When the allegations of child sexual abuse against former Penn State assistant coach Jerry Sandusky became public late last year, people were rightfully outraged that numerous officials at that university failed to report what they knew to child protective services (CPS). Certainly, if everything in the grand jury report is true, they had the moral prerogative to make such a report. But set that aside for a minute to consider an important question: was Sandusky even reportable to CPS under the current Pennsylvania child abuse reporting laws?

Before beginning this discussion, a couple of points must be made clear. First, Penn State officials could have reported to law enforcement even if Sandusky was not reportable to CPS. But the distinction between reporting to CPS and reporting to law enforcement is important. In Pennsylvania, CPS and law enforcement are not required to report to one another in all cases, so a report to law enforcement may not reach CPS. It is critical that these reports reach CPS, since law enforcement is tasked primarily with punishing the perpetrator, while CPS is focused on the safety and well-being of the victim. Second, the analysis here will be limited to the incident involving “Victim #2” from the grand jury report—who was allegedly raped in the shower in the Penn State locker room—because that’s the only incident about which Penn State officials clearly had at least some knowledge based on that report.

At first glance, the question of whether Sandusky was reportable to CPS seems nonsensical. “Of course he was reportable,” one might reason, “after all, he was an adult who (allegedly) committed one of the most despicable acts of child abuse imaginable. There is no logical reason why such an incident should not be reportable to CPS.”

Unfortunately, Pennsylvania’s law is not so logical. In order for CPS to substantiate a report (i.e. determine that abuse occurred), certain facts must be established. For example, the victim must have been under the age of 18 at the time of the abuse. The abuser’s actions must rise to the level of abuse, meaning that the child must suffer serious physical or mental injury, or be subjected to neglect or sexual abuse. Most important for this discussion, the alleged abuser—here, Sandusky—must fit into the statutory definition of the word “perpetrator.”

In Pennsylvania, perpetrators can fall into one of two categories: school employees and non-school employees. Jerry Sandusky was not a school employee. At the time of the alleged incident involving Victim #2, Sandusky was retired from Penn State, and was employed only by his charity, Second Mile.1

The important definition, then, is the definition of “perpetrator” for those who are not school employees. In this context, a perpetrator must be a parent, parent’s paramour, person living with the child, or a “person responsible for the child’s welfare.” From what we know, Sandusky can only be a perpetrator (and thus reportable to CPS) if he was “a person responsible for [Victim #2]’s welfare.”

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**The Devil is in the Details:**

**Pennsylvania’s Definition of Child Abuse Perpetrator**

Stephen St.Vincent, Esq., Stoneleigh Emerging Leader Fellow

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**A New Model for Aging Out: Mentoring Programs to Promote Interdependent Living**

Anne Day, MSW Candidate

Policy is slowly coming to the realization that youth “aging out” of foster care are not likely to be prepared for absolute independence at age 18 or even 21. The Fostering Connections Act of 2008 took a great step in helping youth transition into adulthood by extending foster care up to age 21. Unfortunately, despite the successes of Fostering Connections, many youth are still struggling to achieve independence. Extending foster care to 21 does not mitigate the impact of emancipation with no safety net, no support and no stability. Many states have chosen to step away from the idea that children, of any age, can become absolutely independent upon emancipation. Instead, many states and individual programs are encouraging mentoring programs for youth at risk of aging out. Mentoring programs take the focus off of independent living for young adults and put the focus on interdependent living, encouraging youth to form stable, trusting relationships and to build social capital.

There is little debate about the dismal outcomes for youth that age out of the foster care system. In 2010, 27,854 youth were emancipated from the foster care system (U.S. Department of Health and Human Services, 2011). Of the youth that age out, only 9.9% are completely independent at age 18 or even 21. The Fostering Connections Act of 2008 took a great step in helping youth transition into adulthood by extending foster care up to age 21. Unfortunately, despite the successes of Fostering Connections, many youth are still struggling to achieve independence. Extending foster care to 21 does not mitigate the impact of emancipation with no safety net, no support and no stability. Many states have chosen to step away from the idea that children, of any age, can become absolutely independent upon emancipation. Instead, many states and individual programs are encouraging mentoring programs for youth at risk of aging out. Mentoring programs take the focus off of independent living for young adults and put the focus on interdependent living, encouraging youth to form stable, trusting relationships and to build social capital.

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However, a babysitter was found to be a “person responsible.” For example, in an undefined class of persons whose relationship with the child is something less than a “primary” or “permanent” relation, a babysitter was found to be a “person responsible for the child’s welfare” to include not only those who act in loco parentis, or control.” Unfortunately, this definition provides little help in determining whether Sandusky was a perpetrator. It sounds like it means someone who acts in loco parentis “permanent or temporary care, supervision, or control.” Unfortunately, there are only unpublished lower-court opinions interpreting this definition in the context of child abuse reporting. “Unpublished opinions” are at best persuasive on subsequent courts; they are not binding on future courts.

50 Years Since Publication of the “Battered Child Syndrome”: Can America Stop Hurting Its Children?

John Leventhal, MD, Professor of Pediatrics, Yale University

Dr. Leventhal is one of the foremost national experts in child abuse. His most recent research was just published in Pediatrics: “Using US Data to Estimate the Incidence of Serious Physical Abuse in Children.” It is the first study to provide national estimates on the occurrence of serious injuries due to physical abuse.

April 24, 2012
8:30 – 10:30 am

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("The Devil is in the Details," continued from page 1)

“Person responsible for the child’s welfare” is defined in the statute to include those who provide “permanent or temporary care, supervision, . . . or control of a child in lieu of parental care, supervision, or control.” Unfortunately, this definition provides little help in determining whether Sandusky was a perpetrator. It sounds like it means someone who acts in loco parentis, as a school or daycare provider does. But as will be shown shortly, that isn’t quite the case.

Since the statutes are unclear, we must look to judicial decisions that interpret the ambiguous language. But the case law on this topic is decidedly thin. The most helpful case is a 1994 decision called Gerstner. In Gerstner, the Pennsylvania Supreme Court interpreted the phrase “person responsible for the child’s welfare” to include not only those who act in loco parentis, but also some undefined class of persons whose relationship with the child is something less than in loco parentis. For example, in Gerstner, a babysitter was found to be a “person responsible.” However, Gerstner has two critical deficiencies in this context. First, Gerstner was actually interpreting the phrase “person responsible for the child’s welfare” from a different statute, so it wasn’t directly interpreting the child welfare statute. Strangely, this is how the law works sometimes: the exact same phrase used in two nearly-identical contexts can be assigned different meanings by courts. Second, the court’s interpretation, even if applied to this statute, would be subservient to the legislature’s definition in the child abuse reporting laws (“care, control, or supervision”). In other words, because the legislature has already attempted to define the term, courts must interpret that definition, not the term itself. So what we really need is a judicial interpretation of the “care, control, or supervision” language. Unfortunately, there are only unpublished lower-court opinions interpreting this definition in the context of child abuse reporting. “Unpublished opinions” are best persuasive on subsequent courts; they (continued on page 3)
PA Convenes Task Force on Child Protection: Field Center Faculty Director Appointed by Governor Corbett

In response to an outcry for systemic reform highlighted by charges that former Penn State assistant coach Jerry Sandusky sexually abused young boys over a period of years, in December 2011, the Pennsylvania General Assembly created the Task Force on Child Protection.

On January 10, 2012, Pennsylvania Governor Corbett and legislative leaders announced appointments to the task force, which included representation by the Field Center for Children’s Policy, Practice & Research.

The four members appointed by Governor Corbett:
- Hon. David W. Heckler (Chair of the Task Force), Bucks County District Attorney
- Dr. Cindy W. Christian, Field Center Faculty Director and Director of Safe Place: The Center for Child Protection and Health, Children’s Hospital of Philadelphia
- Delilah Rumburg, Pennsylvania Coalition Against Rape and the National Sexual Violence Resource Center
- William Strickland, President and CEO of Manchester Bidwell Corporation

Appointed by the Senate President:
- Dr. Rachel Berger, member of Child Protection Team at Children’s Hospital of Pittsburgh
- Carol Hobbs-Picciotto, MHS, Intake Worker, Philadelphia Department of Human Services
- Garrison Ipock, Jr., Executive Director, The Glen Mills Schools, Glen Mills

Task Force members appointed by the Speaker of the House:
- Jackie Bernard, Chief Deputy District Attorney, Blair County
- Hon. Arthur Grim, Senior Judge, Court of Common Pleas of Berks County
- Jason Kutalakis, senior partner, Abom & Kutalakis LLP, Carlisle

Department of Public Welfare Secretary Gary Alexander serves as an ex-officio member of the task force. Governor Corbett also named a representative of the Pennsylvania State Police, Lt. Gregg Mrochko of the State Police Bureau of Criminal Investigation, to assist the Task Force, serving as a liaison and resource to the panel.

As called for under House Resolution 522 and Senate Resolution 250, the 11-member task force will examine and analyze the practices, processes and procedures relating to the response to child abuse; review and analyze law, procedures, practices and rules relating to the reporting of child abuse; hold public hearings, accept and review written comments from individuals and organizations; submit reports which will include recommendations to improve the reporting of child abuse; implement any necessary changes in state laws and practices, policies and procedures relating to child abuse; and train appropriate individuals in the reporting of child abuse.

The Task Force held the first of five mandatory meetings in February. The work of the task force can be followed on its website, http://www.childprotection.state.pa.us/index.cfm. It will issue its report by November 30, 2012 and is scheduled to be disbanded the following month.

("The Devil is in the Details; " continued from page 2)

cannot be used as binding precedent. This is another peculiarity of legal practice that often doesn’t make much sense. In the relevant unpublished cases, driving a child to his grandmother’s house was found to be sufficient “care, control, or supervision” to qualify the alleged perpetrator as a “person responsible”; so was having a child stay overnight at the perpetrator’s house. However, even assuming that Sandusky’s level of responsibility over the child rose to the level described in these cases—which is speculative at best based on the grand jury report, which describes only the shower incident and not the underlying relationship—these unpublished cases would not settle the matter because they are non-binding.

Fortunately, basic principles of statutory construction provide at least some guidance. There is a general rule that statutes do not contain unnecessary words; This is the “rule against surplusage.” Here, this means that because the legislature did not define “perpetrator” to include any person means that there must be some individuals who cannot be perpetrators. So perpetrators can include those in loco parentis, and some whose relationships are lesser, but not all persons.

This can be quite complicated and confusing, so here’s a recap of the discussion so far. First, perpetrators must either be school employees (which Sandusky, at the time of the alleged incident involving Victim #2, was not) or “persons responsible for the child’s welfare.” Second, for Sandusky to have been a “person responsible,” he must have had “care, control, or supervision” over the child. Third, the meaning of those phrases is largely unclear except that those acting in loco parentis would qualify, as would some with less parental relationships, but not everyone. Fourth, Sandusky wasn’t in loco parentis, but it is unclear whether he had, legally speaking, “care, control, or supervision” over the child. Fifth, what exactly Sandusky’s relationship to Victim #2 was outside of the alleged incident in unknown; and even it were, there would be little-to-no legal guidance regarding whether that relationship fit the statutory definition.

These are the things that even the experts don’t know. How, then, can mandatory reporters be expected to know? How can CPS be expected to know? How can judges be expected to know? And, more importantly, can they really be blamed if they get it wrong? Incidents like the one involving Victim #2 should be immediately reported to law enforcement at a minimum, and those who suspect that abuse is occurring should report to CPS just to be safe. But what should happen from there under the current laws is anyone’s guess.

The arguments presented here are not meant to defend the failures of anyone involved with this scandal, merely to point out the lack of both clarity and consistency in Pennsylvania’s laws. There are cases every day that fall into these gray areas, many involving abuse that isn’t as violent as that which Sandusky allegedly committed and therefore might not be reportable to law enforcement. What happens then? There must be better guidance on this issue from the legislature so that those whom society holds legally responsible for making and handling child abuse reports can act with clarity and certainty.

1 Even if Sandusky was still an assistant coach employed by Penn State, he might not have been considered a school employee under the relevant statute. A school employee is a person “employed by a public or private school, intermediate unit or area vocational-technical school” who has direct contact with students. It is unclear whether this phrase in the statute was intended to include post-secondary institutions such as Penn State. Intermediate units and vo-tech schools are typically thought of as K-12 institutions, so it could be inferred that “public and private schools” would also be limited to K-12 institutions. There is no case law defining “school employee,” so these waters remain murky.
those 27,854 youth, nearly a quarter of them will not have a GED or high school diploma by age 21. Nearly 70% of those 27,854 youth will not go on to college. Most foster youth that age out will struggle with bouts of unemployment and, on average, 17% will experience homelessness (Courtney, Dworsky, Cusick, Havlicek, & Keller, 2007). Youth aging out of foster care are significantly more likely to live with mental health disorders, including rates of post traumatic stress disorder that are approximately twice as high as post traumatic stress disorder rates in combat veterans returning from war (Samuels, & Pryce, 2008).

The impact of youth aging out of the foster care system is not limited to the child welfare system. If we strip this issue of its humanity, we can examine the dollars and cents of youth aging out. Public costs associated with youth aging out are projected to be in the billions. In 2009, Cutler Consulting estimated the financial impact of the decreased educational attainment of youth that have aged out of foster care to be $748,800,000 per year. The cost of the increased number of unplanned pregnancies for youth that have aged out of foster care was estimated at $115,627,350. And the cost of increased criminal involvement after youth have aged out of the foster care system has been projected to be a staggering $4,833,736,200 per year. In total, the public cost of youth unsuccessfully transitioning from foster care to adulthood on only these three variables was estimated at $5,698,163,550 per year (Freundlich, 2010).

Previous attempts at helping youth transition into adulthood out of foster care have focused almost entirely on independent living. Independent living at such a young age has not and will not be a realistic objective for youth aging out of foster care. Since the late 1990’s, the Jim Casey Youth Opportunities Initiative has evaluated the nation’s attempts at establishing independent living for young adults aging out of the foster care system and has concluded:

“...in general, programs have been found to be ineffective in meeting the needs of young people in the areas of education and employment, economic well-being, housing, delinquency, pregnancy, and receipt of needed documentation (Freundlich, 2010).”

More recently, some states have taken steps toward encouraging youth at risk of aging out to develop healthy, sustainable relationships with a mentor. California passed the Prudent Parent and Check for Important People Act (AB 408, 2003), which went into effect in 2004, establishing the intent to ensure every youth that leaves the foster care system has a connection to a committed adult. The bill directs child welfare workers to inquire about individuals that are important to youth at risk of aging out, help foster youth identify potential mentors, and create plans to develop and strengthen relationships between mentors and youth that are aging out of care. California has also added education on the importance of healthy relationships for foster youth that are aging out of care to the training curriculum for child welfare professionals. Similar to California, bills are making their way through legislatures all over the country emphasizing the importance of mentoring for foster youth.

Mentoring programs for youth aging out have proven successful in decreasing negative outcomes. Although mentoring programs are still in the early stages of development, preliminary research has shown statistically significant gains in outcomes for youth. Youth participating in mentoring programs during and after emancipation from the foster care system, on average, are less likely to smoke marijuana, less likely to engage in criminal activity, less likely to engage in delinquent behaviors of any kind, more likely to report high levels of satisfaction with their lives, and less likely to develop depression (Mech, Pryde, & Rycraft, 1995).

The California Permanency for Youth Project (CPYP) is a mentoring program that has proven to be extremely successful in promoting lasting relationships for youth aging out. CPYP started in 2002 and works to connect older youth in care with adults that can provide a permanent and stable relationship. Over the course of 7 years, the CPYP has collaborated with 20 counties and 276 children, of whom 206 have made permanent, stable relationships with adults and siblings (Friend, 2012).

Currently, at the Federal level, the Foster Care Mentoring Act of 2011 proposes to establish a $15 million grant program under Title IV-B to allow states to expand or establish mentoring programs for youth aging out of care. Although the bill was proposed by Senator Mary Landrieu (D-La.) in February of 2011, it has been referred to the Finance Committee, which has jurisdiction over child welfare issues. Representative Karen Bass (D-Ca.) has also introduced a companion bill in the House of Representatives.

Models for mentoring, legislation and programming are increasingly available all over the country. Mentoring programs provide youth aging out of care with the stability and compassion that the state has historically failed to provide during such a difficult transition. The concept of independently transitioning from foster care to adulthood has proven to be ineffective, harmful and costly. It is time to shift the goal for youth aging out of foster care from independent living to interdependent living.

References
Prudent Parent and Check for Important People, California AB 408, Chapter 813, Statutes of 2003
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In Our Opinion:
Will More Laws Help Children?
Richard J. Gelles, Phd.


Today, the Penn State sexual-abuse case has lawmakers scurrying to pass legislation to protect children. The general sentiment is that state and federal laws requiring suspicions of child abuse to be reported should be expanded and strengthened.

I’m not sure, however, whether that kind of legislation will protect more children from abuse. While there is a possibility that the current debate will improve laws and close the cracks in the system, we should not rush to expand mandatory reporting laws without care and deliberation.

In 2009, the most recent year for which data are available, government agencies throughout the country received 3.3 million reports of suspected child abuse and neglect, involving some five million children. The agencies investigated two million of these reports, leaving about a million uninvestigated, primarily because they didn’t include necessary information (e.g., the name or address of the victim or perpetrator) or because they didn’t meet the state’s definition of child abuse or neglect. These two million investigations found that 442,000 children were actually abused or neglected, leaving 1.6 million reports for which the investigators were unable to uncover sufficient evidence that abuse or neglect had occurred.

So, in the end, slightly more than one in five investigated reports of suspected child abuse and neglect are confirmed. This share, which is referred to as the “substantiation rate,” hasn’t changed much in the last 30 years.

If the allegation that former Penn State assistant coach Jerry Sandusky was sexually abusing boys had been reported and investigated, the substantiation rate suggests a 22 percent chance that an investigator would have determined that abuse probably took place. Had the report been made anonymously, the likelihood of substantiation would have been much lower; had it come from head coach Joe Paterno or a Penn State administrator, the likelihood of substantiation would have been greater.

Unlike many Pennsylvania counties, Centre County, which encompasses Penn State, does not have a child advocacy center, an agency specially equipped to handle child-abuse investigations. That makes it more likely that an investigator assigned to the case would have been unable to substantiate the claims that Sandusky was sexually molesting boys. Why am I so pessimistic? Because Sandusky had already been evaluated and cleared to become a foster parent and an adoptive parent.

So what would happen if new laws forced more citizens to report suspicions of child abuse or else face stiff punishments? In all likelihood, the number of reports would increase (which is probably already happening in Pennsylvania). The staffs of the agencies that investigate those reports would also have to increase. But they would likely be using the same tools they use today to determine whether abuse occurred, and the increased reports would probably cause the substantiation rate to decline.

With more money going to investigations, meanwhile, there would be even less funding for child advocacy centers and other such services. And child-welfare agencies would turn more of their focus to investigations rather than protection from abuse.

While I would like to believe that investigations alone increase the protection of children, I know otherwise. Forty years after the first federal mandatory reporting law was enacted, there isn’t a single study showing that investigations alone increase the safety of children. Investigations without services do not prevent abuse.

So what should we do with this watershed moment, which will pass all too quickly? Instead of trying to expand mandatory reporting laws, let’s ask a more fundamental question: What do we need to do to increase the safety and well-being of vulnerable children?
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<td>NCJFCJ's National Conference on Juvenile and Family Law</td>
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<td>Philadelphia, PA</td>
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<td>John Leventhal, MD, Professor of Pediatrics, Yale University</td>
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<td>Field Center for Children’s Policy, Practice &amp; Research, University of Pennsylvania</td>
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<td>Orlando, FL</td>
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<td>Chicago, IL</td>
<td>2012 NFPA National Education Conference</td>
<td>Phone: (800) 557-5238&lt;br&gt;Email: <a href="mailto:Info@NFPAonline.org">Info@NFPAonline.org</a>&lt;br&gt;Website: <a href="http://www.nfpainc.org/conference2012">www.nfpainc.org/conference2012</a></td>
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<tr>
<td>June 15-18,2012</td>
<td>National Foster Parent Association</td>
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<tr>
<td>Atlanta, GA</td>
<td>26th Annual Conference on Treatment Foster Care</td>
<td>Phone: (800) 414-3382&lt;br&gt;Email: <a href="mailto:shorowitz@ffta.org">shorowitz@ffta.org</a>&lt;br&gt;Website: <a href="http://www.ffta.org/conference">www.ffta.org/conference</a></td>
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<tr>
<td>July 22-25, 2012</td>
<td>Foster Family-Based Treatment Association</td>
<td></td>
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<tr>
<td>Bridgewater, MA</td>
<td>5th National Research Conference on Child and Family Programs and Policy</td>
<td>Phone: (508) 531-2012&lt;br&gt;Email: <a href="mailto:Emily.Douglas@bridgew.edu">Emily.Douglas@bridgew.edu</a>&lt;br&gt;Website: <a href="http://www.nrccfp.org">http://www.nrccfp.org</a></td>
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<tr>
<td>July 24-26, 2012</td>
<td>Bridgewater State University</td>
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We do not share our mailing lists.
NEWS FROM THE FIELD
March 2012

Newsletter Highlights...

- Field Center’s Dr. Cindy Christian appointed to PA Task Force for Child Protection
- A New Model for Aging Out: Mentoring Programs to Promote Interdependent Living
- The Devil is in the Details: Pennsylvania’s Definition of Child Abuse Perpetrator