Revisiting Child Abuse Reporting Laws

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Allegations that a former Penn State football coach sexually abused several boys have drawn national attention to child abuse and neglect reporting. Outraged citizens wondered how these incidents could have gone on for so long without anyone reporting it to the authorities, questioning whether the system designed to receive and investigate reports is truly responsive to abuse victims’ needs.

The Penn State tragedy has raised more questions than answers, both on state and national levels. One outcome has undoubtedly been that a much-needed light has been shined on child abuse reporting. There is an opportunity to honor those victims who had the courage to step forward and tell their stories by working to improve the systems that were supposed to protect them.

Definition of Child Abuse Reporting

There were an estimated 3.3 million reports of suspected child abuse and neglect involving 5.9 million children across the United States in 2010, according to the U.S. Department of Health and Human Services. Child abuse reporting laws provide the means for government agencies to investigate allegations of child maltreatment. Each state has its own public child welfare system designed to investigate reports of child maltreatment and intervene on behalf of victims if the allegations are substantiated. Some child protective service systems are statewide, while others are county based. Each state determines what cases will be investigated and how authorities will respond based on the state’s statutes and regulations.

Child abuse allegations are reported to a designated hotline or child protective services agency. Phones are answered...
by trained staff who receive calls, ask questions to elicit needed information, and make determinations of what happens next. They decide whether there is sufficient information to proceed, whether a case falls within their jurisdiction, and whether the allegations meet the established standard to be screened in for investigation by the child protection agency. For example, if the reporter is unable to provide sufficient information as to the identity of the alleged victim or family, if the victim is over the age of majority, or if the allegations do not meet the state’s statutory definition of child abuse or neglect, the report cannot be referred for investigation. Data from the 2010 National Child Abuse and Neglect Data System (NCANDS) show that 60.7% of child abuse and neglect reports were screened in for investigation while 39.3% were screened out.

**Evolution of Reporting and Investigation**

Although child protection agencies began investigating child abuse in the late 19th century and the federal Children’s Bureau was established in 1912, child abuse reporting laws did not exist until the mid-1960s when C. Henry Kempe’s landmark work on battered child syndrome drew attention to the need for a systemic response. Today, every state has enacted a child abuse reporting statute that defines, at a minimum, what constitutes child abuse in that particular state and who is mandated to report the abuse. No two states have the exact same law, nor is there an overarching federal child abuse reporting statute.

Historically, child abuse reporting laws were designed to identify suspected child abuse and neglect by an adult in a caretaking role. Child maltreatment by other adults fell under the purview of the criminal justice system. Today, some states include all perpetrators in their child protection system. Child abuse by a parent or other adult in a caretaking role may be reported to and investigated by both the child welfare and criminal justice systems if the reported abuse rises to the level of criminal activity. Each state determines its own protocols vis-à-vis a dual system response.

**Commonalities Among Reporting Laws**

Although reporting laws differ from state to state, they do share common core components. For instance, they all specify what constitutes child abuse and neglect in that particular state. Statutes include their specific definition of physical abuse, sexual abuse, emotional or psychological abuse, and neglect; the failure to meet the basic needs of food, clothing, and shelter; and medical care and sometimes education of children. These definitions vary among states, so what constitutes a reportable condition in one jurisdiction may not be considered reportable in another.

The Children’s Bureau reports in their 2010 data that 78.3% of victims were reported for neglect, 17.6% for physical abuse, 9.2% for sexual abuse, 8.1% for psychological maltreatment, 2.4% for medical neglect, and 10.3% for other types of reportable conditions; some children were reported for multiple types of child maltreatment.

Those responsible for the alleged abuse are addressed as well. Each state defines who may be considered a perpetrator. In most instances, states limit the class of perpetrator to people in a parental or caretaking role, but others allow for anyone to be a perpetrator. In the former, child abuse inflicted by someone who is not responsible for the care of a child does not fall under the jurisdiction of child abuse reporting laws.

Each state’s child abuse reporting law enumerates classes of individuals who are mandated by law to report suspected abuse. Mandated reporters typically include doctors, nurses, teachers, counselors, therapists, law enforcement, and day care staff—almost any classification of professional who would come in contact with a child in the course of their work. Some states mandate athletic coaches to report suspected abuse, while others mandate parents to do so. There are 18 states that currently mandate all adults report suspected child abuse and neglect.

The Children’s Bureau reported in “Child Maltreatment 2010” that 58.6% of reports were made by professionals and 27.7% by nonprofessionals, and the reporter’s classification was either unknown or considered “other” (such as clergy members, sports coaches, and camp counselors) in 13.7% of the reports.

In every state, anyone who is not mandated by law to report child abuse still has the option to report it voluntarily. Additionally, each state permits voluntary reports to be made anonymously. This protection is often helpful when the reporter is fearful of repercussions or would otherwise not report.

Normal doctor-patient and therapist-patient confidentiality is waived in most states if child abuse is suspected; protection of children supersedes the privacy of these relationships. Reports are required to be made in good faith, and those who do report in good faith are immune from liability. Statutes also enumerate punishment for failure to report, currently a minor offense across the country.

Some states address a systemic responsibility for reporting or communicating alleged child abuse. Pennsylvania, for example, amended its law to require internal institutional reporting so that the person with direct knowledge is required to report “up” within his or her organization rather than to the child welfare system. It is left to the organization administrator to file the report.

A few states clarify what cases fall under their geographic jurisdiction. For example, a state may specify that its authorities are responsible for investigating reports of abuse in which the child resides within its jurisdiction even if the abuse did not occur within its borders. More often than not, however, jurisdiction is left up to the interpretation and the discretion of those receiving the reports. This results in cases falling through the cracks and remaining uninvestigated.
Reporting laws often delineate a process and protocol for accepting reports and conducting investigations. For example, they can specify time frames to complete investigations. The state statutes may also address how information is maintained on substantiated cases, such as a central registry containing the identities of perpetrators.

Penn State-Inspired Changes

The impact of the Penn State case has been felt locally and nationally. Politicians, lawmakers, professionals, and advocates have called for changes to the current laws and regulations. Some are thoughtful and grounded in good practice, while others are knee-jerk responses seeking a quick fix to a very complex issue. In Pennsylvania and around the country, efforts to amend current statutes seek to prevent a recurrence of all that went wrong in State College. State legislators have proposed changes in their reporting laws in response to public outcry to do something. Some initiatives are calling for more serious penalties for failing to report child abuse. One federal bill would impose sanctions on those who witness child sexual abuse for failing to report it. Although such ideas appear to be a solution and may have applied in the Penn State case, very few cases of child sexual abuse actually have witnesses because perpetrators usually take great care to ensure there are none.

Other initiatives are focused on expanding who is mandated to report suspected child abuse and neglect. Some legislation looks to add new categories of mandated reporters such as athletic coaches and higher education staff, while other efforts attempt to require all adults to report child abuse.

Federal legislation was initiated in November 2011 to amend the Child Abuse Prevention and Treatment Act (CAPTA) to require that all states amend their laws within two years to mandate all adults report suspected child abuse and provide training on child abuse reporting, tied to state eligibility to continue to receive federal CAPTA funding. Introduced by Sen. Robert Casey of Pennsylvania and Sen. Barbara Boxer of California, the Speak up to Protect Every Abused Kid Act is designed to increase trained, responsible reporting of child abuse across the country. The Senate Committee on Health, Education, Labor, and Pensions Subcommittee on Children and Families held a public hearing in December 2011. Experts recommended studying the outcomes of increasing the class of mandated reporters to all adults in the 18 states that currently do so prior to moving forward and legislating this act nationally.

A statute of limitations exists in most states in both civil and criminal cases to bring forth legal action on child sexual abuse. Often victims do not disclose or feel ready to come forward to address their abuse within the legal system for a long period of time after the abuse has occurred. In a recent case in

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New Jersey, several adults alleged that a well-known sports reporter had sexually abused them decades ago when they were children. The statute of limitations in force at the time prevents this alleged perpetrator from being prosecuted. Spurred by the Penn State case, recent efforts have revisited the statute of limitations to amend the laws and allow victims and the court system a longer period of time to bring action.

New efforts are focused on increasing public awareness of child abuse and the need to report. Efforts are being made to expand and improve training for both mandated reporters and the general public on child abuse, the reporting system, and individual responsibility. Child abuse prevention programs are also receiving greater attention, a much-needed boost at a time when prevention programs are faced with funding cuts.

Pennsylvania recently passed legislation to form a Task Force on Child Protection, a year-long commission comprised of experts charged with improving child abuse reporting, training, policies, procedures, and laws. The commission’s report, due in November 2012, will address needed systemic changes as a package.

Factors That Warrant Consideration

It is important not to make change just for change’s sake. Any amendments or modifications should be initiated in a thoughtful manner and be based on research, evidence, and proven practice. While many seek to “do good,” there may be unintended consequences of their actions that can actually cause harm.

One critical factor to consider is the implication of mandating all adults to report child abuse. According to Eckerode et. al. (1988), reports by professionals have substantiation rates 23% higher for reports of physical abuse, 11% higher for reports of sexual abuse, and 26% higher for reports of neglect compared with nonprofessionals. The 2008 NCANDS report found that professional reports have overall substantiation rates nearly double that of nonprofessionals; child abuse and neglect reports made by professionals are substantiated 27.4% of the time, while only 14.4% of nonprofessional reports are substantiated.

From these national data, one can extrapolate that increasing the pool of nonprofessional reports will likely increase the proportion of those that cannot be substantiated. If the system is inundated with reports of this nature, time and attention may be taken away from the more serious cases.

Expanding reporting without simultaneously ensuring the ability to investigate them can result in tragedies. Legislative initiatives have focused on increasing the reporting of child abuse but have not addressed the systemic capacity to investigate these additional cases nor to provide needed services to protect children from further harm should the reports.

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be substantiated. Currently, child welfare agencies are being pushed to their limits with the perfect storm: Families are experiencing greater stress with fewer supports due to the country’s economic downturn, while resources that were historically available to them to provide relief are facing their own challenges with funding cutbacks. Child protection agencies, also facing funding cutbacks, cannot turn families away or place them on waiting lists, which are full. Higher agency case-loads may also prevent completing investigations within legally required time frames. States must find a way to underwrite the capacity of child welfare systems to investigate and serve any increase in reports that result from these efforts.

Before opening the doors to new classes of mandated reporters, the reasons mandated reporters currently fail to report need to be identified and addressed. A study conducted by Robert Sege, MD, PhD, of Boston Medical Center (2011) compared how physicians responded in 92 cases of child injury with evaluations by child abuse experts. They found that a report of child abuse was warranted in 20% of the cases that doctors chose not to report. In six of these cases, the physicians themselves had identified a high likelihood of abuse. One reason the doctors declined to report was their lack of faith in the child protection system. Other reasons that have been cited for professionals failing to report suspected child abuse include worrying about relationships with families, concern about legal action, and the need to be more confident in their suspicion of child abuse.

Families and cases often cross state lines. There is currently no mechanism, law, or regulation to ensure that a report of child abuse will be accepted for investigation when the incident, the victim, and the perpetrator are not all located within the same state. Such cases often fall through the cracks and go uninvestigated. This is an unintended consequence of a state-administered child welfare system and is in need of a remedy.

The construct of systemic reporting, when the organization is legally mandated to report suspected abuse in addition to or in lieu of individuals, is complex and replete with problems. The Penn State case illustrates how reporting up in lieu of reporting out fails victims. If the individual with direct knowledge of the alleged abuse is not the one to report to authorities, the incident itself may be distorted, as in the game of telephone, or not reported at all. The alleged rape of a young boy as reportedly witnessed became horseplay in the locker room as described by an administrator. However, had horseplay been reported to the child welfare system, it would not have been investigated because it would have failed to meet the state’s definition of child abuse.

Moving Forward

The current climate, one of outrage at the increasing number of cases in which trusted and respected adults reportedly abused an increasing number of children, provides an opportunity to do better. This window has been opened, and the response needs to be thoughtful, deliberate, and evidence based. It is not enough or even right to cave in to public pressure and enact legislation that will make citizens feel like they have fixed the problem when they may be compounding it. There is a great body of knowledge in the child welfare field, and it can and should be used to inform systemic change.

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References
