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## A Need for Reform — In the Wake of the Penn State Scandal: In Higher Education and K–12 Schools

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# A NEED FOR REFORM—IN THE WAKE OF THE PENN STATE SCANDAL: IN HIGHER EDUCATION AND K–12 SCHOOLS

## I. INTRODUCTION

Gerald “Jerry” Sandusky’s acts of child abuse shocked and rocked the college football world. Across the nation, laws and policies are changing to protect children from sexual abuse from teachers, coaches, and authority figures.<sup>1</sup> This change came in the wake of the Pennsylvania State University (“Penn State”) scandal. The scandal involved individuals in authoritative positions—such as coaches and campus administrators—who did not report known abuse or did not take steps to stop it. The Penn State scandal exposed a lack of protection in school policies and laws for victims of abuse.

### *A. Background and the Penn State Scandal*

On the outside, Jerry Sandusky portrayed the type of person parents and children could trust. Sandusky began his college football-coaching career as a graduate assistant to Joseph Paterno, eventually becoming the Defensive Coordinator at Penn State.<sup>2</sup> In addition to his leadership role in college football, Sandusky founded a non-profit organization, the Second Mile<sup>3</sup>, in 1977 as a place for at-risk children, including underprivileged males.<sup>4</sup>

In the spring of 2008, the bridges of trust built by Sandusky were shattered. The mother of Victim 1, a high school freshman at the time of the allegation, reported to school authorities that her son was sexually

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<sup>1</sup> See, e.g., *West Virginia School Board Bans Teachers from Sending Students Personal Texts*, LEGAL CLIPS (Oct. 17, 2013), <http://legalclips.nsba.org/2013/10/17/west-virginia-school-board-bans-teachers-from-sending-students-personal-texts/#sthash.Ab0d5hQ7.dpuf>; CNN Wire Staff, *Pennsylvania Governor: Change Law After Penn State Scandal*, CNN JUSTICE (Nov. 14, 2011), <http://www.cnn.com/2011/11/13/justice/pennsylvania-coach-abuse/>; Eric Kelderman, *Sandusky Scandal Shapes Higher-Education Legal and Governance Policies*, THE CHRONICLE OF HIGHER EDUCATION (June 19, 2013), <https://chronicle.com/article/Sandusky-Scandal-Shapes/139895/>.

<sup>2</sup> *Jerry Sandusky Biography*, BIOGRAPHY.COM, <http://www.biography.com/people/jerry-sandusky-20857249?page=3> (last visited Jan. 30, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> *Transcripts: Penn State Sex Abuse Case; Second Mile Charity*, CNN, <http://www.cnn.com/TRANSCRIPTS/111111/ebo.01.html>.

molested by Sandusky.<sup>5</sup> This initial report made by Victim 1's mother to Central Mountain High School resulted in Sandusky being "barred from the school district," and the report was later submitted to authorities.<sup>6</sup> The report by Victim 1's mother and Central Mountain High School's actions instigated bringing Sandusky's deceitful and inappropriate behavior to light.<sup>7</sup> The report ultimately led to an investigation by the Pennsylvania Attorney General into Sandusky's involvement with Victim 1.<sup>8</sup> The investigation unveiled heinous crimes committed by a man that many believed and trusted;<sup>9</sup> additionally, it verified that the Victim 1's experience was not just an isolated instance.<sup>10</sup>

The testimony of the identified victims and the investigations by the Attorney General culminated in charges brought against Sandusky on November 5, 2011 for more than forty counts for abuse of eight boys over a fifteen-year span.<sup>11</sup> Seven months later, Sandusky was convicted for "sexually abusing 10 boys" and "found guilty of 45 of the 48 counts against him."<sup>12</sup> Sandusky was sentenced by The Court of Common Pleas Centre County, Pennsylvania to serve "an aggregate term of not less than 30 years nor more than 60 years."<sup>13</sup>

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<sup>5</sup> In 2005–2006, "Sandusky meets the boy identified as Victim 1 through the Second Mile. He is 11 or 12 years old." Justin Sablich, Ford Fessenden & Alan McLean, *Timeline: The Penn State Scandal*, N.Y. TIMES, [http://www.nytimes.com/interactive/2011/11/11/sports/ncaafootball/sandusky.html?\\_r=0](http://www.nytimes.com/interactive/2011/11/11/sports/ncaafootball/sandusky.html?_r=0) (last visited Jan. 30, 2015).

<sup>6</sup> Joseph Rhee, Gerry Wagschal, & Linh Trans, *Sandusky Victim 1 Steps Out of Shadows, Says Justice Took Too Long*, ABC NEWS (Oct. 19, 2012), <http://abcnews.go.com/US/sandusky-victim-reveals-identity-justice-long/story?id=17511612>; Sablich, *supra* note 5.

<sup>7</sup> Sablich, *supra* note 5.

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

<sup>9</sup> *Jerry Sandusky Biography*, *supra* note 2 ("On the surface, Sandusky appeared to be a highly respected coach and philanthropist").

<sup>10</sup> "The investigation yielded unsettling results: at least eight young boys had been allegedly abused by Sandusky." *Id.* Furthermore, "All of the alleged victims met Sandusky through The Second Mile, the charity he founded in 1977 for underprivileged boys. The grand jury indictment claimed that Sandusky selected his alleged victims and began grooming them for sexual abuse through the Second Mile, often targeting those who were from unstable homes or without fathers in their lives." Carrie Gann, *Jerry Sandusky's Alleged Victims Tell of Shame, Fear, Love*, ABC NEWS (June 15, 2012), <http://abcnews.go.com/Health/jerry-sanduskys-alleged-victims-shame-fear-love/story?id=16570043>.

<sup>11</sup> Sablich, *supra* note 5.

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

<sup>13</sup> Transcript of Proceedings (Sexually Violent Predator Hearing and Sentencing) at 50, Commonwealth v. Sandusky, C.P. Centre County (Oct. 9, 2012) (NO. CP-14-CR-2421-2011), available at <http://co.centre.pa.us/centreco/media/upload/SANDUSKY%20GERALD%20100912%20Sentencing%20Transcript.pdf>. For more information and detailed accusations, see PENNSYLVANIA ATTORNEY GENERAL, REPORT OF THIRTY THIRD STATEWIDE INVESTIGATING GRAND JURY 2–23, available at <http://archive.freep.com/assets/freep/pdf/C4181508116.PDF> [hereinafter GRAND JURY REPORT].

### *B. The McQueary Account and Report*

During the investigation of Sandusky, multiple victims came forward to verify incidents of Sandusky's sexual abuse.<sup>14</sup> One well-publicized incident, and one crucial to the investigation, involved a young boy identified as Victim 2.<sup>15</sup> This incident occurred on the campus of Penn State and was witnessed by a graduate assistant,<sup>16</sup> Michael McQueary.<sup>17</sup> On March 2, 2002, around 9:30 p.m., McQueary entered the Lasch Football Building locker room on campus and "was surprised to find the lights and showers on." After walking further into the locker room, he heard "rhythmic, slapping sounds . . . [and] believed the sounds to be those of sexual activity."<sup>18</sup> After placing his sneakers in his locker "he looked into the shower" and he witnessed "Victim 2 being subjected to anal intercourse by a naked Sandusky."<sup>19</sup>

After witnessing the abuse, McQueary immediately left the building, called his father, and went to his home to discuss what he should do.

[Ultimately,] [t]he graduate assistant and his father decided that the graduate assistant had to promptly report what he had seen to Coach Joe Paterno . . . head football coach of Penn State. The next morning, a Saturday, the graduate assistant telephoned Paterno and went to Paterno's home, where he reported what he had seen.<sup>20</sup>

This report was later confirmed when Paterno "testified to receiving the graduate assistant's report at his home on a Saturday morning."<sup>21</sup> The following day Paterno had a meeting with Tim Curley<sup>22</sup> and "reported to

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<sup>14</sup> See GRAND JURY REPORT, *supra* note 13.

<sup>15</sup> See *id.* at 6 (explaining the incident that occurred with Victim 2).

<sup>16</sup> See *id.*

<sup>17</sup> See Don Van Natta Jr., *The Whistleblower's Last Stand*, ESPN, [http://espn.go.com/espn/feature/story/\\_id/10542793/the-whistleblower-last-stand](http://espn.go.com/espn/feature/story/_id/10542793/the-whistleblower-last-stand) (last visited Mar. 21, 2015).

<sup>18</sup> GRAND JURY REPORT, *supra* note 13, at 6.

<sup>19</sup> *Id.* at 6–7.

<sup>20</sup> *Id.* at 7.

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

<sup>22</sup> Tim Curley was the athletic director for Penn State at the time of McQueary's report. Interestingly, before the Penn State scandal came to light, Mr. Curley had been "named the 2011 recipient of the John L. Toner Award [by The National Football Foundation & College Hall of Fame (NFF)]. One of the top honors that a college athletics administrator can receive, the Toner Award is presented annually by the NFF to an athletics director who has demonstrated superior administrative abilities and shown outstanding dedication to college athletics and particularly college football. 'Tim Curley is a great leader with unparalleled vision, and he has helped Penn State maintain and expand its role as a national powerhouse in collegiate athletics and academics,' said NFF president and CEO Steve Hatchell. 'He is extremely deserving of this honor, and we are excited to recognize him at the NFF Annual Awards Dinner in December.' Curley has presided over Penn State athletics since Dec. 30, 1993 . . ." *Curley to receive National Football Foundation's John L. Toner Award*, PENN STATE NEWS (June 16, 2011), <http://news.psu.edu/story/157262/2011/06/16/curley-receive-national-football-foundations-john-l-toner-award>.

him that the graduate assistant had seen Jerry Sandusky in the Lasch Building showers fondling or doing something of a sexual nature to a young boy.”<sup>23</sup>

Following this meeting, McQueary met with Curley and Gary Schultz, who at the time was Senior Vice President for Finance and Business, and reported once again his account of what he saw in the locker room.<sup>24</sup> Curley informed McQueary at a later date that Sandusky no longer had access to the locker room and that this incident was reported to Second Mile.<sup>25</sup>

Apart from McQueary’s report to Paterno, Curley, and Schultz, McQueary “was never questioned by University Police and no other entity conducted an investigation until he testified [before the] Grand Jury in 2010.”<sup>26</sup> Tim Curley testified that he had received McQueary’s report, but denied that there was any report of sexual abuse; furthermore, he did not report this situation to University Police or any other policing agency.<sup>27</sup> This specific instance in the lack of reporting to appropriate authorities ignited a movement towards stronger policies and laws requiring educators to report sexual abuse.

### *C. Policies and Procedures in Place at the Time of the Penn State Scandal*

At the time the incident was witnessed by McQueary, the University had policies in place to ensure reporting was done,<sup>28</sup> but it lacked enforcement structure which ultimately led to leaders being dismissed and multiple civil suits against Penn State.<sup>29</sup> In the Freeh Report, the

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<sup>23</sup> GRAND JURY REPORT, *supra* note 13, at 7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 7–8.

<sup>27</sup> *Id.* at 8 (offering a brief overview of the reporting that occurred).

<sup>28</sup> 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 31 (2012), *available at* [http://progress.psu.edu/assets/content/REPORT\\_FINAL\\_071212.pdf](http://progress.psu.edu/assets/content/REPORT_FINAL_071212.pdf) [hereinafter FREEH REPORT] (“Although the University has a central Human Resources department headed by an Associate Vice president, each school and other large departments (such as Intercollegiate Athletics) has its own HR staff. Those individual departments sometimes relaxed or opt out of the standard rules or procedures in implementing University policies and rules. The University’s administrative controls include over 350 policies and related procedures, however, oversight of compliance with these policies is decentralized and uneven. The University has no centralized office, officer or committee to oversee institutional compliance with laws, regulations, policies and procedures; certain department monitored their own compliance issues with very limited resources.”).

<sup>29</sup> See Colleen Curry, *Penn State Settles 25 Suits in Jerry Sandusky Case*, ABC NEWS (Aug. 26, 2012), <http://abcnews.go.com/US/penn-state-settles-25-lawsuits-brought-jerrysandusky/story?id=20069117> (“The university’s attorney said that 25 suits had been settled out of 31 total that had been filed. The school has settled with nearly all of the individuals who testified against Sandusky at

applicable policies in place at the time are as follows:

- AD12 – Sexual Assault, Relationships and Domestic Violence, and Stalking (created in 1996)
- AD39 – Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed in university Facilities (created in 1992)
- AD41 – Sexual Harassment (created in 1998)
- AD47 – General Standards of Professional Ethics (created in 1986)
- AD67 – Disclosure of Wrongful Conduct and Protection from Retaliation (created in 2010)
- AD99 – Background Check Process (created in 2010)
- RA20 – Individual Conflict of Interest (created in 2009)
- RA21 – Institutional Financial Conflict of Interest Involving Sponsored Projects, Dedicated Gifts, Research, Scholarship, and Technology Transfer (created in 2003)
- The Penn State Principles (created in 2001)<sup>30</sup>

The University did maintain policies to protect the University and individuals from situations like the Sandusky scandal, but they failed in both instances. Witnessing this failure led to reforms of policies in school districts and laws in states nationwide. For colleges, public education system, and youth programs, the fear remains that lack of protection for minors could create a situation that could spawn lawsuits and scandals similar to Penn State.

The trial and scandal of Sandusky did not end the firestorm that occurred in the wake of the Penn State scandal; rather, further investigations and changes have occurred. Investigations have led to a stronger and clearer reporting system at Penn State by establishing mandatory reporting to the appropriate policing authorities.<sup>31</sup> In particular, the “Sandusky scandal has caused society to rethink fundamental questions about the nature of child sexual abuse, such as how to prevent it, and how to deal with offenders and victims.”<sup>32</sup> The Penn State scandal revealed everything that was wrong with the then

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his sex abuse trial in June 2012.”)

<sup>30</sup> FREEH REPORT, *supra* note 28, at 36–37.

<sup>31</sup> *Penn State’s mandated reporter training, policy revised in response to new law*, PENN STATE NEWS, <http://news.psu.edu/story/343131/2015/02/02/administration/penn-states-mandated-reporter-training-policy-revised> (last updated Feb. 2, 2015).

<sup>32</sup> Caitlin E. Glenn, *Symposium: The Legal Implications of the Sandusky Scandal*, 22 WIDENER L.J. 551, 552 (2013).

current attempts to protect children in vulnerable situations and has made reforming current laws and policies in states and schools a necessity. Without these changes, there is the possibility of another scandal. Schools and situations like tutoring or coaching, where adults have direct, personal contact with children, are environments where youth are vulnerable and more susceptible to being abused. This article explores how the Penn State scandal and other sexual abuse situations are not only shaping the policies and laws in higher education, but also in K–12 schools across the nation. Part II will address current examples of changes happening in individual school districts and state legislatures, specifically the enactment of mandatory reporting laws and policies. Part III will examine the effects and outcomes in changes of laws and policies, and, more specifically, of individual school districts.

## II. CHANGES IN STATE LAWS AND IN POLICY AND PROCEDURES OF SCHOOLS K–12 AND IN HIGHER EDUCATION: TO PROTECT MINOR CHILDREN FROM SEXUAL ABUSE

After the allegations against and prosecution of Jerry Sandusky, a new concern spread across the nation: Are there other Penn State-like situations happening, and what about Sandusky-like people involved with our children? Sandusky, a beloved coach and advocate for underprivileged young boys, was someone who successfully gained and held the trust and respect of others.<sup>33</sup> Behind the façade, he spent his life and professional career “grooming” young boys to gain enough trust to sexually abuse young boys and cover it up.<sup>34</sup> Malcolm Gladwell explains that grooming is “the process by which child molesters ingratiate themselves into the communities they wish to exploit.”<sup>35</sup> Gladwell further elaborates on exactly what Sandusky intended when he established Second Mile: “We now know what Sandusky was really doing with the Second Mile. He was setting up a pipeline of young troubled boys. Just as important, though, he was establishing his bona fides.”<sup>36</sup> The idea of pedophiles grooming children is not new; rather, this is a method used regularly by pedophiles to gain the trust of the community and to create an environment where the victim feels that there is no escape.<sup>37</sup> Recognition of the Penn State scandal has increased

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<sup>33</sup> Malcolm Gladwell, *In Plain View*, THE NEW YORKER (Sept. 24, 2012), [http://www.newyorker.com/arts/critics/atlarge/2012/09/24/120924crat\\_atlarge\\_gladwell?currentPage=all](http://www.newyorker.com/arts/critics/atlarge/2012/09/24/120924crat_atlarge_gladwell?currentPage=all).

<sup>34</sup> *Id.*

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

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

<sup>37</sup> *See id.*

overall awareness of these types of grooming tactics used by pedophiles.<sup>38</sup> Furthermore, this behavior is the reason that universities, schools, and states have initiated the development of efficient reporting policies and laws.

A prevalent concern for this need in changing policy and law, for school districts in particular, is the protection of the student/teacher relationship. As this comment shows through the Penn State scandal, a lack of boundaries can create distrust, wreak havoc, and give rise to scandals between parents, children, school districts, and communities. One of the most publicized cases of betrayal and distrust of teachers in respect to the boundaries of the student/teacher relationship occurred in the state of Washington.<sup>39</sup> Mary Kay Letourneau, a thirty-five-year-old sixth-grade teacher, pled guilty to two counts of second-degree rape of a child after having sexual intercourse with one of her thirteen-year-old male students.<sup>40</sup> This is an example of the necessity for policies and laws to protect vulnerable students. Without policy changes in school districts, universities, and states, the prevalence of technology and social media outlets will only increase contact between students and teachers, and escalate the number of situations where boundaries are crossed.

#### *A. Statistical Research to Back the Concerns of School Districts*

In response to a mandate by Congress, Dr. Charol Shakeshaft of Hofstra University completed a literature review that provides the Department of Education's most current statistical information on sexual misconduct of educators.<sup>41</sup> This literature review was done based on the information available; which, admittedly, is not as specific and detailed as would be preferred, but "[t]he Department of Education is currently investigating ways to obtain more reliable evidence on the extent of sexual abuse in schools."<sup>42</sup> The report concluded that more than 4.5 million minor students are subjected to sexual misconduct by an

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<sup>38</sup> See Eddie Pells, *4 of 5 Schools Beef Up Policy After Penn State*, AP BIG STORY (Sept. 1, 2013), <http://bigstory.ap.org/article/4-5-schools-beef-policy-after-penn-state> ("As they watched Penn State struggle to contain a child sex-abuse scandal that ruined its once-pristine name and took down the mightiest of college coaches, schools around the country realized they needed to examine what they were doing so they wouldn't see their reputations destroyed, as well.").

<sup>39</sup> *State v. Letourneau*, 997 P.2d 436, 439–40 (Wash. Ct. App. 2000).

<sup>40</sup> *Id.*

<sup>41</sup> Charol Shakeshaft, *Educator Sexual Misconduct: A Synthesis of Existing Literature*, prepared for the U.S. Dept. of Educ., Preface (2004), available at <http://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf> ("Section 5414 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, requires 'a national study of sexual abuse in schools.'").

<sup>42</sup> *Id.* at 1 (noting that there is a possible underestimate of how much abuse actually occurred, but the results nonetheless are important to show just how often this does occur).

employee of a school sometime between kindergarten and twelfth grade.<sup>43</sup>

For instance, in a 1989 North Carolina survey, recent high school graduates were asked, “[b]ased on the above definition, do you believe that you experienced sexual harassment during your high school years?”<sup>44</sup> The response indicated that “[43] percent reported insulting comments, looks, or gestures by a teacher; 17.5 percent reported sexual touching; and 13.5 percent reported sexual intercourse with a teacher.”<sup>45</sup> This would suggest that, of the 148 responses by high school graduates surveyed, thirty-one percent had experienced sexual misconduct by a teacher; furthermore, and even more shocking, 19.98 students had sexual intercourse with a high school teacher.<sup>46</sup> This report substantiates the fear that the educational system is ripe for sexual predators to groom and manipulate minor students. Dr. Shakeshaft concludes that educators have power over students:

Schools are also a place where teachers are more often believed than are students and in which there is a power and status differential that privileges teachers and other educators. . . . [L]ike sexual predators anywhere—sexual abusers in schools use various strategies to trap students. They lie to them, isolate them, make them feel complicit, and manipulate them into sexual contact. Often teachers target vulnerable or marginal students who are grateful for the attention. And, students that adults regard as marginal are also unlikely to be accepted as credible complainants against a celebrated teacher.<sup>47</sup>

This conclusion by Dr. Shakeshaft relates back to Sandusky’s actions as a coach and mentor. Everything he did, such as creating the Second Mile program, was calculated to create an environment around minors where they did not feel they had a safe place to report abuse. Sandusky’s seemingly charitable actions were used as a way to manipulate young boys and their families into trusting him enough to take advantage of the situation. The results of this literature review by Shakeshaft articulate the fear that seemingly ordinary, well-loved educators could be potential or present predators. These concerns, especially after the Sandusky scandal and in light of increased technological access to students, have encouraged individual school districts and states to change their policies and create stronger protections for minors.

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<sup>43</sup> *Id.* at 18.

<sup>44</sup> *Id.* at 19.

<sup>45</sup> *Id.*

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

<sup>47</sup> *Id.* at 31 (citations omitted).

*B. Individual School Policy Changes in Response to the Penn State Scandal*

*1. Raleigh County Board of Education's texting ban*

In Raleigh, West Virginia, the County Board of Education (hereinafter “Board”) has recognized the need for boundaries to be set and “pass[ed] a policy that bans teachers from sending personal texts to students.”<sup>48</sup> The Superintendent explained the reasoning behind this ban was to prohibit “any type of close personal relationship . . . that may reasonably be perceived as inappropriate’ between a student and staff member, including excessive socialization that would cause parents, students or the public to believe an inappropriate relationship exists.”<sup>49</sup> Board member Cynthia Jafary further explained that since West Virginia does not currently have a policy outlining what is appropriate technological communication between students and teachers, this policy was meant to “define what we think is appropriate communication between the student and staff member.”<sup>50</sup> The Board’s goal was to create boundaries between the students and teachers, but the ban on texting still allows for school or extra-curricular related text messages.<sup>51</sup> Even with the protections and boundaries put into place, the Board has not addressed communications from student and teacher through Facebook, Twitter, or other social media sites. The Board does encourage educators to use all the “best-practice models out there that give an indication as to what’s appropriate and what’s not.”<sup>52</sup>

In comparison to the Penn State scandal, the Board was specifically trying to prevent similar scenarios between educators and students. For instance, Sandusky was consistently calling one victim in particular: “Officer of Attorney General Narcotics Agent Anthony Sassano testified concerning phone records that establish 61 phone calls from Sandusky’s home calls to Victim 1’s home phone between January 2008 and July 2009.”<sup>53</sup> Additionally, in that time period “there were 57 calls from Sandusky’s cell phone to Victim 1’s home phone. There were four calls

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<sup>48</sup> Jessica Farrish, *Teacher, student texting banned by BOE*, REGISTER-HERALD REPORTER (Oct. 9, 2013), <http://www.register-herald.com/local/x2112891536/Teacher-student-texting-banned-by-BOE>.

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

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> GRAND JURY REPORT, *supra* note 13, at 5. Additionally, Victim 1’s mother said in a statement that she was “alarmed by the hundreds of phone calls Sandusky made to the house.” Joseph Rhee, Gerry Wagschal, & Linh Trans, *Sandusky Victim 1 Steps Out of Shadows, Says Justice Took Too Long*, ABC NEWS, Oct. 19, 2012.

made from Victim 1's home phone to Sandusky's cell phone and one call from Victim 1's mother's cell phone to Sandusky's cell phone."<sup>54</sup> It is not clear what the subject or content of these phone calls was, but there is understandably suspicion as to why a person in Sandusky's position would need to call a minor's home that often. The message from this scenario is clear: clear boundaries have to be set in order to protect minors.

## 2. Policy changes at the University of Mississippi

The aftermath of Penn State included revelations of abuse in on-campus facilities, damaging publicity, and lawsuits. Universities, especially state universities, allow minors on campus. For example, in Utah alone, Utah Valley University hosts state high school drill dance competitions,<sup>55</sup> Salt Lake Community College hosts part of the state high school basketball rounds,<sup>56</sup> and the University of Utah hosts part of the football state championship games.<sup>57</sup> It is not uncommon for universities to host minors for academic events, mentoring opportunities, and other activities that involve minors coming to on-campus events. After the Sandusky scandal, universities across the nation began to react and create policies of their own to prevent situations similar to Penn State from happening.

For instance, the University of Mississippi passed a policy restricting adult one-on-one contact with minors.<sup>58</sup> Additionally, they reinforced Mississippi law and passed official policy for mandatory reporting:

Duty to Report: If any person has reason to suspect that a Minor has been subject to neglect or abuse, he or she must: Inform the Mississippi Department of Human Services by calling the Abuse hotline . . . and provide written notification to the Department of Human Services as soon thereafter as possible. Inform the University Police Department . . . or other appropriate law enforcement agency, and if the suspected assault or abuse presents an imminent danger to a Minor, contact should occur immediately. If the Minor is a participant in a Program, inform the Program Director immediately. The Program

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<sup>54</sup> *Id.*

<sup>55</sup> Utah High School Activities Association, *2014 UHSAA State Drill Competitions: 4A & 5A DRILL TEAM CHAMPIONS*, <http://www.uhsaa.org/drillteam/2013-2014/2014%204A-5A%20STATE%20DRILL%20RESULTS.pdf> (last visited Jan. 19, 2015).

<sup>56</sup> Utah High School Activities Association, *2014 UHSAA Girls Championships*, <http://www.uhsaa.org/gbasketball/2014/5A.pdf> (last visited Jan. 19, 2015).

<sup>57</sup> Utah High School Activities Association, *2013 3AA State Football Championships*, <http://www.uhsaa.org/football/2013/3AA.pdf> (last visited Jan. 19, 2015).

<sup>58</sup> UNIVERSITY OF MISSISSIPPI, SUPERVISIONS OF MINORS 1 (2013), available at [https://secure4.olemiss.edu/umpolicyopen/GetPdfActive?pol=11619450&ver=active&file=11619450\\_active\\_20130422.pdf](https://secure4.olemiss.edu/umpolicyopen/GetPdfActive?pol=11619450&ver=active&file=11619450_active_20130422.pdf).

Director will immediately notify the University Police Department and the Title IX Coordinator or designee. If the Program Director may be involved in the suspected assault or abuse the person should report the suspected assault or abuse to the University's Title IX Coordinator or designee. . . . "See Something, Say Something": If any person witnesses a violation of this policy, such as One-on-One Contact, or anything that gives rise to concern for the health or safety of a Minor, that person shall immediately notify the University's Title IX Coordinator or designee. . . .<sup>59</sup>

The policies created also required background checks, mandatory training, and supervision of minors by multiple adults at all times.<sup>60</sup> During the Penn State scandal, this would have required the graduate assistant who witnessed the abuse to report this to the authorities on campus or another appropriate law enforcement agency. Additionally, the one-on-one contact would have barred Sandusky's time spent with young boys while on campus. The University of Mississippi's policy changes reflect the reform that was needed in light of the Sandusky scandal and the damaging litigation of Penn State that ensued.

### *C. Statewide Policy Changes*

Not only did school districts and universities begin changing policies, but states also became very active and concerned about protecting minors. In 2012, states began introducing mandatory reporting laws: approximately 107 bills in 30 states and the District of Columbia have been introduced in the 2012 legislative session on the reporting of suspected child abuse and neglect; 10 of these states have enacted legislation.<sup>61</sup> These proposed changes in the law vary, but focus on mandatory reporting of child abuse. The changes are particularly aimed at those who are in situations of authority where minors are involved. While Pennsylvania was probably the state most directly motivated by the incidents at Penn State, other states followed suit and began proposing new legislation to ensure these same protections.

#### *1. In the wake of Penn State: Pennsylvania's proposed legislation*

After the Penn State scandal, an outcry erupted to remedy the shortfalls in the current statutory laws.<sup>62</sup> Loopholes and flaws in child

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<sup>59</sup> *Id.* (citations omitted).

<sup>60</sup> *Id.* at 1–5.

<sup>61</sup> Nat'l Conference of State Legislatures, *Mandatory Reporting of Child Abuse and Neglect*, <http://www.ncsl.org/research/human-services/2012-child-abuse-mandatory-reporting-bills.aspx> (last visited Feb. 9, 2015).

<sup>62</sup> CNN Wire Staff, *Pennsylvania Governor: Change Law After Penn State Scandal*,

protection laws exposed the need for reform in order to protect minors from abuse. Pennsylvania began to change the laws and require that “reports of alleged child sexual abuse [be] made to government authorities.”<sup>63</sup> Since this call for changes in Pennsylvania, the legislature used policies and laws to establish a task force to investigate Pennsylvania’s response to child abuse claims.<sup>64</sup> Pennsylvania’s Task Force on Child Protection suggested there should be changes in the law, and made strengthening these laws its primary goal.<sup>65</sup>

The Task Force submitted proposed changes in the law through the “Child Protection Package.”<sup>66</sup> H.B. 430 proposed to “eliminate chain-of-command reporting within organizations and institutions, allow for internet and email reporting, and institute a cross reporting requirement to ensure that reports of suspected child abuse are sent to the proper authorities.”<sup>67</sup> H.B. 429 proposed to “expand protections from employment discrimination to any person who makes a good faith report of suspected child abuse. Currently mandated reporters of child abuse are protected, but [this] will extend this important protection to permissive reporters as well.”<sup>68</sup> This would allow protections for those who report child abuse, thus protecting those who report their superiors. Additionally, H.B. 436 proposed “legislation [that would] expand and clarify the list of mandated reporters of child abuse. This bill [would] also clarify a mandated reporter’s basis to report child abuse and enhance the penalty scheme for those who fail in this obligation.”<sup>69</sup>

In addition to changes made regarding the reporting of abuse, the legislature introduced changes to the receiving of such reports. H.B. 432 proposed “legislation to require child abuse recognition and reporting training for mandated reporters under the jurisdiction of a Commonwealth agency”<sup>70</sup> This would allow for clear trainings to take place and would clear up any ambiguities of how and where to report child abuse. Then, H.B. 431 proposed legislation “that would amend the

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CNN.COM (Nov. 14, 2011, 3:21 PM), <http://www.cnn.com/2011/11/13/justice/pennsylvania-coach-abuse/>.

<sup>63</sup> *Id.*

<sup>64</sup> Associated Press, *Sandusky Abuse May Change Laws*, USA TODAY (Nov. 27, 2012, 5:03 PM), <http://www.usatoday.com/story/news/nation/2012/11/27/sandusky-child-abuse-laws/1730047/>.

<sup>65</sup> *Id.*

<sup>66</sup> Memorandum from Rep. Katharine Watson, Rep. Ryan Aument, Rep. Maureen Gingrich, Rep. David Maloney, Rep. Dan Moul, & Rep. Todd Stephens to PA H.R. regarding proposed Child Protection Package (Jan. 28, 2013), *available at* <http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20130&cosponId=11363>.

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

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

Child Protective Services Law to require that licensing boards issue regulations to require that licensees who are mandated reporters of child abuse be trained on child abuse recognition and reporting.”<sup>71</sup>

The language in H.B. 435 proposes “legislation to expand and enhance background clearance requirements for those who work with children or volunteer in a role where they supervise children.”<sup>72</sup> It would expand the screening process for all those who worked with children. H.B. 434 proposed “legislation to remove the separate standards and procedures that exist for school employees accused of abusing a student. [It would] ensure that school employees are subject to the same investigations and held to the same standards as parents, child care workers, and other perpetrators of child abuse.”<sup>73</sup> Furthermore, H.B. 433 proposed “legislation to provide for additional safeguards and due process with respect to the outcome of . . . child abuse investigation[s] . . . [and] require[s] that the county Children and Youth Agency . . . provide[s] a specific timeline for appeals of the outcome of a child abuse investigation.”<sup>74</sup> The Pennsylvania legislature’s actions, following the Penn State Scandal, provide greater protections for minors and resolve ambiguities in previous laws and policies.

Utah is also taking steps towards protections for minors. Recently, Elizabeth Smart, an advocate for the protection of minors, “and her father, Ed [Smart], attended the Utah House Health and Human Services Committee meeting to lend support to a bill that calls for elementary schools to provide training on child sexual abuse prevention.”<sup>75</sup> The bill would allow elementary schools to set up training to prepare students to be aware of sexual abuse. Elizabeth Smart stated, “I have learned that over 80 percent of children who are given choices, who are given options about fighting back, about saying no, about realizing when that line has been crossed, they’re able to get away.”<sup>76</sup> Again, there is a concern for the welfare of children in abusive situations.

The proposed laws in Pennsylvania, and other states, for trainings, background checks, and reporting misconduct can reduce the possibility of “grooming” by teachers, coaches, and mentors. Additionally, training

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<sup>71</sup> *Id.*

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

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

<sup>74</sup> *Id.*

<sup>75</sup> *Elizabeth Smart Biography*, BIOGRAPHY.COM, <http://www.biography.com/people/elizabeth-smart-17176406> (last visited Feb. 9, 2015) (“[Elizabeth] Smart, who was 14 at the time, was rescued with the help of an *America’s Most Wanted* episode after being kidnapped and held captive for nine months.”).

<sup>76</sup> Ryan Curtis, *Elizabeth Smart Offers Compelling Testimony on Child Sexual Assault Prevention Bill*, UTAH POLITICAL CAPITOL (Feb. 20, 2014), <http://utahpoliticalcapitol.com/2014/02/20/elizabeth-smart-offers-compelling-testimony-on-child-sexual-assault-prevention-bill/#>.

children on what it means to be sexually abused increases the likelihood that children will report abuse.

## 2. *Enacted statutes*

In addition to proposed statutes, states have passed and are enforcing many statutes which seek to further protect minors. For example, California passed SB 1264 in 2012, which “include[s] in the list of individuals who are mandated reporters any athletic coach, including . . . an assistant coach or a graduate assistant involved in coaching at a public or private postsecondary institution.”<sup>77</sup> Furthermore, this law of creating mandatory reporting and providing incentives to report, increases the penalty for failure to report to “imprisonment in a county jail for a period of up to 6 months, a fine of \$1,000, or . . . both.”<sup>78</sup> Like Pennsylvania, California requires that mandatory reporters receive training, especially if working directly with children, to report child abuse.<sup>79</sup> In Delaware, the legislature “[s]implifie[d] the mandatory report requirements for schools through ensuring that the most serious offenses, such as any sexual offense, shall be reported to law enforcement while giving schools discretion to handle minor offenses without mandatory reporting.”<sup>80</sup>

In another example, which specifically applied to state universities, the Florida legislature determined the following:

That any Florida College System institution, state university, or nonpublic college, university, or school whose administrators, faculty, or staff knowingly and willfully fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or who knowingly and willfully prevent another person from doing so shall be subject to fines of \$1 million for each such failure. The bill would require anyone to report suspected child abuse or neglect to the Department of Children and Families (DCF) hotline and would require hotline operators to process all abuse complaints; any calls about abuse other than by caregivers will be forwarded by DCF officials to local authorities.<sup>81</sup>

After the Sandusky Scandal, loopholes in Pennsylvania’s and many state’s laws became evident. In response, states and universities began reexamining the soundness and effectiveness of laws in protecting

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<sup>77</sup> S.B. 1264, *Legislative Counsel’s Digest* (2012), available at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_12511300/sb\\_1264\\_bill\\_20120924\\_chaptered.html](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_12511300/sb_1264_bill_20120924_chaptered.html) (also defining mandatory reporting individuals).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Nat’l Conference of State Legislatures, *supra* note 61.

<sup>81</sup> *Id.*

minors when in the care of mandatory reporters. A primary concern focused on the mandatory reporting laws and policies already in place.

### III. WHAT IS NEXT FOR UNIVERSITIES AFTER THE PENN STATE SCANDAL

After the Sandusky trial and public outcry, universities were placed on a public stage of scrutiny regarding responsibilities to improve security and protections for minors that are on campus. Managing these new laws and policies is where difficulty arises. For instance, “Most universities have minors on campus in so many different ways[,] . . . [j]ust getting a grasp on where they are is a large job.”<sup>82</sup> Supervision will have to be increased for minors on campus; as well as putting into effect strict policies and mandatory reporting, which some universities have begun to do.<sup>83</sup> The scrutiny of policies and procedures of universities has only escalated after the Penn State Scandal, and there has been a call for a call to managing the risk that minors are at while on campus. The solution to these difficulties for universities is to (1) take inventory of the minors that come to the campus each year; (2) assess the risks minors encounter while on campus; and (3) have policies in place to be proactive for future harms to minors on campus.

Universities take on a major risk when allowing programs on campus that involve minors. The solution is to increase awareness of minors on campus. For example, some university officials explained that “[C]ollege lawyers said one of the first things they did at their institutions in response to the Sandusky scandal was to complete a thorough inventory of the places and situations where minors interact with faculty and staff members.”<sup>84</sup> This is the first step universities and colleges will want to take. Once this is established, they can move forward with putting policies and procedures into effect to protect minors.

### IV. CONCLUSION

The Penn State scandal has shaken the education system. From this point forward universities and colleges have the responsibility to correct faulty policies or procedures to make certain that minors on campus are protected. These same responsibilities are required for K–12 schools and are possibly even more crucial. Whether a university or college or a K–12 school, policies and laws must be created to keep minors safe. In all

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<sup>82</sup> Kelderman, *supra* note 1 (quoting Laura LaCorte, associate senior vice president for compliance at the University of Southern California).

<sup>83</sup> *See supra* Part II.

<sup>84</sup> Kelderman, *supra* note 1.

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areas of education—colleges, universities, and K–12 schools—policies must change. These changes need to be in accordance with newly changed state and federal policies and need to ensure the safety of minors. Effecting change in these areas, schools can prevent another scandal on the level of Penn State.

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