of the essence, and immunity enables help to be timelier and keeps the focus on the child and not the immediate or long-term ramifications affecting the reporter. This timeliness may be vital if an abuser moves the child to another location for fear of a suspecting educator.

CAPTA requires that states provide immunity for those individuals who report child abuse, who must do so in good faith.⁷⁷ A report is done in good faith when the “assumption of the reporter, to the best of his or her knowledge, has reason to believe that the child in question is being subjected to abuse or neglect.”⁷⁸ Even if the report is not fully substantiated, the reporter of the child abuse is allowed immunity.⁷⁹ Seventeen states and the District of Columbia have a presumption of good faith,⁸⁰ meaning an assumption that the report of child abuse is done in good faith, unless there is proof that it was done maliciously or falsely.⁸¹ This allows an educator to have a clear conscience if he makes a report based solely on suspicions.

Applying reporter immunity to the Pennsylvania State University issue, Paterno and McQueary are still susceptible to liability in civil lawsuits. Since neither of the two men reported the incident of 2002 to local authorities or social services, they were not granted immunity.⁸² McQueary reported the incident to Paterno, who then reported that information to the athletic director,⁸³ but not to local authorities. Therefore, although the state statute allows both individuals to report an incident of child abuse, immunity only extends to them if they report the incident to legal authorities.⁸⁴

Lacking the protection of immunity provided by state law, both men may have legal action brought against them civilly, particularly from any victims abused by Sandusky after the 2002 incident. The basis for such a common law claim is

⁷⁷ 42 U.S.C. § 5106a(b)(2)(A)(vii) (2006).

⁷⁸ IMMUNITY FOR REPORTS, *supra* note 72, at 2.

⁷⁹ *Id.*

⁸⁰ *Id.* at 2 n.3 (Colorado, Illinois, Indiana, Maine, Michigan, Mississippi, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Wisconsin, and Wyoming).

⁸¹ *Id.* at 3.

⁸² 23 PA. CONS. STAT. ANN. § 6318 (West 2010).

⁸³ REPORT, *supra* note 34.

⁸⁴ 23 PA. CONS. STAT. ANN. §§ 6311, 6312, 6318 (West 2010).

the idea that had either reported Sandusky to legal authorities, they may have prevented Sandusky's further abuse.

Paterno and McQuery would also not have any immunity from criminal legal action. However, neither is considered a mandatory reporter of child abuse under the language of Pennsylvania statutes.⁸⁵ Since they are not deemed to be mandatory reporters, it is likely that they will not have to face any criminal actions. In fact, the Attorney General of Pennsylvania has declared that there will not be criminal actions against these men. Again, this is because Pennsylvania does not require every person to report child abuse.⁸⁶ There has been a public outcry that it was wrong that either man not report the 2002 incident to legal authorities,⁸⁷ so it will be interesting to see if the statutes are later changed to replace the term "may" with "must."

A majority of states give immunity to reporters whose actions extend beyond the initial report. All but fourteen states plus the District of Columbia have immunity for a reporter who is a participant in any of the judicial proceedings that follow the initial report of abuse.⁸⁸ More specifically, there are twenty-six states whose codes or statutes allow for immunity for reporters who participate in the investigation of "allegations of maltreatment."⁸⁹

It is not apparent why there are states that will not allow immunity beyond the initial report. The report of child abuse is extremely important and necessary, and the process afterwards seems just as important. An educator could be deterred from reporting abuse involving a child if they know that there is no protection when testifying in court or elsewhere. It seems necessary that if a state is going to provide protection on the initial report, it should also provide that same protection for any later actions related to the report.

In ten states, a reporter of child abuse, including an educator, does not have immunity where the report is in "bad

⁸⁵ *Id.* § 6311.

⁸⁶ *Id.* § 6311-6312.

⁸⁷ Viera & Thamel, *supra* note 40.

⁸⁸ IMMUNITY FOR REPORTS, *supra* note 72, at 2 (the fourteen states are Arkansas, California, Florida, Illinois, Massachusetts, Michigan, Minnesota, New York, North Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming).

⁸⁹ *Id.* (Alabama, Arizona, Colorado, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and Wisconsin).

faith” or malicious.⁹⁰ This does not mean that all other states provide immunity for reports done in bad faith or malice, but that they do not use specific language asserting that fact. It is unlikely that any state would grant immunity for these particular reports, although states that specify this directly should be applauded. Another ten states give immunity for a report that is knowingly false.⁹¹ It seems obvious that there would not be immunity for mandatory reporters, like educators, who fail to report. Minnesota and North Dakota specifically pronounce this in their statutes and codes.⁹² Alaska does not provide immunity for any person who knowingly makes an “untimely report.”⁹³ What seems rather obvious but is only specifically stated in sixteen state statutes is the denial of immunity for “alleged perpetrators of the suspected abuse.”⁹⁴

For the most part, it seems that immunity is not granted where it would clearly not be deserved. If an educator reports abuse for any reason other than for the safety and welfare of the child, there should be no immunity. Reporting suspicions of abuse cannot be permitted to be used a tool for settling personal disputes or vendettas. The focus must be on helping children or preventing abuse, whether from adults or other children. Making a report for any other reason is not only immoral and should have consequences.

Courts have recognized the immunity granted to public employees, including educators, who report child abuse.⁹⁵ In *Landstrom v. Illinois Department of Children and Family Services*, two students and their parents brought a Section 1983 action claiming that state and local school employees violated

⁹⁰ *Id.* (Arizona, Colorado, Idaho, Indiana, Missouri, Montana, New Mexico, Ohio, Texas, and Virginia).

⁹¹ *Id.* (California, Louisiana, Maine, Missouri, Montana, Nebraska, North Dakota, Ohio, Utah, and Washington).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* (Alaska, Arizona, Colorado, Connecticut, Florida, Indiana, Louisiana, Massachusetts, Minnesota, North Dakota, South Dakota, Tennessee, Texas, Vermont, Washington, and Wisconsin).

⁹⁵ *Landstrom v. Ill. Dep’t of Children & Family Servs.*, 892 F.2d 670, 679 (7th Cir. 1990); *see also Doe v. Hennepin Cnty.*, 858 F.2d 1325, 1329 (8th Cir. 1988) (“Allegations of malice are not sufficient to defeat immunity if the defendant acted in an ‘objectively reasonable manner.’”); *Hodorowski v. Ray*, 844 F.2d 1210, 1217 (5th Cir. 1988) (immunity is provided to public employees who remove children from homes based on suspicion of abuse); *Robison v. Via*, 821 F.2d 913, 921 (2d Cir. 1987) (immunity provided for public employees for taking children into custody who were victims of abuse).

their constitutional rights during a child abuse investigation.⁹⁶ The appellate court held that the trial court properly dismissed the claim since the state and school employees were entitled to qualified immunity.⁹⁷ It is important to note that the issue in this case had more to do with the constitutional rights of the students and their families regarding the investigation of the child abuse than the reporting of abuse only.⁹⁸ However, the court observed the importance of the state in child abuse investigations,⁹⁹ helping to provide precedent that would cover educators in their reporting of child abuse.

There is, however, no immunity from civil liability in most states for educators who do not report child abuse, and there are cases where educators have been sued for such inaction.¹⁰⁰ Opening up reporters to civil action, even in a state that mandates specifically that they report, has both support and opposition. Proponents believe that civil liability provides another layer of motivation for educators to report abuse, especially since criminal indictments are rare.¹⁰¹ Opponents of civil liability see it as distracting the legislation from its purpose to protect children by focusing on punishing individuals who may be reporters.¹⁰² This is reflected in the fact that the majority of past case law involving civil suits dealing with failure to report child abuse has involved educators.¹⁰³ The courts then are in a position to determine in a particular circumstance if there should be accountability for an individual who did not report suspicions of child abuse. This goes back to the fact that educators have more direct daily contact with children, and therefore should be more accountable than other professions. Thus, when there has been abuse, it seems far more intuitive to blame the educator, who is around the child daily, than a doctor or another professional who sees the child only periodically.

In one New York case, there was a statutory requirement for a teacher to report child abuse, but the prosecutor chose

⁹⁶ *Landstrom*, 892 F.2d at 671.

⁹⁷ *Id.* at 678.

⁹⁸ *Id.* at 671.

⁹⁹ *Id.* at 676.

¹⁰⁰ *Kimberly S.M. v. Bradford Cent. Sch.*, 649 N.Y.S.2d 588, 591 (N.Y. App. Div. 1996); *see also* *Campbell v. Burton*, 750 N.E.2d 539 (Ohio 2001).

¹⁰¹ SWINTON, *supra* note 2, at 12.

¹⁰² *Id.* at 12-13.

¹⁰³ *Id.*

not to pursue criminal charges.¹⁰⁴ However, the parents sued the school civilly for not reporting the suspected abuse by the child's uncle.¹⁰⁵ The school filed for summary judgment, which was granted by the trial court.¹⁰⁶ The appellate court held that the teacher was individually liable for breach of duty to report abuse.¹⁰⁷ The court also held that this breach carried liability for the teacher regardless of whether it was ultimately determined that there was abuse or not.¹⁰⁸ This ruling reinforces the possibility of an educator's liability when mandated to report child abuse, even if the state chooses not to pursue criminal charges.

In Ohio, it was held that civil liability exists where a statute imposes a duty to report known or suspected child abuse.¹⁰⁹ During a peer mediation session, a student informed the peer mediation coordinator—also a teacher—of inappropriate sexual advances by a family friend.¹¹⁰ The student, through her parents, sued for civil liability against the teacher for not reporting the suspected abuse,¹¹¹ and the court ruled that there was civil liability under Ohio law.¹¹²

However, two years later, the same court overruled that case by reasoning that tort immunity can only be superseded by Congress through the Enforcement Clause of the Fourteenth Amendment.¹¹³ The court reasoned that “an act of Congress is not ‘a section of the Revised Code.’”¹¹⁴ In other words, even if there is a state statute that requires a mandated action, such as a report of child abuse, there is no civil liability for failing to abide by that statute except by legislation of Congress. This seems to be the exact opposite of case law in New York¹¹⁵ in contradiction of reasonable presumptions of

¹⁰⁴ *Kimberly*, 649 N.Y.S.2d at 589.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Campbell v. Burton*, 750 N.E.2d 539, 547 (Ohio 2001).

¹¹⁰ *Id.* at 542.

¹¹¹ *Id.* at 541.

¹¹² *Id.* at 542.

¹¹³ *Estate of Ridley v. Hamilton Cnty. Bd. of Mental Retardation & Developmental Disabilities*, 809 N.E.2d 2, 8 (Ohio 2004).

¹¹⁴ *Id.*

¹¹⁵ *Kimberly S.M. v. Bradford Cent. Sch.*, 649 N.Y.S.2d 588, 591 (N.Y. App. Div. 1996).

uniformity among states. Thus, one state provides immunity whether or not the law is followed while another state requires accountability in some form.

The federal government through CAPTA, state governments through statutes and codes, and courts in most states have recognized the necessity of providing immunity for reporters of child abuse. Immunity helps to promote the gravity and necessity of ensuring that children are protected and provided a safe foundation for growth into adulthood. However, immunity that is provided for not following the law does not seem to be in the best interest of children. Where immunity has been granted through federal and state law for educators to report suspicions of child abuse, it cannot be fully effective without a way for there to also be accountability for failure to report.

V. TRAINING OF EDUCATORS TO REPORT CHILD ABUSE

There is an absolute necessity for educators to report child abuse, as well as to understand the requirements mandating such reporting and the protections provided for so doing. It is important to find out how and how often this information is being conveyed to educators through educational training on reporting child abuse. It is necessary to have continued training throughout the career of an educator, as opposed to a one-time pre-service training and education.

There are various opportunities for educators to receive such training. Besides the education provided during college or university courses, educators can participate in instruction that may be offered at the school, district, county, or state level.¹¹⁶ Programs provided at the school or district level may be delivered by a member of the staff or perhaps an outside expert.¹¹⁷ Federal programs are also available, though they are not generally mandatory.¹¹⁸ Attendance at these programs can either be mandatory or voluntary, although there may be professional development credits earned, which can be

¹¹⁶ Emily A. Greytak, *Are Teachers Prepared? Predators of Teachers' Readiness to Serve as Mandated Reporters of Child Abuse* (2009) (unpublished Ph.D. dissertation, University of Pennsylvania), *available at* <http://repository.upenn.edu/edissertations/57>.

¹¹⁷ *Id.* at 35.

¹¹⁸ CYNTHIA CROSSON-TOWER, *THE ROLE OF EDUCATORS IN PREVENTING AND RESPONDING TO ABUSE AND NEGLECT* (2003), *available at* <https://www.childwelfare.gov/pubs/usermanuals/educator/educator.pdf>.

necessary for state licensing.¹¹⁹ There is even financial compensation provided to some who attend.¹²⁰

Generally, the topics that are covered in child abuse trainings are identification, teachers as mandated reporters, referral information, and the effects of abuse on children.¹²¹ The major areas of abuse educators are instructed to identify are physical abuse, neglect, emotional maltreatment, sexual abuse, and child abuse within the school.¹²² Within each of the areas there are certain behavioral clues that may indicate abuse. An example is a child that wears “clothing that covers the body and that may be inappropriate in warmer months.”¹²³

The topic of teachers as mandated reporters is usually addressed during training programs. This conversation includes education on the recognition of laws that require educators to report child abuse, ramifications for not reporting, protections provided when there is a report, and the different confidential policies of the reporter.¹²⁴

Another topic that is addressed is who is to report that a child is being abused and how to report it. Educators are taught to report to local law enforcement, child protective services, or both¹²⁵ and are provided with toll-free phone numbers specifically for the reporting of child abuse.¹²⁶ They are also trained on what to report—reasonable cause or suspicion—and when to report.¹²⁷ Also, although conferring with other professionals or colleagues may help to confirm a reasonable suspicion or make one feel more comfortable in deciding to report,¹²⁸ it is imperative that the initial reporter make sure that there is a report made since he or she is the responsible party.¹²⁹

Finally, a common topic addressed in training for child abuse is the effects it has upon the child and those associated

¹¹⁹ Greytak, *supra* note 116, at 35.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² CROSSON-TOWER, *supra* note 118.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Hale & Underwood, *supra* note 17, at 563.

¹²⁹ *Id.*

with the child.¹³⁰ Educators may be taught different approaches for dealing with issues that derive from abuse. If there is a heightened interpersonal conflict, for example, then an educator can teach conflict resolution and peer mediation.¹³¹ Sharing relevant information with child protective services after the report has been made can help in the child's rehabilitation.¹³² Participation in providing services to the child and family can help to strengthen the family and prevent future abuse.¹³³

There are also committees and programs designed to help the child and parents and the educators who reported the abuse after action has taken place. Knowing about school programs that provide help for parents is important, especially if the parents lack financial resources.¹³⁴ Multidisciplinary teams, either inside or outside of the school, where professionals work with educators in dealing with school-based crises, including the reviewing and reporting of child abuse, may also be of assistance.¹³⁵ Educators may additionally participate in programs that are offered within the community and coordinated with the school and possibly other youth programs.¹³⁶

Most states require the training of teachers in the reporting of child abuse in order to obtain a teaching license.¹³⁷ For example, the New York State Education Department requires two hours of training on child abuse before licensing.¹³⁸ Two hours of training seems insufficient to learn about the different aspects of child abuse reporting. It is one thing to read in a manual or a handout for what signs of child abuse to look for and it is another to be trained how to observe such signs.

Much of the education received after the initial training that is necessary to obtain a license is done independently by the educator.¹³⁹ There is minor training and education that may

¹³⁰ CROSSON-TOWER, *supra* note 118.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ CROSSON-TOWER, *supra* note 118.

¹³⁷ Greytak, *supra* note 116, at 35.

¹³⁸ Office of the Professions, N.Y. State Educ. Dep't, *Mandated Training Related to Child Abuse* (Nov. 5, 2011), <http://www.op.nysed.gov/training/camemo.htm>.

¹³⁹ Greytak, *supra* note 116, at 35.

be provided by the school, district, and state, but any intensive or comprehensive training is left up to the educator. This seems like a lot to ask of the educator regarding a matter that is as sensitive, complicated, and emotional as child abuse. Child abuse is such a national epidemic that perhaps it deserves training that is consistent nationwide, particularly since educators often move from state to state. It is imperative that proper education and training be provided so that educators not only know what is required of them, but also know how to properly recognize reasonable suspicions and where to report those suspicions.

VI. POSSIBLE REASONS FOR NOT REPORTING CHILD ABUSE

The fact that there are statutes in all fifty states and the District of Columbia mandating that educators report suspicions of child abuse does not mean that abuse is always reported. In fact, under-reporting of child abuse by educators happens quite frequently.¹⁴⁰ In the late 1980s, this failure to report was as high as 76% percent of the time. Especially when compared to hospitals' and nationwide rates of failure to report abuse—34% and 60%, respectively—this is unacceptable.¹⁴¹ Educators should and need to be in a position to prevent abuse and protect children. They are arguably on the front line in protecting and preventing harm to children.

As discussed previously, one possible reason for the lack of reporting could be the lack of effective and comprehensive training. In her research, Emily Gretak found that teachers are not reporting due to their lack of knowledge regarding “the law, reporting procedures, or indicators of child abuse.”¹⁴² Proper training of educators has shown an increase in confidence, knowledge, and awareness concerning responsibilities under the law, reporting procedures, and recognition of child abuse indicators.¹⁴³ It only makes sense that the more an educator knows about what is required and how to do it, the more confident she will be to act accordingly, in the process preventing inaction that could prove fatal for a child.

¹⁴⁰ Hale & Underwood, *supra* note 17, at 565.

¹⁴¹ SWINTON, *supra* note 2, at 10-II.

¹⁴² Greytak, *supra* note 116, at 34.

¹⁴³ *Id.* at 38-39.

Studies have shown that an increased probability of reporting child abuse among educators necessitates “at least three to four hours of training.”¹⁴⁴ Knowledge itself, however, will not always eliminate the fears or negative beliefs that an educator may have concerning the outcomes of a report.¹⁴⁵ Continuous training and reinforcement will allow behavioral change to accompany the knowledge gained.

Although there is immunity for reporting in good faith, some educators may fear being sued. Particularly, they may not have received training to ensure that they understand that fact. Even if they are trained and know about the immunity that exists, they may fear the possibility of being dragged through the legal system. An educator who knows about the immunity protection of child abuse reporters but is inexperienced in dealing with lawyers may be intimidated. Most would hope that these factors would not outweigh the welfare of a child, although it has at times.¹⁴⁶

Fear of physical retaliation may also hinder reporting. There are confidentiality laws that are meant to protect the identity of an educator who reports on child abuse in each state.¹⁴⁷ Nevertheless, it may seem possible that a reporter’s name could be discovered, especially by the perpetrators. An educator could fear for himself or his family physically. Or, to a lesser degree, there could be harassing of the educator and his family.¹⁴⁸ This could present enough risk to cause hesitation or outright disregard in reporting knowledge or suspicion of child abuse.

Lack of reporting by an educator is not just limited to abuse that is suspected at home. When there is observance, knowledge, or a reasonable suspicion of abuse at school, the educator could be even more hesitant. All states plus the District of Columbia outlaw excessive corporal punishment at schools.¹⁴⁹ However, only twenty states have statutes or codes outlawing any form of corporal punishment at schools.¹⁵⁰ In 1988, the U.S. Department of Education documented that one

¹⁴⁴ *Id.* at 39.

¹⁴⁵ *Id.*

¹⁴⁶ Hale & Underwood, *supra* note 17, at 565.

¹⁴⁷ *Id.* at 566.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 567; D.C. Mun. Regs. tit. 5-E, § 2403.

¹⁵⁰ Hale & Underwood, *supra* note 17, at 567.

million school children were struck by an educator.¹⁵¹ An educator may have trouble discerning the line between appropriate and excessive when observing signs of a punishment administered by a colleague. With a lack of training or experience in this area, possible hesitance could be even greater.

Another fact that may result in the under-reporting of child abuse is concern for the safety of the child. The educator may feel that if they do anything that would suggest to the perpetrator that there is suspicion of abuse, the child may be harmed again before aided. An educator may fear that a report might not generate action, leaving the child susceptible to more abuse that may be more severe than it was initially. However, it is recommended that if the educator documents what they observe, the more likely there will be immediate and substantial action by a protective service.¹⁵² Good documentation provides a great foundation for proper authorities to intervene.¹⁵³

Another reason for hesitancy is the concern of the educator that they may be breaking up a family. An educator may think that the suspected abuse may not be sufficient to take a child away from a mother, father, or both. An educator may take it upon herself to weigh the gravity of the current abusive situation with possible negatives of the possible alternative of foster care for the child. Personal feelings or perceptions of alternative care should not inhibit a report of the potential reality of a child in physical danger.

The possibility of losing employment can also be a factor in choosing not to report. Although state statutes and codes prevent a discharge from employment for making a report, there may still be fear that other circumstances could be emphasized to lead to a dismissal. An example is future harassment in the workplace or negative reviews of job performance. This could be especially true when the abuse involves a colleague or a superior at the school or where the child is from an influential or prominent family that could have bearing on an educator's future employment, leading an educator to weigh their suspicion and justify the possibility of

¹⁵¹ *Id.*

¹⁵² *Id.* at 569.

¹⁵³ *Id.*

not reporting, perhaps hoping that somebody else will be in a better position to do so at a later time.

Under-reporting of observed, known, or suspected child abuse can be attributed to different reasons. Lack of efficient training and proper knowledge of statutes and codes can lead to doubt of an educator's ability to identify and report. Fear of physical harm, harassment, employment loss, the breaking up of families, and more severe abuse of the child can impact the judgment and discretion of an educator in reporting abuse. Whatever the reason for under-reporting, it is necessary to seek measures that provide educators the ability to protect children and prevent further abuse.

VII. SUGGESTIONS FOR PREVENTING UNDER-REPORTING

In identifying reasons for an educator's inability to report child abuse, there is an underlying theme of separation between the states regarding laws, training, and procedures. Providing uniformity in child reporting may help educators report properly and efficiently. There are many who feel strongly that education needs to be governed and administered as locally as possible, keeping individual schools from becoming part of any sort of federal system. In acknowledging that sentiment, it seems that a nationwide mandate in certain areas would provide for more effective foundation where children can get help from educators.

Currently, most of the training and education varies across schools, districts, counties, and states.¹⁵⁴ Perhaps a mandated training course and uniform requirements for teacher certification nationwide would be more effective. It is clear that when there is increased knowledge and training there are better results in reporting.¹⁵⁵ It is apparent that educators need to have the confidence in themselves and the system to be efficient in reporting child abuse.

States differ regarding mandating who must and who may report child abuse. Thus, a person such as Paterno who works closely with youth is not liable in Pennsylvania for not reporting child abuse to legal authorities, but would be liable in another state such as Utah.¹⁵⁶ This appears to be an unintended loophole for some individuals not to report child

¹⁵⁴ Greytak, *supra* note 116, at 54.

¹⁵⁵ *Id.* at 34, 53-55.

¹⁵⁶ *Cf.* Viera & Thamel, *supra* note 40; UTAH CODE ANN. §3A-6-502.

abuse. This could be more uniform by Congress passing legislation requiring all states to impose reporting requirements on all persons. However, this would raise constitutional questions and would undoubtedly lead to long-term legal battles. Another way would be to provide financial incentives, possibly through CAPTA, for implementing such a requirement.¹⁵⁷ Through this method, the states would still have final decision-making power and maintain their sovereignty in an area traditionally regarded as the domain of the states.

Providing immunity for educators from civil liability in all states may provide an added incentive to report. As was discussed in *Campbell*, although there is a statute or code mandating reporting for educators, civil liability cannot pierce immunity provided to local governments by the state without an act of Congress.¹⁵⁸ It would seem proper and just that simply because the state chooses not to pursue criminal action does not mean that the educator should not be liable for failing to report. To protect children from abuse there should be some threat of enforcement. Civil action could help provide liability for the surmounting issue of under-reporting. It should be noted that this seems like a drastic measure, but it may be necessary to combat the serious and enormous problem that under-reporting of child abuse presents.

Lastly, it might be beneficial to incorporate some sort of whistleblower statute into federal law to provide protection to educators, similar to corporate and government whistleblower cases where individuals are insulated from being expressly terminated.¹⁵⁹ This would help insulate educators from employment dangers, even though state statutes and codes presently provide protection against employer reprisal.¹⁶⁰ A federal statute may give reporters more confidence that they truly are protected and result in less under-reporting by educators.

The current enormity of under-reporting demonstrates the need to explore additional measures so that educators will report child abuse. Nationwide training requirements regarding

¹⁵⁷ 42 U.S.C. §§ 5101-5106, 5111-5116 (2006).

¹⁵⁸ *Campbell v. Burton*, 750 N.E.2d 539, 547 (Ohio 2001).

¹⁵⁹ 5 U.S.C. § 1221 (2006).

¹⁶⁰ *Hale & Underwood*, *supra* note 17, at 566.

content and length of training may give educators more confidence, knowledge, and skills to properly report abuse. Requiring that all persons must report child abuse, as in the Utah Code, could eliminate loopholes that exist from state to state and create responsibility and liability for everyone who works closely with children. Ensuring that civil liability is attainable, even if there is criminal liability, likely will be motivation for educators to report abuse. A federal statute insulating educators from losing employment could help educators have courage in identifying and reporting child abuse. These are suggestions of possible measures to help protect children and prevent child abuse through reporting by educators. Hopefully, this will provoke discussion that will accomplish the goal of ensuring the well-being of children.

VIII. CONCLUSION

Child abuse is egregious. It destroys the foundation and stability of a child. It deteriorates self-confidence, ambition, and personal relationships. Trust is often unattainable with others, especially with adults. A child who is abused faces a hard road that only gets harder as the child becomes an adult. To commit child abuse is to rob an individual of their youth. Its effects are long-lasting with repercussions through adulthood and perhaps life's duration.

Educators have a special relationship with children that gives them an opportunity to care and protect their fragile foundation. Educators may be a child's only hope in identifying and reporting abuse. Most children trust their educators and rely on their courage and strength to protect them from other children, adults, family members, and other educators who may abuse them.

All states plus the District of Columbia mandate that educators report observance, knowledge, or a reasonable suspicion of child abuse. In some states, they are civilly liable even if they are not prosecuted criminally for not reporting abuse. It is worth discussing whether all states should allow for civil liability for those educators who do not report. Educators are granted immunity from all criminal and civil legal action when they report in good faith. They are also immune from being discharged from their employment; however, a federal statute may help to allay fears about their job security.

There are certain requirements of training and education on reporting child abuse to obtain a license to teach. There

could be more discussion and implementation of a uniform nationwide curriculum to ensure proper training for identification and reporting of child abuse. Also, it seems that there may be a need for longer training periods. Research has shown this to be effective in the battle against abuse.¹⁶¹

In addressing how states vary in the treatment and requirements of reporting child abuse by educators, as well as training requirements, it would be more efficient to have a more unified approach nationally. Something as crucial as the safety of children needs to be addressed in a consistent manner so that individuals who move from state to state need not guess what is required and can receive training that teaches the most effective ways of recognizing and acting upon signs of child abuse. Education is generally viewed as a state issue and a federal action regarding the reporting of child abuse by educators, designated professionals, or all persons does not have to mean a deviation from that view. This may present some constitutional issues with regard to basic states' rights and authority. However, this issue is of such importance and necessity that it would be worth investing resources to seek unification in the battle against child abuse. It also may lead to a more productive society as a whole where the costs of rehabilitation of those who have been abused can be minimized. Each state working together under a federal law or regulation would allow for consistent addressing of this issue so that, although child abuse may not be extinguished, it can be addressed for a greater number of children.

Child abuse, especially sexual abuse, is unacceptable, and society needs to do what it can to prevent it. Whether or not there is agreement on the measures proposed here, there should always be an open dialogue to better educators in their pursuit of children's welfare. After all, the foundation and stability of a child is the foundation and stability of society, both present and future.

¹⁶¹ Greytak, *supra* note 116, at 59.