

State Bar of Michigan Children’s Law Section

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**The
Michigan
Child
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Editor's Note—Winter 2013

This issue of the *Michigan Child Welfare Law Journal* includes two articles covering particularly challenging issues. In “Identifying mother-son incest: What child protective services investigators and attorneys need to know” (Goldberg, M. & Pollack, D.) the authors note that mother-son incest has historically been thought of as uncommon, especially when compared to other forms of incest such as that between father and daughter. However, the authors present data proving otherwise. Moreover, it is likely that sociocultural denial, underreporting by the victim, and a lack of validating evidence hinder the collection of recorded cases. Therefore, the problem is perhaps even more prevalent than statistics indicate. In light of this circumstance, the authors focus on three questions: 1) Why is mother-son incest historically underreported? 2) Why should CPS investigators and attorneys be aware of mother-son incest? 3) What are the practice implications for CPS investigators and attorneys?

In “Analysis of the ‘Speak Up to Protect Every Abused Kid Act’: Does It Really Protect Kids?” (Sobocinski, A.) the

author describes the circumstances surrounding the allegations of child sexual abuse associated with the Pennsylvania State University college football program. In the wake of this scandal, Senator Robert Casey of Pennsylvania introduced a bill entitled the Speak Up to Protect Every Abused Kid Act of 2011. This bill proposed to amend the Child Abuse Prevention and Treatment Act to require all states to pass and enforce a law requiring all adults to report instances of known or suspected child abuse. The author examines this bill's potential impact on child welfare systems and asks whether the approach taken in this bill is the most effective way to improve child safety, or whether other alternative plans for protecting children may be desirable.

As always, the editors welcome your feedback on this and future issues to ensure that the *Child Welfare Journal* is of value to you.

—Joseph Kozakiewicz

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Message from the Chair

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.” —Kofi Annan

We have an extraordinary group of members within the State Bar of Michigan-Children’s Law Section that guides the practice of child welfare in a superb way. As leaders in our respective disciplines, we attempt to excel in our field to bring our families the best of us. We attempt to provide our families with the best we have to offer but at the same time we face many obstacles in our field. The issues we face are not the most glamorized of topics. It is not something that is televised and that will captivate the world. The issues we deal with are the issues that people turn the television off for or close the newspaper because they do not want to hear about it. We represent the silent sufferers of our communities. We listen to children and parents who are going through the worst times of their lives. The only time we hear anything about child abuse and neglect is when it is the worst of the worse cases but we only hear of it for a fleeting moment and then on to the next story.

These thoughts came to me as I was watching the early morning news these last few weeks. Throughout the news, I have continually heard of the Olympian who is accused of murdering his girlfriend, the watchful eye of the press on the celebrity expectant mother, and most recently, the elaborate Belgian diamond heist. The latest news involving child abuse that was reported to the world was the Sandusky trial. However, those who work tirelessly in this field know that this is only the beginning of what is happening within our world. Our families that need assistance in substance abuse, anger management, and mental health, just to name a few, are the silent sufferers that we attempt to provide assistance to so that families may be reunited; children returned home to their parents.

Children are suffering from a hidden epidemic of child abuse and neglect. Every year 3.3 million reports of child abuse are made in the United States involving nearly 6 million children. A report of child abuse is made every ten seconds in the United States. More than five children die every day as a result of child abuse in the United States. Child abuse occurs at every socioeconomic level, across ethnic and cultural lines, within all religions and at all levels of

education. <http://www.childhelp.org/pages/statistics>. According to Michigan CASA, there are approximately 12,291 children in foster care, ages 0-17, in the State of Michigan. <http://michigancasa.org>. However, there is a dedicated group of individuals who work diligently and advocate fiercely making sure the voices of these children and parents are not silenced. They work to allow our children to have some peace in their lives and not to live in constant fear. Our section continues to strive and excel in our field by working on the ever-changing legislation in child welfare and through education of our practicing attorneys such as the conference that will be held this year. The State Bar of Michigan-Children’s Law Section will be partnering with the State Court Administrative Office at Shanty Creek in Bellaire, MI on Thursday, May 16, 2013 to bring an outstanding event to assist our committed professionals in the child welfare field to excel even more in their advocacy skills. The conference will focus on trauma and the parent-child bond, updates to Michigan law, and to speak on issues that should be brought up when advocating for your client such as evidentiary issues, parenting time, and services to our families.

The State Bar of Michigan-Children’s Law Section recognizes that child protection is a global concern and that the art of advocating child welfare continues to evolve. Accordingly, this journal is intended to be useful to practicing attorneys, referees, Judges, caseworkers, professional practitioners, scholars, policymakers, and concerned citizens. We encourage contributions to this journal so that we can expand the knowledge in regards to child abuse and neglect and create a voice for our silent sufferers. We must continue to advocate loudly so that our families are not hidden in the shadows but instead front and center who cannot be ignored so that we can provide them with what they need to achieve permanency and stability for themselves and their children.

—Robin Eagleson

The Michigan Child Welfare Law Journal Call for Papers

The editorial board of *The Michigan Child Welfare Law Journal* invites manuscripts regarding current issues in the field of child welfare. The *Journal* takes an interdisciplinary approach to child welfare, as broadly defined to encompass those areas of law that directly affect the interests of children. The editorial board's goal is to ensure that the *Journal* is of interest and value to all professionals working in the field of child welfare, including social workers, attorneys, psychologists, and medical professionals. The *Journal's* content focuses on practice issues and the editorial board especially encourages contributions from active practitioners in the field of child welfare. All submissions must include a discussion of practice implications for legal practitioners.

The main text of the manuscripts must not exceed 20 double-spaced pages (approximately 5000 words). The deadline for submission is June 30, 2013. Manuscripts should be submitted electronically to kozakiew@msu.edu. Inquiries should be directed to:

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Identifying Mother-Son Incest: What Child Protective Services Investigators and Attorneys Need to Know

by Melanie L. Goldberg and Daniel Pollack

Introduction

Society's disdain and concern for child sexual abuse has been accelerated by the recent trial of Jerry Sandusky and a number of other local high profile cases. To address this phenomenon, every state has an infrastructure of professionals to detect, investigate, record and analyze allegations of child abuse.

Twenty-five years ago, the United States Supreme Court observed that "child abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim." *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987). This observation particularly characterizes a unique form of child abuse: mother-son incest.

Prevalence

According to the *Fourth National Incidence Study of Child Abuse and Neglect* (Sedlak, et al., 2010), 9.2% of maltreatment cases reported to Child Protective Services (CPS) workers in 2010 were cases of sexual abuse. In more than 80% of all maltreatment cases one or both of the victim's parents was the alleged perpetrator. This same study found that 22% of all 49,500 children who were sexually abused by a biological parent were done so by their mothers. Additionally, 3% of all 31,300 children who were sexually abused by a non-biological parent (which includes stepparents, foster parents, and biological parents' significant others) were done so by the female partner. Consequently, a total of 11,829 children were sexually abused by their mother or mother figure in the study year.

Mother-son incest has historically been thought of as uncommon, especially when compared to other forms of incest such as that between father and daughter. However, the data above prove otherwise. Moreover, recent arguments have been made that sociocultural denial, underreporting by the victim,

and a lack of validating evidence hinder the collection of recorded cases. Therefore, the problem is perhaps even more prevalent than the statistics above indicate, making mother-son incest significant enough to warrant increased attention from researchers, helping professionals, and CPS workers (Allen, 1990; Lawson, 1993; Etherington, 1997; Hetherington, 1999; Kelly, Wood, Gonzalez, MacDonald, & Waterman, 2002; Denov, 2003).

Research Questions

While there is literature on this phenomenon – albeit scarce – much of the discussion has centered on theoretical perspectives and specific case studies. Recently, the body of research concerning the problem of mother-son incest is slowly growing. This article adds to the conversation by alerting CPS investigators and attorneys to the problem and helping them respond more effectively. Three overarching questions are addressed: 1) Why is mother-son incest historically underreported? 2) Why should CPS investigators and attorneys be aware of mother-son incest? 3) What are the practice implications for CPS investigators and attorneys?

Why is Mother-Son Incest Historically Underreported?

Many participants are involved in reporting mother-son incest. First, the informant – who is usually the victim – must report the abuse. Second, the person to whom the victim reports – usually a social worker, teacher, or other helping professional – must acknowledge and validate the claim and report the abuse to CPS. Third, CPS workers, often in consultation with attorneys, must investigate the case. In reality, ingrained expectations of male perpetrators and female victims, a thin line between maternal affection

and mother-son sexual abuse, and the complicated dynamics between mothers and sons all serve as obstacles to reporting cases of mother-son incest.

Ingrained expectations of male perpetrators and female victims

The public misconception that mother-son incest does not exist is partly the result of pervasive socio-cultural concepts that strictly define the nature and role of women and mothers. Mothers are warm and nurturing, have unconditional love for their children, and prioritize the role of caregiver—putting their children's wants and needs before their own (Krug, 1989; Etherington, 1997; Hetherington, 1999; Chiotti, 2009). So entrenched are these conceptions that laypeople and professionals have difficulty acknowledging the possibility of a mother sexually abusing her child (Banning, 1989; Allen, 1990; Lawson, 1991; Etherington, 1997; Hetherington, 1999; Denov, 2003, 2004; Bunting, 2005; Levine, 2006; Turton, 2008, 2010; Chiotti, 2009). The idealization of women and of the mother-child relationship is a significant factor in promoting the disbelief and denial of mother-son sexual abuse (Etherington, 1997; Turton, 2010).

The conflict between theoretical conceptions of motherhood and the reality of mother-son sexual abuse is an example of cognitive dissonance. When a real event does not fit with pre-conceived thoughts, beliefs, and attitudes, psychological discomfort may result. This discomfort may force a person to rationalize the feeling of inconsistency in order to achieve a sense of consonance (Festinger, 1957). In the case of mother-son incest, those who are responsible for recognizing, reporting, or responding to the abuse may rationalize the occurrence to make the reality fit with their conceptions of female innocence and motherly love. They may achieve cognitive consonance by reframing a mother's sexually abusive acts as an extended expression of love by denying the mother's culpability, or by labeling the abusive mother as abnormally evil or psychotic (Saradjian, 1996).

The deeply rooted denial of maternal malevolence has important ramifications for responding to reports of mother-son incest. In interviews with survivors of female sexual abuse, most of whom were men abused by their mothers, Denov (2003) examined the responses of helping professionals. While some of the survivors reported positive responses, including the creation of a supportive environment and the valida-

tion of their feelings, others reported more negative reactions. Some helping professionals were reported as demonstrating discomfort with and avoidance of the subject, minimization of the abuse allegations, and shock, disbelief, or denial that the events occurred.

Similarly, child psychiatrist Robert Wilkins (1990) urges his colleagues to acknowledge the reality of mother-son sexual abuse. He points to several cases, both publicly known and witnessed by him personally, in which doctors, psychiatrists, and social workers were dismissive of boys reporting their mothers for sexual abuse. Banning (1989) presents a case in which a mother was clearly sexually abusing her son. The response of the teachers and social workers involved in the case was not to report the abuse to police officials, but instead to refer both mother and son to therapy. Both she and Wilkins challenge readers to imagine helping professionals and law enforcement officials steering sexually abusive men towards therapy rather than criminal prosecution if the genders of victim and perpetrator were reversed.

In interviews with 45 child protection professionals including a mix of social workers, lawyers, health care workers, counselors, probation officers and police officers, Turton (2010) found that many professionals either did not believe that mother-son sexual abuse existed or did not view it as a problem. They may deny the existence of female sexual offense because of the pervasive socio-cultural conceptions of femininity (Turton, 2010), or, due to generally held assumptions about the nature of mother-son relationships, they may minimize the abuse or interpret the situation as innocuous (Turton, 2008).

Separating maternal affection from mother-son sexual abuse

Another obstacle to the general acknowledgment of mother-son sexual abuse is the fact that women and mothers typically have more physical contact with children than do men or fathers. Because it is expected that a mother (especially) will show affection towards her child through touching, hugging, and kissing, the boundaries between appropriate and inappropriate behavior become blurred (Banning, 1989; Lawson, 1991; Lawson, 1993; Etherington, 1997; Oliver, 2007). In interviews with CPS workers, Turton (2010) found that they had difficulty in discerning between maternal affection and mother-son sexual abuse. The expectation of mothers to be intimate with

their children makes it difficult for researchers, lawmakers, and child protection agencies to define what constitutes mother-son sexual abuse.

Does genital touching have to occur or may non-contact forms of seduction also be labeled abuse? Similarly, at what age is it no longer appropriate for a mother to bathe with her child, to sleep in the same bed as her child, to be seen naked by her child, or have her child be seen naked by her? These questions have ambiguous answers at best (Wakefield & Underwager, 1991), and are muddled even further when cultural differences are taken into account (Lawson, 1993). In some cultures, for example, mothers are taught to fondle the genitals of their babies as a means of showing love or providing comfort (Lawson, 1993; Deering & Mellor, 2007). While there are cultural norms about how a father can touch his children—a violation of which causes a knee-jerk reaction of contempt—the rules for mothers are more fluid (Wilkins, 1990; Robertiello, 1998). As a result, CPS workers and law enforcement officials may have difficulty identifying the boundary between maternal responsibilities and sexual abuse and making decisions about substantiating a report of mother-son incest.

Lawson (1993) provides a detailed definition of mother-son incest that incorporates an understanding of the dynamics of mother-son sexual abuse. Recognizing the need to address both the subtle and overt forms of maternal incest, she posits five levels of abuse. The first level is “subtle” (p. 265). This most covert level of abuse includes non-contact sexual abuse in which the mother behaves inappropriately, not with the intent to arouse the child sexually, but rather to receive emotional or physical attention that she feels she is lacking, or to give the child the special attention that she feels he needs. Examples of subtle sexual abuse include bathing with the child or sleeping in the same bed with the child past an appropriate age. The second level of abuse is “seductive abuse” (p. 266). This also includes non-contact sexual abuse, but the intent of the mother’s actions is to sexually arouse her son. These behaviors include showing her son pornography, verbally arousing her son, or exposing her son to her or others’ nudity. The last form of non-contact sexual abuse is “pervasive” (p. 266). Mothers who abuse their sons in this way criticize their sexuality or emasculate them. For example, a mother will force her son to dress in women’s clothing or will mock his sexual development.

The final two levels of mother-son sexual abuse include genital contact. One Lawson terms “overt” and the other “sadistic” (p. 266). When a mother is sexually abusing her son overtly, she is participating in interactions like oral sex, sexual intercourse, or sexualized kissing, with the intention of satisfying her own sexual needs. On the other hand, when a mother is sadistically sexually abusing her son, she is either forcing sexual contact or violently abusing sexual parts of the body with a cruel intent to harm the child. Though these last two forms of abuse are more blatant, the first three must be acknowledged as well, as the harm they inflict on the child may be as serious as those resulting from more violent forms of abuse.

Shame may prohibit male victims from reporting

Boys who are being sexually abused by their mothers may not view the abuse as such. Due to physical arousal, an initial positive or confused response to the encounter, the subtle nature of the abuse, or an inability to see their mothers in a negative light, many boys do not see themselves as victims and thus do not report the abuse to officials, if at all, until they process the relationship in long-term therapy later in life (Lawson, 1993; Etherington, 1997; Kelly et al., 2002; Turton, 2008).

Boys are socialized to believe that they are dominant and that sex is not something to which they passively succumb. Rather, sex is something they actively pursue. Sexual victimization by a woman does not fit with their internalized gender expectations (Fromuth & Burkhart, 1989; Etherington, 1997; Levine, 2006). Because of the dissonance between reality and perception, boys may reframe maternal sexual abuse as a type of exploration or experimentation that they themselves searched for and initiated (Hetherington, 1999). This reframing may lead male victims to feel responsible for the inappropriate behavior (Forward & Buck, 1988; Hetherington, 1999; Levine, 2006) and inhibit self-reporting.

While some boys do recognize mother-son sexual abuse as inappropriate or destructive, Carnes (1997) offers a theoretical basis to explain why a male victim may continue to remain loyal to an abusive mother. Using the term “betrayal bond,” Carnes explains how any form of traumatic or abusive relationship produces a biochemical reaction that causes an emotional arousal in the victim and which may be confused for positive feelings of intimacy. As a result, victims may

continue to feel loyalty and love toward those who have betrayed them. In the case of mother-son incest, boys may refrain from reporting their abusive mothers.

Why should CPS Investigators and Attorneys be Aware of Mother-Son Incest?

Due to a combination of the gender stereotypes and biological processes involved in sexual acts, there may be a generally held belief that sexual interactions between young boys and older women cannot be considered abusive (Hetherton, 1999; Levine, 2006). Put simply, many people falsely believe that if boys are innately sexual initiators and if they respond biologically to a woman's sexual advance, then by definition, they are not experiencing sexual victimization. Instead, the belief follows that they are willing participants in a game of sexual experimentation. Mass media (Chiozzi, 2009) and popular culture (Gartner, 1999) help spread the message of innocuousness through their portrayals of male sex offenders as evil, despicable, and criminal, and female sex offenders as confused caretakers, educating willing victims about sex. Unfortunately, the portrayal of mother-son incest as harmless is detrimental to the long-term recovery of the victim.

Harmful effects on male victims

Several studies have assessed the long-term effects of mother-son sexual abuse on childhood victims. Lawson (1991) presents case studies of men who had been sexually abused by their mothers as children. Though four of the men described instances of subtle or seductive abuse and only one described acts of overt incest, many of the psychological effects described by all five of the men later in life were the same. These included sexual dysfunction, a fear of intimacy, and a consequent inability to commit to women.

In two cases of subtle maternal incest, Robertiello (1998) notes that victims were unable to sustain close relationships with women and experienced bouts of sexual impotence. Through in-depth interviews with seven men who had been victims of maternal sexual abuse, Etherington (1997) also found that all but one had difficulty maintaining close relationships with women. Five men were divorced and one had never been married; all six of these men attributed their fears of intimacy to their history of maternal incest. Krug (1989) proposes an explanation for this common struggle with relationships: difficulties with

intimacy spring from a distortion of the first and most significant figure of female attachment at a time when the child is developing an understanding of love and relationships with women. Lastly, in a review of eight case histories of maternal incest survivors, Krug (1989) found that the men had problems with emotional and sexual intimacy, substance abuse, and depression. All of these clinical samples demonstrate the significant harm that was done to boys who were sexually abused by their mothers, no matter how subtle or seemingly innocuous that abuse was.

Some researchers argue that the destructive effects of mother-son abuse are more severe than those caused by father-daughter incest (Kempe & Kempe, 1984; Forward & Buck, 1988). As the mother is the first and primary object of attachment for the child, a loss, exploitation, or distortion of this bond is especially detrimental to the psychosocial development of the abused son (Etherington, 1997). Similarly, as the mother is the one person who a child expects to unconditionally care for and protect him, a betrayal of this first notion of love, family, and connection is damaging to her son (Hetherton, 1999; Kelly et al., 2002).

In a study of 67 men who had experienced intra-familial sexual abuse as a child, these arguments gained empirical traction. The 17 victims of mother-son incest, both subtle and overt, had more severe psychosocial problems later in life than victims who had been sexually abused by their fathers (Kelly et al., 2002). When compared to all other forms of familial incest, those who were abused by their mothers reported more problems with aggression, PTSD, sexual problems, dissociation, and interpersonal relationships. Interestingly, those men who had endured more subtle forms of abuse or had more positive initial reactions to the abuse reported more problems with aggression and self-destruction later in life than did those who initially responded negatively to the abuse (Kelly et al., 2002).

Practice Implications for CPS Investigators and Attorneys

Hetherton & Beardsall (1998) found that CPS investigators do not report incidents of mother-son sexual abuse to law enforcement. When social workers and police officers involved in child protection were given hypothetical vignettes of childhood sexual abuse, the responses indicated a gender bias when the

scenario involved a female versus a male perpetrator. Though it was acknowledged that both forms of abuse were inappropriate and harmful, the recommended interventions differed. Study participants found designating the incident as “child abuse” and imprisonment of the abuser more appropriate when it was a male carrying out the abuse.

Statistics of the number of cases of female sexual abuse within the child protective system compared to the criminal justice system also reveal CPS workers’ reluctance to report incidences to the police. In an analysis of one state’s law enforcement records and child sexual abuse registry, Bader, Scalora, Casady, & Black (2008) found that while 98% of female-perpetrated childhood sexual abuse cases handled by CPS were intra-familial, only 30% of cases in the criminal justice center were cases of incest. This suggests that a majority of maternal sexual abuse cases were handled within the social service arena and not brought to the attention of law enforcement. Another county’s sexual abuse cases show that 57% of alleged male sexual offenders were reported to police officials, while only 40% of accused female sexual offenders were referred to law enforcement. In a similar trend, 79% of cases in which a stranger was accused of sexual abuse were referred to the district attorney’s office, while only 52% of cases involving an abusive parent were reported to legal authorities (Stroud, 2000). Here, maternal sexual abusers would be the least likely perpetrators to be reported for prosecution.

Turton (2010) claims that CPS workers have difficulty assessing the risk of maternal sexual abuse because of the ramifications that an accusation would have for the family. When the maternal abuser is the primary caregiver of the victim, child protection workers may find it more difficult to remove the child from the home. If they are not convinced that harm has been done, it is too risky to break the mother-child bond by removing the child from the home (Turton, 2010). Given the idea that CPS workers are not reporting cases of mother-son sexual abuse to legal authorities, it is important to discuss how a greater awareness of the issue can empower investigators to respond proactively to a report of mother-son incest.

Justice & Justice (1979) and Forward & Buck (1988) argue that everyone has incestuous thoughts and feelings. With this premise, Justice & Justice (1979) ask what separates those mothers who act on their feelings from those who do not. When looking

at broad reviews of case histories, common themes emerged, which are discussed below.

It is important to include a cautionary note when discussing risk factors. Not all of these indicators will occur in a home where a mother is sexually abusing her son. Also, the presence of one of these indicators does not definitively confirm that mother-son incest is occurring. However, when a report is received, the characteristics described below can help CPS workers know what to look for in the mother as an individual, in the relationship between mother and father and mother and son, and in the dynamics and interactions of the entire family, in order to substantiate a case. As is often the case, identifying concrete signs of more subtle abuse is difficult, and the intricacies of mother-son incest only make it more complex. Taken together, the risk factors described below can simply act as yellow flags to signal CPS workers to investigate further the mother-son relationship in a reported case.

Recognizing individual characteristics that are indicative of a sexually abusive mother

Sexually abusive mothers are often isolated. Feelings of loneliness and alienation stem from an inability to establish extra-familial relationships (Wakefield & Underwager, 1991). Along with this hyper-connection to familial relationships, mothers at risk for sexually abusing their sons often feel deprived or rejected because of their lack of outside friendships and absence of socially validating experiences. Another indicator of sexually abusive mothers is their tendency to use sex as a means of connecting to others. They believe that sex is the best way to overcome feelings of rejection and isolation. Sex is also believed to be the only way to maintain closeness with men (Justice & Justice, 1979). A mother’s isolation coupled with her inappropriate use of sex creates a situation in which sexually abusing her son becomes a possibility.

Understanding indicators of mother-son sexual abuse within dyadic family relationships

A look at the dyadic relationships within families, particularly between a husband and wife, can reveal warning signs that mother-son incest may be occurring. If a woman’s husband is emotionally or physically absent from the home, she is at a greater risk for sexually abusing her son (Lawson, 1991). Divorce or an unhappy marriage can also increase the risk of

mother-son incest (Krug, 1989). In addition, if the relationship between husband and wife is sexually or emotionally dissatisfying, the risk of mother-son incest intensifies (Justice & Justice, 1979).

One of the most significant indicators of mother-son incest is a mother-son relationship that is more like adult peers than like parent and child (Saradjian, 1996). The tone and content of their conversations and the type and amount of touching between them may signal this type of relationship. Also present in this relationship is a divergence from the traditional roles of parent and child. A sexually abusive mother expects her son to fill the role of husband or caretaker. Likewise, a sexually abused son feels obligated to fill these roles (Krug, 1989; Lawson, 1991).

Expectations that sexually abusive mothers have of their sons are unrealistic. With complete disregard for her son's developmental stage, a sexually abusive mother may expect her son to understand her complex emotional and physical needs. At the same time, she is unable to acknowledge her son's needs and instead sees him only as a way to fill her own emotional or physical void. One need specifically denied is a child's quest for independence. As male children grow, they naturally desire separation from their mothers. Incestuous mothers stifle this growth and prohibit separation from the family. They may do this by making their sons feel guilty for leaving them alone in the house, or directly preventing them from participating in normal social experiences. Mothers who are unsuccessful in controlling the independent development of their sons respond with feelings of anger and contempt. Mother-son relationships in which mothers are overly controlling or dependent on their sons should alert CPS workers to the possibility of mother-son incest (Saradjian, 1996).

Becoming attuned to the "family sex culture"

In addition to individual or dyadic risk factors of sexually abusive mothers, Justice & Justice (1979) describe the indicators of mother-son incest that may be present in a family's "sex culture" (p. 130). This multi-faceted concept provides a framework for looking at the complicated dynamics of intra-family interactions. One indicator of mother-son incest within a family is a high amount of overt sexual behavior, or undressing and nudity openly viewed between mother and son.

It is important for CPS workers and attorneys to notice the types of games allowed among children and played between parents and children. A sexualized undertone may signal an inappropriate, incestuous relationship between mother and son. Notice should also be taken of mothers who make inappropriate overt sexual references, suggestions, or jokes. Extreme communication patterns between mothers and sons – whether unnecessarily hostile or overly affectionate – may also signal an incestuous relationship. This intense familial relationship is heightened if the family is isolated from outside social influences (Justice & Justice, 1979).

Conclusion

There is scarce information on the number of recorded cases of mother-son incest. While one reason for this may be a lack of self-reporting by male victims, another reason may involve the ways in which CPS workers and attorneys investigate these types of cases. Due to deep-rooted stereotypes, they may ignore signs of mother-son incest or deny the reality of a report. Additionally, because of the expectation that mothers will touch their sons, they may have difficulty discerning between an affectionate mother and a sexually abusive one. Finally, tightly held beliefs in the power of the mother-child relationship may prevent CPS investigators and attorneys from substantiating cases of subtle mother-son incest, as they recognize the disruptive consequences that a report would have on a family.

By becoming aware of the issue and of the reasons for which denial exists, CPS investigators and attorneys can be more sensitive and responsive to reports of mother-son incest. It would be comforting if we knew that the apparent low incidence of mother-son sexual abuse reflected reality. More likely, it indicates that our inability to see behind closed doors is masking the nightmares within. ©

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References

- Allen, C.M. (1990). Women as perpetrators of child sexual abuse: Recognition barriers. In A. Horton et al. (Eds.), *The incest perpetrator* (pp. 108-123). London: Sage.
- Bader, S. M., Scalora, M. J., Casady, T. K., & Black, S. (2008). Female sexual abuse and criminal justice intervention: A comparison of child protective service and criminal justice samples. *Child Abuse & Neglect, 32*, 111-119.
- Banning, A. (1989). Mother-son incest: Confronting a prejudice. *Child Abuse & Neglect, 13*, 563-570.
- Bunting, L. (2005). *Females who sexually offend against children: Responses of the child protection and criminal justice systems*. London: National Society for the Prevention of Cruelty to Children.
- Carnes, P. J. (1997). *The betrayal bond: Breaking free of exploitive relationships*. Florida: Health Communications, Inc.
- Chiotti, J. M. (2009). *The "illusive" female sex offender: A quantitative content analysis of media exposure*. (Doctoral Dissertation). Retrieved from ProQuest Dissertations and Theses. (Accession Order No. AAT 3382147)
- Deering, R. & Mellor, D. (2007). Female-perpetrated child sex abuse: Definitional and categorisational analysis. *Psychiatry, Psychology, and Law, 14*(2), 218-226.
- Denov, M. S. (2003). To a safer place? Victims of sexual abuse by females and their disclosures to professionals. *Child Abuse & Neglect, 27*, 47-61.
- Denov, M. (2004). *Perspectives on female sexual offending: A culture of denial*. Burlington: Ashgate Publishing.
- Etherington, K. (1997). Maternal sexual abuse of males. *Child Abuse Review, 6*, 107-117.
- Forward, S. & Buck, C. (1988) *Betrayal of innocence: Incest and its devastation*. New York: The Penguin Group.
- Fromuth, M. E. & Burkhart, B. R. (1989). Long-term psychological correlates of childhood sexual abuse in two samples of college men. *Child Abuse & Neglect, 13*, 533-542.
- Gartner, R. B. (1999). Cinematic depictions of boyhood sexual victimization. *Gender and Psychoanalysis, 4*, 253-289.
- Hetherington, J. (1999). The idealization of women: Its role in the minimization of child sexual abuse by females. *Child Abuse & Neglect, 23*, 161-174.
- Hetherington, J. & Beardsall, L. (1998). Decisions and attitudes concerning child sexual abuse: Does the gender of the perpetrator make a difference to child protection professionals? *Child Abuse & Neglect, 22*, 1265-1283.
- Justice, B. & Justice, R. (1979). *The broken taboo: Sex in the family*. New York: Human Sciences Press.
- Kelly, R. J., Wood, J. J., Gonzalez, L. S., MacDonald, V., & Waterman, J. (2002). Effects of mother-son incest and positive perceptions of sexual abuse experiences on the psychosocial adjustment of clinic-referred men. *Child Abuse & Neglect, 26*, 425-441.
- Kempe, R. S. & Kempe, C. H. (1984). *The common secret: Sexual abuse of children and adolescents*. New York: W. H. Freeman.
- Krug, R. S. (1989). Adult male report of childhood sexual abuse by mothers: Case descriptions, motivations and long-term consequences. *Child Abuse & Neglect, 13*, 111-119.
- Lawson, C. (1991). Clinical assessment of mother-son sexual abuse. *Clinical Social Work Journal, 19*, 391-403.
- Lawson, C. (1993). Mother-son sexual abuse: Rare or underreported? A critique of the research. *Child Abuse & Neglect, 17*, 261-269.
- Levine, K. L. (2006). No penis, no problem. *Fordham Urban Law Journal, 35*7-405.
- Oliver, B. E. (2007). Preventing female-perpetrated sexual abuse. *Trauma, Violence, & Abuse, 8*(1), 19-32. doi: 10.1177/1524838006296747.
- Pennsylvania v. Ritchie*, 480 U.S. 39 (1987).
- Robertiello, R. C. (1998). Effects of incestuous heterosexual childhood seduction on three men. *Journal of Contemporary Psychotherapy, 28*, 235-238.
- Saradjian, J. (1996). *Women who sexually abuse children: From research to clinical practice*. New York: Human Sciences Press.
- Sedlak, A.J., Mettenburg, J., Basena, M., Petta, I., McPherson, K., Greene, A., and Li, S. (2010). *Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Report to Congress*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families.
- Stroud, D. D. (2000). Criminal investigation of child sexual abuse: A comparison of cases referred to the prosecutor to those not referred. *Child Abuse & Neglect, 24*, 689-700.
- Turton, J. (2008). *Child abuse, gender and society*. New York: Routledge Taylor & Francis Group.
- Turton, J. (2010). Female sexual abusers: Assessing the risk. *International Journal of Law, Crime, and Justice, 38*, 279-293.
- Wakefield, H. & Underwager, R. (1991). Female child sexual abusers: A critical review of the literature. *American Journal of Forensic Psychology, 9*(4), 45-69.
- Wilkins, R. (1990). Women who sexually abuse children. *British Medical Journal, 300*, 1153-1154.

Analysis of the “Speak Up to Protect Every Abused Kid Act”: Does It Really Protect Kids?

by Annette J. Sobocinski

Introduction

In the fall of 2011, sports fans across the country were shocked to learn of serious allegations of child sexual abuse associated with the Pennsylvania State University college football program. On November 4, 2011, former assistant football coach, Jerry Sandusky, was indicted on forty counts of sex crimes against underage boys.¹ In addition, several other university employees faced serious consequences for failing to notify the appropriate authorities outside of the university about the abuse allegations.²

In the wake of this scandal, Senator Robert Casey of Pennsylvania introduced a bill entitled Speak Up to Protect Every Abused Kid Act of 2011 (Speak Up Act).³ This bill proposed to amend the Child Abuse Prevention and Treatment Act (CAPTA), originally enacted in 1974.⁴ Among other things, this legislation would “require all states to pass and enforce a law requiring all adults to report instances of known or suspected child abuse.”⁵ This article will argue that even though child abuse and neglect is a serious problem in our country, requiring every adult to be a mandated reporter of child abuse⁶ (also known as universal mandated reporting) is not necessarily the best way to protect children from abuse.

Section II of this Comment will provide an overview of child abuse and neglect and its impact on our country. It will also provide a history of mandated reporting laws and the enactment of CAPTA. Section III will address the recent proposal of the Speak Up Act of 2011. It will also outline the current mandated reporting laws among the states. It will analyze the potential impact of this legislation on child welfare systems. Finally, it will set forth some alternative plans for protecting children.

Child Abuse and Neglect

The Great Cost of Child Abuse and Neglect to Society

According to the Fourth National Incidence Study of Child Abuse and Neglect, over 1.25 million experienced maltreatment in the study year of 2005-2006.⁷ This is one out of every fifty-eight children.⁸ This study obtained information both on children reported to child protection agencies throughout the country and those who were not.⁹ Approximately forty-four percent of the maltreated children were abused and approximately sixty-one percent of these children were neglected.¹⁰ Of the abused children, the majority of them experienced physical abuse, just under a quarter of them were sexually abused, and just over a quarter of them were emotionally abused.¹¹

In addition, a recent study found that in the year 2006, over four thousand children were hospitalized in the United States due to serious physical abuse.¹² Of the children that were hospitalized for serious physical abuse that year, three hundred of them died.¹³ The author of the study, Dr. John D. Leventhal, said the following about the results: “These numbers are higher than the rate of sudden infant death syndrome . . . which is alarming.”¹⁴ The study also indicated that hospitalizations of children due to injuries from serious abuse cost an estimated \$73.8 million.¹⁵

More recently, in 2010, there were a total of 1537 children who died as a result of abuse and neglect.¹⁶ Statistics also show that younger children are the most vulnerable to death due to child abuse and neglect.¹⁷ Of the 1537 children who died as a result of abuse and neglect, close to eighty percent of them were younger than four years old.¹⁸

According to the Child Maltreatment 2010 report from the National Child Abuse and Neglect Data

System, child protection agencies nationwide received approximately 3.3 million allegations of child maltreatment in 2010.¹⁹ Of these, nearly two million were determined to require further investigation from the child protection agencies.²⁰ Of the investigated cases, over 400,000 of the allegations were found to be substantiated cases of abuse or neglect.²¹

Research shows that children who experience child abuse are at increased risk of suffering long-term effects from the abuse in the following areas: poor physical health, poor emotional and mental health, social difficulties, cognitive dysfunction, high-risk health behaviors, and behavioral problems.²² But in addition to the effects that the children themselves experience, a recent study has shown that the estimated cost of child abuse and neglect to society as a whole is \$103.8 billion annually.²³

This annual cost of child abuse and neglect includes both direct and indirect costs.²⁴ Direct costs include hospitalization for serious injuries, mental health care for the resulting trauma, the child welfare services system, and law enforcement.²⁵ Indirect costs include special education for learning disorders associated with abuse and neglect, juvenile delinquency, mental health and medical care for the ongoing mental and physical effects of the abuse and neglect, the adult criminal justice system,²⁶ and lost productivity to society.²⁷

Child Abuse Prevention and Treatment Act

The Child Abuse Prevention and Treatment Act (CAPTA) was enacted in 1974.²⁸ Before 1960, there was no requirement for anyone to report suspected cases of child abuse.²⁹ Reporting of known or suspected child abuse was just a permissive process – no one was required to report, but anybody could report. In 1962, a physician, C. Henry Kempe, published an influential paper on the battered child syndrome.³⁰ The Kempe Center said the following: “This paper was regarded as the single most significant event in creating awareness and exposing the reality of abuse.”³¹ As a result, several model child abuse reporting laws were created.³²

In the decade before CAPTA’s enactment, each of the fifty states had revised their child abuse reporting laws.³³ But according to congressional findings, despite these revisions to state laws, many cases of abuse were only discovered after serious harm to the victim had been already been done.³⁴

The purpose of CAPTA was “to provide financial assistance . . . for the prevention, identification, and treatment of child abuse and neglect.”³⁵ The law also established an Office on Child Abuse and Neglect³⁶ and a National Clearinghouse³⁷ for information relating to child abuse.³⁸ One of the specific provisions of CAPTA created some uniformity amongst mandated reporting laws amongst the states.³⁹ It specifically provided that in order for the states to be eligible to receive funding for abuse programs, the state must have “provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances.”⁴⁰ The law allowed the states themselves to determine who should be included in the definition of a mandated reporter of child abuse.⁴¹

Current Mandated Reporting Requirements

Currently, eighteen states require all adults to be mandated reporters of known or suspected child abuse.⁴² All fifty states require teachers, principals, doctors and nurses to be mandated reporters.⁴³ Some other states also include professionals such as social workers, clergy, parents or foster parents, childcare workers, and recreational groups.⁴⁴

In forty-one states, it is a crime for someone identified as a mandated reporter by the state’s statute to fail to report known or suspected child abuse.⁴⁵ But the data show that this is a crime that is prosecuted very infrequently and results in very low penalties.⁴⁶ For example, in Pennsylvania it is a crime for a mandated reporter to fail to file a report of suspected abuse.⁴⁷ But since 2004, besides the recent scandal at the university, only three other cases were filed over failures to report abuse, and none of these resulted in anything more than a \$375 fine.⁴⁸

Speak Up to Protect Every Abused Kid Act

Proposal of the Act

Following the investigation into the child sexual abuse allegations against Jerry Sandusky, the grand jury report revealed that a high-school coach reported the suspected abuse of an alleged victim to the proper authorities as required by Pennsylvania’s mandated reporting law.⁴⁹ Unfortunately, this report only resulted in Sandusky agreeing that it was inappropriate

to shower with underage boys. He also agreed that he would not do it again.⁵⁰

The report also revealed that a graduate assistant in the football program testified that he witnessed Sandusky engaged in anal intercourse with a boy of about ten years of age in the shower room at the university.⁵¹ But the graduate assistant did not call the child protection agencies or law enforcement to report the suspected abuse.⁵² Instead, he left the scene and the next day reported the incident to the head football coach, Joe Paterno.⁵³

Paterno also testified in front of the grand jury. In his testimony, he indicated that the day after receiving the report from the graduate assistant, he called the university's athletic director, Tim Curley.⁵⁴ Paterno told Curley that a "graduate assistant had seen Jerry Sandusky . . . fondling or doing something of a sexual nature to a young boy."⁵⁵

More than a week later, Curley and the university's Senior Vice President for Business and Finance, Gary Schultz, called the graduate assistant to a meeting with them regarding the incident he had witnessed.⁵⁶ The graduate assistant testified that during the meeting he told Curley and Schultz that he had witnessed Sandusky having anal sex with a child.⁵⁷ Both Curley and Schultz testified that the graduate assistant never mentioned any sexual conduct, but only mentioned conduct that made him uncomfortable.⁵⁸ But the grand jury found the graduate assistant's testimony to be credible, and the testimony of Curley and Schultz not to be credible.⁵⁹

Following this meeting, Curley and Schultz notified University President, Graham Spanier, of the situation.⁶⁰ As a result, Spanier approved a decision to ban Sandusky from bringing children to any of the buildings on the university's campus.⁶¹ However, none of the university's administrators or employees ever contacted either the police or the state's child protection agency to report the abuse.⁶²

Overall the grand jury initially found that there were at least eight alleged victims of the sexual abuse.⁶³ In addition, the abuse spanned a period of more than ten years, six of them after the initial incident of anal sex was witnessed by the graduate assistant.⁶⁴

After the grand jury report was issued, there was an increased focus on the laws regarding mandated reported of child abuse. Many in the public were highly critical of the failure to report the suspected abuse by those who were aware of it within the university. In

part, this was because Pennsylvania has a law requiring that when a staff member reports child abuse, whoever is in charge of the institution must report the incident to either a child protection services agency, or to a law enforcement agency.⁶⁵ Therefore, at the very least, the President of the University, Graham Spanier, had a statutory duty to report the locker room incident to the proper authorities.

Citing the recent university scandal as the reason for his proposal of the Speak Up Act of 2011, Senator Robert Casey said, "I introduced this legislation to close a loophole that allows abusers to get away with heinous crimes and emphasize the responsibility of all adults to protect children from abuse and neglect."⁶⁶ He additionally said, "our focus should be on doing everything we can to prevent abuse in the future."⁶⁷

Mandated Reporting Provision

The section of the Speak Up Act related to mandated reporting requires the following:

(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes—

(i) provisions or procedures for an individual to report suspected or known incidents of child abuse or neglect to a State child protective service agencies or to law enforcement agencies, which, shall include a State law for mandatory reporting of such incidents, to either type of agency, by any adult.⁶⁸

This provision of the Act would require states to modify their existing laws regarding mandated reporting of child abuse by expanding the definition of a mandated reporter to include all adults. If a state failed to do so, federal funds for abuse and neglect programs would be withheld.

Potential Consequences of the Act

The Senate Subcommittee on Children and Families held a hearing on Breaking the Silence on Child Abuse: Protection, Prevention, Intervention and Deterrence. In written testimony submitted to that committee, Erin Sullivan Sutton, J.D., the Assistant Commissioner for the Child and Family Services division of the Minnesota Department of Human Servic-

es, testified to her belief that states should continue to be responsible for defining who is a mandated reporter in that state.⁶⁹ She said the following: “Under current law states are responsible for determining who is a mandated reporter. This is a state issue and should remain a state issue.”⁷⁰ Sutton also said the following:

[U]niversal mandatory reporting could unintentionally result in an increase in false reports. Because all reports require a preliminary investigation, universal reporting is likely to result in a drain on available resources. Not only the child welfare system, but state and local law enforcement and judiciary agencies will likely be stressed beyond capacity.⁷¹

In additional testimony, Teresa Huizar, the Executive Director of the National Children’s Alliance, discussed the wide variety in the reporting and substantiation rates for child abuse and neglect due to the differences in the requirements amongst the states.⁷² She also identified that a significant barrier to the proper reporting of suspected child abuse and neglect was a lack of knowledge regarding the signs of child abuse and a lack of understanding regarding the requirements for and consequences of reporting.⁷³

Huizar also indicated that even if improvements were made to the mandated reporting laws, it would not help children unless improvements are made to the systems responsible for intervening in cases of abuse and neglect.⁷⁴ She stated the following:

Flooding the system with ill-informed reports will only result in overwhelming investigators leading to delaying investigation while triaging occurs, poorer quality investigations as each case receives less time and attention, and personnel shortages in coping with the increased volume. Changing the reporting requirements and procedures must be paired with the resources to manage the resulting flow of reports.⁷⁵

With minor exceptions,⁷⁶ a majority of the experts in the child welfare and legal communities seem to agree that requiring all adults to be mandated reporters of child abuse would be more harmful than helpful in protecting children from abuse. The first argument against universal mandated reporting is that it would completely overwhelm the child welfare system.

If every adult in every state were required to report known or suspected instances of child abuse, it is

likely that the number of reports in those states would drastically increase. This, in turn, would result in a greater burden on the state child welfare system to investigate these reports to determine whether they need to be substantiated and if intervention is necessary. Joette Katz, Commissioner of the Department of Child and Family Services in Connecticut, recently shared her worry that if everyone were a mandated reporter, there would be an inundation of “junk reports” that would overwhelm the caseworkers.⁷⁷

The resources of the child welfare system would be focused to a much greater extent on the investigation process. This would necessarily decrease the amount of resources that would be available to address any *substantiated* charges of abuse and neglect, resources that are already limited. The resources devoted to intervention with abused children and their families for the purpose of stopping the abuse and preventing further abuse would be reduced, resulting in less protection for the children within the child welfare system who actually are victims of abuse and neglect.

Furthermore, just because more people are making reports of abuse does not necessarily mean that more abuse is being identified. If a universal mandated reporting law is enacted, there would most likely be heightened awareness in the public about the requirement to report known or suspected child abuse. Just because this is the requirement does not necessarily mean the general public will be better able to recognize and report abuse and neglect accurately. There is evidence which indicates reports made by nonprofessional reporters (i.e., neighbors, family friends, extended family members) are much more likely to be wrong than reports made by mandated reporters who are professionals (i.e., doctors, teachers, social workers, etc.).⁷⁸ The increase in reported abuse does not necessarily lead to the conclusion that there will be an increase in substantiations of abuse and resulting treatment for actual child abuse victims.

The second argument against universal mandated reporting is the trauma that can result for the child and family from the investigation process.⁷⁹ This process, particularly in cases of alleged sexual abuse, can be very intense and invasive. Even in cases of physical abuse, the inspection for physical injuries can be traumatic for children. It is also true that just the nature of the investigation itself and the questions asked of a child during the process can cause a great deal of anxiety and stress.

Furthermore, the investigation process can sometimes lead to unnecessary disruptions of families due simply to the lack of intensive treatment services for the families. Children may be removed from the home and placed into foster care not necessarily because they are at risk of serious injury, but instead because there are not enough resources to provide the families with services to help educate them about caring for their children better.⁸⁰

An additional problem with mandated reporting in general is that even trained professionals who are mandated reporters do not report every time they suspect abuse. A study conducted by the American Academy of Pediatrics (AAP) found that doctors “did not report twenty-seven percent of injuries considered likely or very likely caused by child abuse and seventy-six percent of injuries considered possibly caused by child abuse.”⁸¹ The study also found that the reasons why doctors do not report all suspected cases of abuse and neglect included the following:

- “A belief that one has to be certain that abuse or neglect had occurred;
- Lack of confidence in CPS intervention;
- Lack of feedback from CPS in prior cases reported;
- Reliance on others to report (e.g. emergency room personnel); and
- Fear of legal retribution from families.”⁸²

Although CAPTA does require states to provide immunity to reporters of child abuse and neglect in order to receive federal funding,⁸³ fear of being liable for either criminal or civil penalties continues to be one of the reasons people fail to report child abuse.⁸⁴ All states do provide some form of civil and criminal immunity for those who report suspected abuse and neglect in good faith.⁸⁵ However, there is variation in how the states interpret the CAPTA immunity requirement and therefore, the lack of understanding of what immunity means (or even that it exists) by those who encounter suspected child abuse and neglect is likely to contribute to the fear of reporting.

For example, there is a presumption that someone making a report of child abuse or neglect is making it in good faith in only seventeen states.⁸⁶ The presumption of good faith means that there is an “assumption that the reporter, to the best of his or her knowledge, has reason to believe that the child was being subjected

to abuse or neglect.”⁸⁷ However, this means that in the other thirty-three states, a person who has been sued for making a report of abuse or neglect would not have the benefit of this presumption and would have to demonstrate that the report was made in good faith.

The AAP study also demonstrates that there is much confusion among professionals who are mandated reporters about what their duty actually is under the mandatory reporting requirements. Frank Cervone, Executive Director of the Support Center for Child Advocates said, “A remarkably large number of mandated reporters – people who come into contact with children in their work – have never even been to a training program on the requirements of these laws.”⁸⁸ In an article by Anne Reiniger, she said the following about professionals who are mandated reporters: “Even when they recognize abuse, professionals don’t know what to do with the information.”⁸⁹

The National Incidence Study on Child Abuse and Neglect found the following:

The CPS Screening Policies Study found that if all maltreated children were reported to CPS [Child Protective Services] and CPS agencies followed their current screening policies, then a large majority of the maltreated children (eighty percent or more) would receive CPS investigation. Assuming that agencies followed their stated screening policies, the implication is that mandated reporters do not report most of the uninvestigated children (two-thirds or more).⁹⁰

Furthermore, the study indicated that mandated reporter professionals who had received training on their state’s reporting requirements were more likely to report maltreated children to Child Protective Services.⁹¹

Finally, it is important to note that the proposed legislation in this case would threaten states with the loss of federal funding for their child abuse and neglect prevention and treatment programs if they failed to enact a universal mandatory reporting requirement. It is difficult to see how withholding funding from the states for these critical programs could lead to better protection for children.⁹²

Alternative Plans for Protecting Children

The mandatory reporting system in this country would be greatly strengthened if professionals who regularly interact with children and are defined as mandated reporters were required to receive adequate

training.⁹³ To be effective, the training should include information about the identification of abuse, how to determine when a report is required, what should be included in the report, and the consequences for failing to report known or suspected child abuse. It would also be helpful to train these professionals about what resources are available for families who are under stress, which can lead to an increased risk of child abuse and neglect.⁹⁴

Additionally, for those professions in which licensure is required (i.e. doctors, nurses, social workers, teachers), the completion of this training could be a requirement prior to receiving a secondary degree in the specialty area. It would also further protect children if ongoing training in these areas were required prior to the renewal of a license. These requirements would help to ensure that mandated reporters of child abuse are better informed which would lead to an increased level of accurate reporting. An increased level of accurate reporting would lead to increased efficiency in the investigation process. This, in turn, would result in better protection for children from abuse and neglect.

Another potential solution is related to the investigation process itself. One approach suggested and supported by the National Children's Alliance (NCA) relies on coordination between community agencies and child abuse intervention professionals.⁹⁵ An editorial in the *Washington Post* said the following:

The NCA certifies and audits "children's advocacy centers," which bring together social workers, law enforcement officers, health professionals and a variety of other specialists once an abuse complaint has been filed. A professional trained in questioning children gathers information as law enforcement officers look on, reducing the need for repeated, and often traumatic, interrogations. These centers also serve as first responders for the child, providing health care and counseling, as well as follow-up services.⁹⁶

This approach has had much success not only in the reduction of trauma for children involved in the investigation process, but also in the resulting intervention following any substantiations of abuse. According to statistics kept by the National Children's Alliance, over 279,000 children received services at Child Advocacy Centers (CACs) across the country

in 2011.⁹⁷ These services included medical exams or treatment, counseling or referral to counseling, and forensic interviewing.⁹⁸ Furthermore, preliminary results of a recent study on CACs conducted by the National Center for Crimes Against Children indicate that the use of CACs increase coordination of investigations, use of medical examinations, and lead to greater satisfaction among non-offending parents of alleged victims.⁹⁹ Finally, there is evidence that the use of CACs is a much more cost-effective approach to child abuse investigations.¹⁰⁰

Conclusion

The Speak Up Act's requirement that states enact a law that would require all adults to be mandated reporters of child abuse and neglect under threat of losing funding would ultimately result in less protection for child victims of abuse and neglect. Universal mandated reporting would only result in a dramatic increase in reports of abuse and neglect from adults fearful of the consequences of failing to report their suspicion. This would take place within the context of a child welfare system that is already drastically overwhelmed. Although it may seem as though increased reporting can only lead to increased identification of risky abuse patterns, it would actually have the opposite effect. It would be necessary to devote more resources to the investigation process, leaving fewer resources for intervention and treatment for those children that are actually being abused.

In addition, universal mandated reporting would most likely lead to increased and unnecessary trauma for children and their families. This is due partially to the risk of inaccurate reporting by those not familiar with the signs and symptoms of abuse and neglect. But because of the reduced resources for intervention and treatment, it could also lead to additional situations where children are removed from their families, not necessarily because they are at risk for serious abuse, but because there is a lack of intervention resources for the family.

There are alternative ways to accomplish the noble goal of protecting children from abuse and neglect without resorting to universal mandated reporting requirements. One of these includes training for mandated reporters. Ensuring that these professional reporters are trained properly would increase the efficiency of the reporting and investigative process. If

university officials at Pennsylvania State University had better understood their own state's laws regarding mandated reporting, it may have resulted in the prevention of six additional victims in the Sandusky case. Additionally, increasing the efficiency of the reporting and investigative process would possibly free up much-needed resources for intervention and treatment.

Another way to increase protection for children is to provide additional funding for child advocacy centers. It is clear that a multi-disciplinary approach to the investigative process for reports of child abuse and neglect has the effect of streamlining that process, thereby reducing trauma for children and families related to it.

Senator Casey and others truly believe that the Speak Up Act of 2011 would result in better protection for children from abuse and neglect because of the universal mandated reporting requirement. Unfortunately, however, if this proposed legislation is enacted, it would have the opposite effect and actually result in less protection for children from the serious problem of abuse and neglect. ©

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Endnotes

- 1 Sara Ganim, *Jerry Sandusky, A Penn State University Football Legend and Founder of The Second Mile, Faces Charges of Sex Crimes*, THE PATRIOT-NEWS, Nov. 4, 2011, http://www.pennlive.com/midstate/index.ssf/2011/11/jerry_sandusky_a_penn_state_un.html.
- 2 Sara Ganim, *A Patriot-News Special Report: Who Knew What About Jerry Sandusky? There Were Many Missed Chances to Investigate as Early as 1995*, THE PATRIOT-NEWS, Nov. 11, 2011, http://www.pennlive.com/midstate/index.ssf/2011/11/who_knew_what_about_jerry_sand.html (stating that University President Graham Spanier and head Football Coach Joe Paterno were both fired; Athletic Director Tim Curley and Senior Vice President for Finance and Business both resigned and were also charged with perjury).
- 3 Press Release, Senator Robert P. Casey, Jr., Casey Introduces Bill to Strengthen Child Protection Laws (Nov. 16, 2011) *available at* <http://casey.senate.gov/newsroom/press/release/?id=4870f6e4-6537-44d8-ad1b-3c41da07751e> [hereinafter Casey Press Release].
- 4 Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101-5106 (1974).
- 5 Casey Press Release, *supra* note 3.
- 6 S. 1877, 112th Cong. (2011-2012) (defining child abuse as “any recent act or failure to act, on the part of a parent or caretaker, that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or an act or failure to act that presents an imminent risk of serious harm”).
- 7 A.J. SEDLAK, ET AL., U.S. DEP’T HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS, EXECUTIVE SUMMARY 9 (2010) [hereinafter NIS-4].
- 8 *Id.* at 5.
- 9 *Id.* at 1.
- 10 *Id.* at 5. The total adds up to more than 100% because children who were both abused and neglected were counted in both categories. *Id.*
- 11 *Id.* at 5 (stating that an estimated total of 323,000 children were physically abused, an estimated total of 135,300 were sexually abused, and an estimated total of 148,500 were emotionally abused).
- 12 Karen N. Peart, *Children Hospitalized at an Alarming Rate Due to Abuse*, YALE NEWS, Feb. 6, 2012, <http://news.yale.edu/2012/02/06/children-hospitalized-alarming-rate-due-abuse> (stating that the total number of children hospitalized was 4569).
- 13 *Id.*
- 14 *Id.*
- 15 *Id.*
- 16 U.S. DEP’T HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, CHILD MALTREATMENT 2010 X (2011) *available at* <http://www.acf.hhs.gov/programs/cb/pubs/cm10/index.htm>.
- 17 *Id.* at 58.
- 18 *Id.*
- 19 *Id.* at viii.
- 20 *Id.*
- 21 *Id.*
- 22 CHING-TUNG WANG, PH.D. & JOHN HOLTON, PH.D., PREVENT CHILD ABUSE AMERICA, TOTAL ESTIMATED COST OF CHILD ABUSE AND NEGLECT IN THE UNITED STATES I (2007) *available at* http://www.preventchildabuse.org/about_us/media_releases/pcaa_pew_economic_impact_study_final.pdf (economic impact study).

- 23 *Id.* at 2.
- 24 *Id.*
- 25 *Id.* at 4.
- 26 *Id.* at 5 (“According to the National Institute of Justice, thirteen percent of all violence can be linked to earlier child maltreatment.”).
- 27 *Id.*
- 28 Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101-5106 (1974).
- 29 Kathleen Coulborn Faller, *Unanticipated Problems in the United States Child Protection System*, 9 CHILD ABUSE & NEGLECT 63, 64 (1985).
- 30 C. Henry Kempe et. al., *The Battered-Child Syndrome*, J. OF THE AM. MED. ASS’N., 181:17-24, July 7, 1962.
- 31 THE KEMPE CENTER, <http://www.kempe.org/mission-history> (last visited Mar. 16, 2012).
- 32 Andrea E. Pelochino, *Chapter 842: Extending the Provisions of the Child Abuse and Neglect Reporting Act*, 36 MCGEORGE L. REV. 831, 832 (2005).
- 33 Faller, *supra* note 29, at 64.
- 34 S. REP. NO. 93-308, at 1-2 (1973).
- 35 *Id.* at 1.
- 36 42 U.S.C. § 5101(b) (2010) (stating that the purpose of the Office on Child Abuse and Neglect was to “execute and coordinate the activities” required by CAPTA).
- 37 42 U.S.C. § 5104(b)(1) (2010) (stating that the purpose of the National Clearinghouse was, among other things, to “maintain, coordinate, and disseminate information on all effective programs, including private and community-based programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect and hold the potential for broad scale implementation and replication”).
- 38 S. REP. NO. 93-308, at 1 (1973).
- 39 Faller, *supra* note 29, at 64.
- 40 42 U.S.C. § 5106(a)(b)(2)(B)(i) (2010).
- 41 *Id.*
- 42 *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws*, CHILD WELFARE INFORMATION GATEWAY (2010), http://www.childwelfare.gov/system-wide/laws_policies/statutes/manda.cfm (stating that the eighteen states that currently require all adults to be mandated reporters of child abuse are Delaware, Florida, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming).
- 43 Brad Heath, *Few Penalties for Keeping Child Abuse Secret*, USA TODAY, Dec. 16, 2011, <http://www.usatoday.com/news/nation/story/2012-01-02/unreported-child-abuse/51981108/1>.
- 44 *Id.*
- 45 *Id.*
- 46 *Id.*
- 47 *Id.*
- 48 *Id.*
- 49 THIRTY-THIRD STATEWIDE INVESTIGATING GRAND JURY REPORT, GERALD A. SANDUSKY GRAND JURY REPORT 5 (2011) [hereinafter SANDUSKY GRAND JURY REPORT] (stating that Steve Turchetta was made aware of the alleged sexual abuse by an alleged victim’s mother).
- 50 *Id.* at 20.
- 51 *Id.* at 6-7.
- 52 *Id.* at 7.
- 53 *Id.*
- 54 *Id.*
- 55 *Id.*
- 56 *Id.*
- 57 *Id.*
- 58 *Id.* at 8-9.
- 59 *Id.* at 7-8.
- 60 *Id.* at 9-10.
- 61 *Id.* at 10.
- 62 *Id.* at 12.
- 63 *Id.*
- 64 *Id.*
- 65 23 Pa. Const. Stat. § 6311(c) (2007). The statute says the following:
- (c) Staff members of institutions, etc.—Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not

require more than one report from any such institution, school, facility or agency. *Id.*

66 Casey Press Release, *supra* note 3.

67 *Id.*

68 S. 1877, 112th Cong. (2011-2012).

69 *Hearing on Breaking the Silence on Child Abuse: Protection, Prevention, Intervention, and Deterrence: Before the Subcomm. on Children and Families of the S. Comm. on Health, Education, Labor, and Pensions*, 112th Cong. 5 (2011) [hereinafter *Hearing on Breaking the Silence*] (statement of Erin Sullivan Sutton, J.D., Assistant Commissioner, Children and Family Services, Minnesota Department of Human Services).

70 *Id.*

71 *Id.*

72 *Hearing on Breaking the Silence*, *supra* note 69, at 4 (statement of Teresa Huizar, Executive Director of the National Children's Alliance).

73 *Id.*

74 *Id.*

75 *Id.*

76 Marci A. Hamilton, *The Universal Need for the Mandatory Reporting of Child Sexual Abuse*, VERDICT, Nov. 17, 2011, available at <http://verdict.justia.com/2011/11/17/the-universal-need-for-the-mandatory-reporting-of-child-sexual-abuse> (arguing that a combination of universal mandated reporting laws, immunity from civil liability for those who report, and much stronger penalties for failure to report child sexual abuse would be the best way to protect children).

77 Joseph Shapiro, *Calls for More Reporting of Suspected Child Abuse*, NPR.ORG, (Dec. 21, 2011), <http://www.npr.org/2011/12/21/143841832/calls-for-more-reporting-of-suspected-child-abuse>.

78 Faller, *supra* note 29, at 65.

79 See L.L. Baiser & John Wisely, *Judge: Wendrow Family Can Continue Its Lawsuit Over Dismissed Child Abuse Allegations*, THE DETROIT FREE PRESS, Mar. 28, 2012, <http://www.freep.com/article/20120328/NEWS03/203280380/Judge-Oakland-County-family-can-continue-its-lawsuit-over-dismissed-child-abuse-accusations?odyssey=mod%7Cnewswell%7Ctext%7CFRONTPAGE%7Cp>; L.L. Baiser & John Wisely, *Family's Life Unravels With Claims Dad Raped Daughter*, THE DETROIT FREE PRESS, June 12, 2011, <http://www.freep.com/article/20110612/NEWS03/106120522/Family-s-life-unravels-claims-dad-raped-daughter>; L.L. Baiser & John Wisely, *Parents Are Locked Up and Desperate*, THE DETROIT FREE PRESS, June 14, 2011, <http://www.freep.com/article/20110614/NEWS03/106140373/A-family-s-nightmare-Chapter-3-Parents-locked-up-desperate?odyssey=tab|topnews|text|FRONTPAGE> (all discussing specific allegations of sexual abuse made based on a controversial method of communication for autistic children and the resulting traumatic impact on the family – the father was jailed for eighty days, the mother was jailed for five days, the daughter was subjected to an invasive exam and was placed in a residential treatment facility, the son was placed in a juvenile detention facility – charges against the father were later dropped).

80 See generally Douglas J. Besharov, *Child Protection: Past Progress, Present Problems, and Future Directions*, 17 FAM. L.Q. 151, 166-167 (1983); Paul Chill, *Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protection Proceedings*, U. of Conn. School of Law Articles and Working Papers, Paper 55 (2004) available at http://lsr.nellco.org/uconn_wps/55/.

81 *Hearing on Breaking the Silence*, *supra* note 69, at 10 (statement of Robert W. Block, MD, FAAP, of the American Academy of Pediatrics).

82 *Id.* at 10-11.

83 *Id.* at 11.

84 *Id.* at 11.

85 *Immunity for Reporters of Child Abuse and Neglect: Summary of State Laws*, CHILD WELFARE INFORMATION GATEWAY (2008), http://www.childwelfare.gov/system-wide/laws_policies/statutes/immunity.cfm.

86 *Id.* The states who provide a presumption of good faith are Colorado, Illinois, Indiana, Maine, Michigan, Mississippi, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Wisconsin, and Wyoming.

87 *Id.*

88 *Hearing on Breaking the Silence*, *supra* note 69, at 6 (statement of Frank P. Cervone, Esq., Executive Director of Support Center for Child Advocates).

89 Anne Reiniger, et al., *Mandated Training of Professionals: A Means for Improving Reporting of Suspected Child Abuse*, 19 CHILD ABUSE & NEGLECT, no. 1, 1995, at 68.

90 NIS-4, *supra* note 7, at 21.

91 *Id.* at 22.

92 See *Hearing on Breaking the Silence*, *supra* note 69, at 6 (statement of Erin Sullivan Sutton, J.D., Assistant Commissioner, Children and Family Services, Minnesota Department of Human Services).

93 See generally Faller, *supra* note 29, at 67-68.

94 *Id.*

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- 95 NATIONAL CHILDREN'S ALLIANCE, <http://www.nationalchildrensalliance.org/index.php?s=24> (last visited Mar. 16, 2012).
- 96 Editorial Board, *Stopping Child Abuse*, THE WASHINGTON POST, Feb. 24, 2012, http://www.washingtonpost.com/opinions/stopping-child-abuse/2012/02/01/gIQA-huVfYR_story.html.
- 97 NATIONAL CHILDREN'S ALLIANCE, NCA NATIONAL STATISTICS, <http://www.nationalchildrensalliance.org/cacstatistics> (last visited Nov. 18, 2012)
- 98 *Id.*
- 99 THEODORE P. CROSS ET. AL., EVALUATING CHILDREN'S ADVOCACY CENTERS' RESPONSE TO CHILD SEXUAL ABUSE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE JUSTICE BULLETIN (August 2008).
- 100 AMY L. SHADOIN ET. AL., COST-BENEFIT ANALYSIS OF COMMUNITY RESPONSES TO CHILD MALTREATMENT: A COMPARISON OF COMMUNITIES WITH AND WITHOUT CHILD ADVOCACY CENTERS, NATIONAL CHILDREN'S ADVOCACY CENTER (2006) (indicating that the use of CACs saves approximately \$1,000 per child abuse investigation).

Notes