

# Mandatory Reporting of Child Abuse

Courtland Geyer

Marion County Circuit Court Judge

# Mandatory Reporting of Child Abuse

## A Failure to Report

Acknowledgments to Amber Hollister,  
Deputy General Counsel, Oregon State  
Bar

CHILD ABUSE REPORTING: A PENN  
STATE CASE STUDY



# Mandatory Reporting of Child Abuse

**Penn State University  
Football**

**1995 Rose Bowl:  
Penn State 38, Oregon 20**



# Mandatory Reporting of Child Abuse

## Penn State University Nittany Lions

- 3 Big Ten Conference titles
- 7 undefeated seasons
- 2 national championships



## Failure to Report

*Headline*

*11/7/11*

“Two Top  
Officials Step  
Down Amid  
Penn State  
Scandal”



## Failure to Report

*Coach Joe Paterno (right)*

- 44 seasons as head coach at Penn State
- Held record for most wins as Division 1 head football coach



## Failure to Report

2001: Penn State graduate assistant reported seeing Jerry Sandusky (left with photo) sexually assault a naked boy, estimated to be about 10 years old, in a team locker room shower.



## Failure to Report

Sandusky, a volunteer at the time, was once defensive coordinator at Penn State and considered the heir-apparent to longtime coach Joe Paterno



## Failure to Report

- Reported to Coach Joe Paterno (right)
- Reported immediately to Tim Curley, the athletic director (center)
- Reported to Gary Schultz, the school's senior vice president for business and finance



## Failure to Report

NEVER  
reported  
to police



## Failure to Report

June, 2012

- Sandusky (68) convicted on 45 of 48 counts of child sexual abuse involving ten different children
- Sentenced to 30-60 years in prison



## Failure to Report

- Joe Paterno was fired November 9, 2011
- He died in January, 2012 at the age of 85



## Failure to Report

- Former AD Tim Curley was placed on administrative leave.
- He and Gary Schultz = indicted for perjury at the grand jury and failing to report child abuse.



# Failure to Report

WALL STREET JOURNAL

July 17, 2013

“Penn State to  
Settle Some Claims  
for \$60 Million

*Settlement Covers About  
Two Dozen Men Who Say  
Sandusky Abused Them”*



## Failure to Report

WALL STREET JOURNAL

July 17, 2013

*“The settlements are nearing completion a year after an independent investigation found that former Penn State officials allegedly conspired to keep silent about Mr. Sandusky's abuse and allegedly failed to report knowledge of at least one instance to authorities.”*



# Mandatory Reporting of Child Abuse

But that will  
never happen  
here, right?



# Child Abuse Statistics

- Nationally, about 200,000 children are sexually abused each year
- 1 out of 4 girls, 1 out of 9 boys will be abused
- Children ages 7-9 are most commonly abused

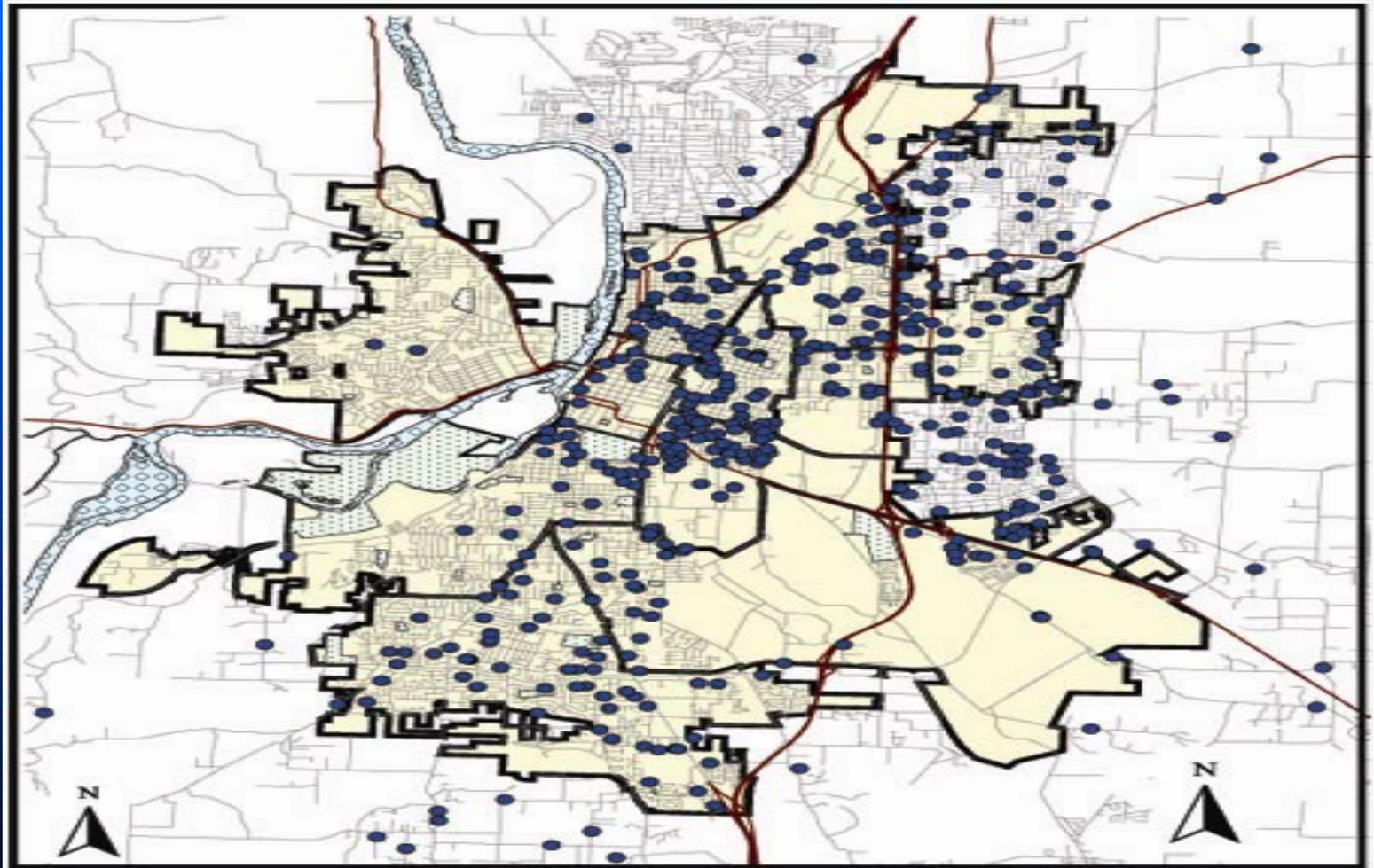
# Child Abuse Statistics

- Sex offenders commit an average of 120 separate sexual crimes before they're caught
- Have only 3% chance of being caught

# Offender Relationship to Victim

- 16% Biological Parent
- 14% Step Parent
- 16% Other Relative
- 26% Acquaintance or Friend of Parent
- 22% Youth Service Worker
- 5% Stranger
- 1% Other

# APPROX. 1,400 REGISTERED SEX OFFENDERS LIVING IN MARION COUNTY



# Child Abuse Statistics

- Fewer than 5% of child victims tell anyone
- 1986 Study: Children had to tell an average of nine people before someone called police
- Today, probably closer to one or two but people still have trouble reporting

# Child Abuse Statistics

- According to the CDC, the leading cause of injury death to children in the United States is homicide
- In Oregon, the age group with the highest rate of homicide is children under one-year of age
- In 2008, one-third of the homicides in Marion County involved child victims (4)

# Legislative Intent

## The Prevention of Child Abuse

- Encourages voluntary reporting
- Provides civil immunity for making a report in good faith

# Who Must Report?

Certain professions most likely to encounter initial disclosure, designated as “Public or private officials”



ORS 419B.010

# Public/Private Officials

Public or private official" means:

(a) Physician, osteopathic physician, physician assistant, naturopathic physician, podiatric physician and surgeon, including any intern or resident.

(b) Dentist.

(c) School employee.

(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(e) Employee of the Department of Human Services, Oregon Health Authority, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) Peace officer.

# Public/Private Officials

Public or private official" means:

- (g) Psychologist.
- (h) Member of the clergy.
- (i) Regulated social worker.
- (j) Optometrist.
- (k) Chiropractor.
- (L) Certified provider of foster care, or an employee thereof.
- (m) Attorney.
- (n) Licensed professional counselor.
- (o) Licensed marriage and family therapist.
- (p) Firefighter or emergency medical services provider.
- (q) A court appointed special advocate, as defined in ORS 419A.004.
- (r) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
- (s) Member of the Legislative Assembly. \*

# Public/Private Officials

Public or private official" means:

(t) Physical, speech or occupational therapist.

(u) Audiologist.

(v) Speech-language pathologist.

(w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.

(x) Pharmacist.

(y) An operator of a preschool recorded program under ORS 657A.255.

(z) An operator of a school-age recorded program under ORS 657A.257.

(aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

# What is the Duty?

Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made .

# What is the Duty?

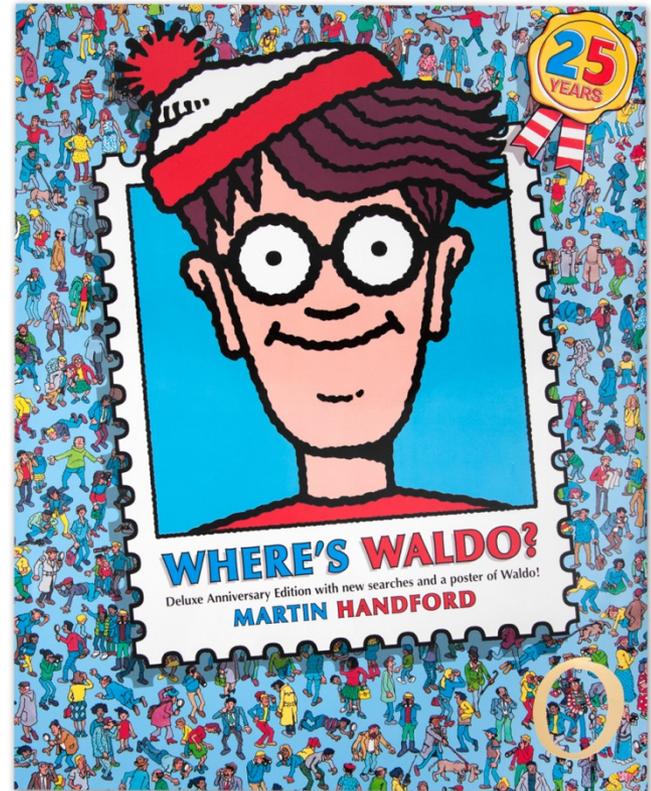
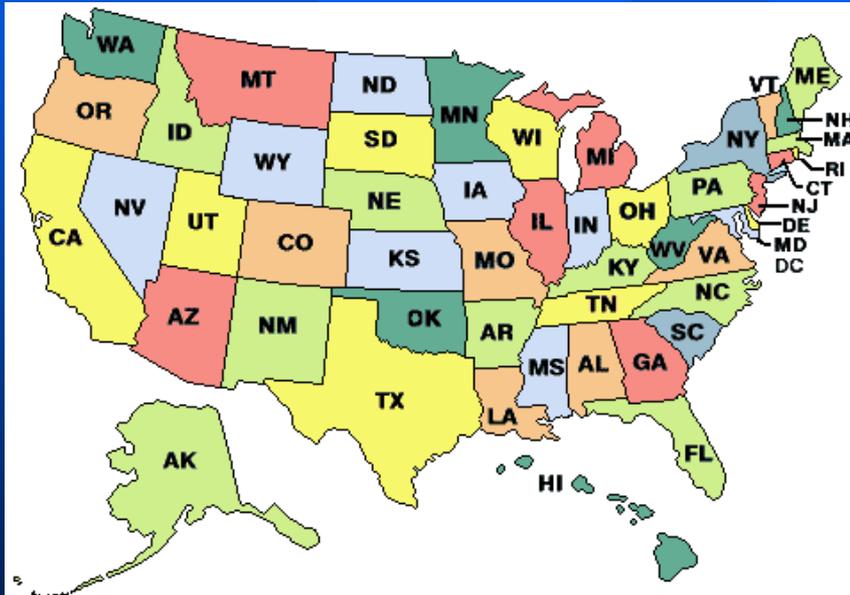
- Applies 24 hours/day, 365 days/year
- Personal duty – cannot be passed on to co-worker or superior
- “Immediately”

# What is the Duty?

## Geography

### WHERE

Does the Duty Apply?



# Exceptions to Duty to Report

## Psychiatrists, Psychologists, Clergy and Attorneys

Shall not be required to report child abuse if the communication is **privileged** under ORS 40.225 to 40.295

# Exceptions to Duty to Report

- ORS 9.460 requires lawyers to maintain the confidences and secrets of clients
- ORS 419B.010: A lawyer is NOT required to report client secrets if the disclosure would be detrimental to *their* client
- ORPC 1.6(b)(5) permits a lawyer to disclose to disclose confidences and secrets of a client when required by law

# Exceptions to Duty to Report

ORS 419B.010: Lawyers are NOT required to report client secrets if the disclosure would be *detrimental*

EXAMPLE: The client is NOT the alleged abuser

# What is “Reasonable Cause?”

*Reasonable Cause* is not:

- Probable cause;
- Reasonable suspicion
- Specifically defined by statute or case law

# What is “Reasonable Cause?”

*“Reasonable Cause* is a good faith determination that child abuse has occurred based on facts reasonably believed by the reporter to be true”

- *Questions and (some) Answers About Mandatory Child Abuse Reporting* (George A. Riemer, Sylvia Stevens, 2005)(Amber Hollister, 2012)
- ORS 419B.010(1); ORS 419B.025

# What is “Reasonable Cause?”

- “Certainty” is not required – the standard is merely reasonable cause
- No duty to investigate
- Leave that to the experts (have you ever, in your personal life, confronted a sex offender?)

# What is “Comes in Contact?”

- “Nebulous”
- Suggests “that a lawyer is required to report child abuse only when the lawyer has had some kind of physical contact with” the abuser or the child who has been abused.”  
Riemer and Stevens
- However...

# What is “Comes in Contact?”

- “Reliable second- or third-hand information may provide the reasonable cause to believe that abuse has occurred.”
- “[I]t may be sufficient if the lawyer believes, based on reliable information, that a child has been abused but does not ever have contact with the child or the abuser.”

Riemer and Stevens

# What is “Comes in Contact?”

## HYPOTHETICAL

What if reliable non-reporter (e.g., your spouse, child, best friend, etc.) tells you of the abuse?

# What is “Child Abuse?”



# What is "Child Abuse?"

## Cents-Less Coupons

Your money-saving circular

Announcing  
the arrival of new  
**Monthlies**

THE  
EXPANDABLE  
DIAPER!

With new Monthlies, constant changing's a thing of the past! A patented reservoir fanny e-x-p-a-n-d-s to carry a month's worth of loads — as much as your little one can dish out! A super absorbent, quicklime lining locks in most odors while decomposing waste. Dated "Change Me" stickers remind you when it's time to replace diaper.

Dated  
"Change Me"  
stickers remind  
you when it's  
time to replace  
diaper!



May cause  
severe chafing  
in some infants.

Start Saving  
Now!  
HURRY! OFFER  
EXPIRES  
TODAY!

MANUFACTURER'S COUPON — WHO ELSE'S?

Save **\$1.50**

when you buy any  
**Monthlies**  
expandable diapers



Consumer: Limit one coupon per purchase on product(s) indicated. Coupon not transferable. Consumer must pay any sales tax. Help me, Old-Wan Kenobi! You're my only hope! Good only in the continental U.S.A., Alaska, Hawaii, and Puerto Rico.

WRITER: SCOTT MAIKO  
ARTIST: SCOTT BRICHER  
PHOTOGRAPHER: IRVING SCHILD

A  
WALD KIDS  
FAKEOUT AD

# What is “Child Abuse?”

ORS 419B.005(1)(a)

- Assault

- Includes injuries inconsistent with given explanation
- Does not include “reasonable physical discipline” [MORE NEXT SLIDE]

- Sexual abuse and exploitation

- Neglect

- Threat of harm

# What is “Reasonable Discipline?”

- ORS 161.205(1)
- Practical considerations:
  - Appropriate reason
  - Age and development of the child
  - Level of force and location

# How Do You Report?

- Report to local DHS or law enforcement
- Include (if known):
  - Names/addresses of the child and parents
  - Child's age
  - Nature of the abuse (and any previous abuse)
  - Explanation given for the abuse
  - Any other helpful information

# How to Report

## Daytime Hours

Call the Child  
Abuse Hotline

[http://www.oregon.gov/dhs/children/pages/abuse/cps/cw\\_branches.aspx](http://www.oregon.gov/dhs/children/pages/abuse/cps/cw_branches.aspx)

## After Hours

Call 911 or use  
confidential  
backlines

# Liability for Failure to Report

## ■ ORS 419B.010(3)

- Class A Violation
- Maximum fine: \$600

## ■ Possible civil liability

From the website of an Oregon Plaintiff's Attorney:

- “Representative Verdicts and Settlements”
- “\$ 640,000 professional negligence - mandatory reporter failed to comply with state child abuse reporting law”

# Liability for Failure to Report

- Possible professional discipline
- Possible damage to your reputation
- Possible damage to a child...and your conscience

# Other Considerations

- You have no duty to investigate
- The report will set in motion an appropriate investigation to determine whether a child has been abused
- Experience shows that professionals do a great job of recognizing child abuse (case example – “The Pee Story”)
- No risk lies in reporting what turns out NOT to be child abuse – risk lies in failure to report