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Matthew Johnson

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## MANDATORY CHILD ABUSE REPORTING LAWS IN GEORGIA: STRENGTHENING PROTECTION FOR GEORGIA'S CHILDREN

**Matthew Johnson**\*

### INTRODUCTION

Kevin Ricks was a popular and well-liked English teacher at Osbourn High School in Manassas, Virginia.<sup>1</sup> He was “universally described by those who know him as intelligent, friendly, generous and convincing,” and he created for himself the image of a caring and compassionate teacher and mentor.<sup>2</sup> He amassed a long career as a camp counselor, teacher, tutor, and sponsor of foreign exchange students, always working to be near adolescent youth.<sup>3</sup> On February 18, 2010, authorities arrested Ricks and charged him with sexually assaulting a sixteen-year-old student at Osbourn High School.<sup>4</sup> The resulting investigation uncovered a long trail of abuse that began in the 1970s and stretched for more than thirty years.<sup>5</sup> During this period, Kevin Ricks abused at least a half-dozen boys, with

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\* J.D. Candidate, 2015, Georgia State University College of Law. I would like to thank my wife Jill for her constant support and endless patience throughout law school. I could not have achieved this goal without her encouragement and willingness to carry all of the burdens in every other aspect of our lives. I would also like to thank Marisa Benson for her editorial eye and meaningful critique as well as all the members of the Georgia State University Law Review who invested their time and efforts in editing and checking this work.

1. Josh White et al., *Kevin Ricks' Career as Teacher, Tutor Shows Pattern of Abuse That Goes Back Decades*, WASH. POST, July 25, 2010, at A1 [hereinafter White et al., *Kevin Ricks' Career*]. Kevin Ricks was the target of a four-month investigation by the Washington Post newspaper in 2010. *Id.* Among the revelations uncovered was that Ricks was able to continue getting teaching jobs by working at private schools that do not require teacher certification. *Id.* However, on at least one occasion he was able to get a job in a Virginia public school despite not applying for licensure. *Id.* During the course of the investigation, the Washington Post pieced together the trail and timeline of his serial abuse from North Carolina to Maryland, with stops in Georgia, Japan, and three different locations in Virginia. Josh White et al., *Path of a Predator*, WASH. POST, <http://www.washingtonpost.com/wp-srv/special/metro/kevin-ricks-timeline/> (last visited Feb. 11, 2015) [hereinafter White et al., *Path of a Predator*].

2. White et al., *Kevin Ricks' Career*, *supra* note 1.

3. *Id.*

4. Tom Jackman, *Manassas Teacher Accused of Sexually Assaulting Student*, WASH. POST (Feb. 19, 2010 11:40AM), <http://voices.washingtonpost.com/crime-scene/manassas/manassas-teacher-accused-of-se.html>.

5. White et al., *Kevin Ricks' Career*, *supra* note 1.

potentially more unconfirmed victims.<sup>6</sup> The first known victim is now forty-six years old.<sup>7</sup>

Jerry Sandusky was a veteran football coach who created a vaunted and formidable defense for the Penn State Nittany Lion football program.<sup>8</sup> For years, he was the defensive right-hand man of iconic collegiate football legend Joe Paterno.<sup>9</sup> Sandusky also had a soft spot in his heart for children who came from underprivileged homes, and in 1977, he established a charity called The Second Mile to aid those children and their families.<sup>10</sup> Through this charity, disadvantaged youth developed life skills and techniques for conflict resolution through summer camps and other activities.<sup>11</sup> Much of the success of The Second Mile was due, at least in part, to its close ties to Penn State University football and its access to Penn State facilities.<sup>12</sup> Sandusky and his wife even adopted several children, one

6. Josh White & Dana Hedgpeth, *Ex-Va. Teacher Ricks Pleads Guilty to Child Porn, Gets 25 Years*, WASH. POST (Mar. 3, 2011 10:22PM), <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/03/AR2011030302619.html?sid=ST2011030302620>. According to the authors, Ricks ultimately pled guilty to federal child pornography charges because prosecutors indicated that those charges are much easier to prove and do not require victims to testify at trial. *Id.* However, the authors also indicate that the number of potential victims of abuse continues to grow as the story has developed. *Id.*

7. See White et al., *Path of a Predator*, *supra* note 1.

8. See Sara Ganim, *Jerry Sandusky, Former Penn State Football Staffer, Subject of Grand Jury Investigation*, PENN LIVE: THE PATRIOT-NEWS (Mar. 31, 2011, 8:20 AM), [http://www.pennlive.com/midstate/index.ssf/2011/03/jerry\\_sandusky\\_former\\_penn\\_sta.html](http://www.pennlive.com/midstate/index.ssf/2011/03/jerry_sandusky_former_penn_sta.html). Jerry Sandusky was the defensive coordinator for the Penn State Nittany Lion football team from 1977 through 1999. Bob Flounders, *Jerry Sandusky Was Penn State Football's Defensive Coordinator for Decades*, PENN LIVE: THE PATRIOT-NEWS (Mar. 31, 2011, 8:15 AM), [http://www.pennlive.com/midstate/index.ssf/2011/03/jerry\\_sandusky\\_was\\_penn\\_state.html](http://www.pennlive.com/midstate/index.ssf/2011/03/jerry_sandusky_was_penn_state.html). He was largely seen as a defensive mastermind and was widely credited with Penn State's earning the reputation of "Linebacker U." *Id.*

9. Flounders, *supra* note 8.

10. Sara Ganim, *Jerry Sandusky Started The Second Mile to Aid Children; Name Was Inspired by PSU Players and Sermon*, PENN LIVE: THE PATRIOT-NEWS (Mar. 31, 2011, 8:14 AM), [http://www.pennlive.com/midstate/index.ssf/2011/03/jerry\\_sandusky\\_started\\_the\\_sec.html](http://www.pennlive.com/midstate/index.ssf/2011/03/jerry_sandusky_started_the_sec.html).

11. See *id.* Only forty-five students were involved in the first summer camps in 1977. Eventually, The Second Mile grew to include over 100,000 children in those camps over the years. *Id.* As of 2011, the charity was worth some \$9 million, with income in 2010 of \$2.6 million. *Id.* The Second Mile was at the beginning stages of constructing a facility that would provide housing for some 100 underprivileged youth when the news of the grand jury investigation of Sandusky broke. *Id.*

12. See Mark Viera, *Former Coach at Penn State Is Charged with Abuse*, N.Y. TIMES (Nov. 5, 2011), [http://www.nytimes.com/2011/11/06/sports/ncaafootball/former-coach-at-penn-state-is-charged-with-abuse.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/11/06/sports/ncaafootball/former-coach-at-penn-state-is-charged-with-abuse.html?pagewanted=all&_r=0). According to grand jury reports, some victims received tickets to Penn State football games and one victim went to the 1999 Alamo Bowl game as a guest of Sandusky. *Id.* The victims—as well as other boys involved in The Second Mile—had access to and use of Penn State football facilities because Sandusky maintained an office on campus and had full access to

of whom they met when the boy became involved with The Second Mile.<sup>13</sup> Police arrested Sandusky on November 5, 2011, and charged him with abusing eight boys over a fifteen-year time span.<sup>14</sup> He allegedly met most of his victims through his charitable organization and used his position and influence as a public figure and Penn State coach to victimize the boys.<sup>15</sup> A jury subsequently convicted Sandusky of forty-five counts relating to the abuse of ten different boys.<sup>16</sup> The oldest victim to testify at Jerry Sandusky's trial was twenty-seven years old.<sup>17</sup>

In 2011, an estimated 681,000 children were victims of abuse or neglect in the United States.<sup>18</sup> Approximately 120,000 of those children suffered some type of physical abuse, approximately 62,000 suffered sexual abuse, and about 534,600 suffered from neglect.<sup>19</sup> Abuse or neglect caused the deaths of 1,570 children.<sup>20</sup> In an effort to combat the scourge of child abuse in this country, every state and the District of Columbia have enacted legislation that mandates the reporting of suspected child abuse to designated authorities.<sup>21</sup> Each state sets its own standards and guidelines for reporting, including who must report, and when.<sup>22</sup>

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all facilities, even after his retirement from the university. *Id.*

13. Ganim, *supra* note 10. As his trial unfolded, Sandusky's adopted son that he met through The Second Mile, Matt, admitted that he, too, was one of Sandusky's victims. Joe Drape, *Sandusky Guilty of Sexual Abuse of 10 Young Boys*, N.Y. TIMES (June 22, 2012), <http://www.nytimes.com/2012/06/23/sports/ncaafootball/jerry-sandusky-convicted-of-sexually-abusing-boys.html?pagewanted=all>.

14. Viera, *supra* note 12.

15. *Id.* Pennsylvania Attorney General Linda Kelly released a statement in which she said, "This is a case about a sexual predator who used his position within the university and community to repeatedly prey on young boys." *Id.*

16. Drape, *supra* note 13.

17. *List of Victims in the Sandusky Child Sex Abuse Case*, THEDAILYREVIEW.COM (June 11, 2012), <http://thedailyreview.com/news/list-of-victims-in-the-sandusky-child-sex-abuse-case-1.1327905>.

18. CHILDREN'S BUREAU, CHILD MALTREATMENT 2011 ix (2012) [hereinafter CHILD MALTREATMENT 2011], available at [www.acf.hhs.gov/programs/cb/resource/child-maltreatment-2011](http://www.acf.hhs.gov/programs/cb/resource/child-maltreatment-2011). Child abuse generally refers to any of a collection of abuses including neglect, physical abuse, sexual abuse, and emotional abuse. *Id.* at vii. In this Note, the term *child abuse* refers collectively to any type of recognized abuse.

19. *See id.* at ix.

20. *Id.* at x.

21. CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT 2 (2014) [hereinafter MANDATORY REPORTERS], available at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda/>.

22. *Id.* at 3.

This Note examines Georgia's mandated reporting law and evaluates its sufficiency for protecting children in the state. Part I discusses the need for reporting laws and the reasoning behind this type of legislation. Part II evaluates Georgia's reporting law in detail and analyzes the approaches and reasoning adopted in several other states and the federal government, focusing on those states that offer the most expansive requirements for reporting. Part III suggests additions to Georgia's mandatory reporting law to expand the protection afforded the state's children.

## I. THE NEED FOR MANDATORY REPORTING

### A. *The Evolution of Child Abuse as a Societal Concern*

The abuse of children is not a new phenomenon in our nation or our world; in fact, parents, as well as other adults, have mistreated children for centuries.<sup>23</sup> With the urbanization of America during the Industrial Revolution, families living in close proximity to one another began to see the struggles of family life among their friends and neighbors.<sup>24</sup> The initial reaction of state legislatures was to pass laws that would allow the state to remove children from families, but removal was usually only available if the government felt that the child was at risk of becoming a criminal and endangering society at large.<sup>25</sup> Although there were some laws that protected children from abuse, such as those dealing with assault and neglect, states did not enforce these laws in any uniform or systematic way.<sup>26</sup> State legal

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23. Marjorie R. Freiman, *Unequal and Inadequate Protection Under the Law: State Child Abuse Statutes*, 50 GEO. WASH. L. REV. 243, 243 (1982) ("Because their fathers could sell, abandon, or maltreat them, Roman children occupied the status of chattels."); Mason P. Thomas, Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293, 294 (1972) ("Over the centuries infanticide, ritual sacrifice, exposure, mutilation, abandonment, harsh discipline, and exploitation of child labor have been only some of the ways in which children have been mistreated.")

24. See Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society's Response*, 36 OHIO N.U. L. REV. 819, 830 (2010).

25. *Id.* at 831.

26. Thomas, Jr., *supra* note 23, at 308. For a long time, there were two theories that contributed to the lack of protection for children. The first was that an "orderly society depended on parents having discretion in disciplining within the home in order to maintain domestic harmony and family government." *Id.* at 304. This led to the generally held rule that parents could not be held liable in a civil

systems generally gave wide latitude to parents regarding the disciplining of their children, and were not eager to step into family affairs.<sup>27</sup> In 1874, New York changed the status quo.

### 1. *Mary Ellen Wilson*

Mary Ellen Wilson was born in 1864 in New York City, and after the death of her father and the resulting hardship on her mother, the city's Department of Charities took custody of her.<sup>28</sup> This department placed her, illegally, with Mary and Thomas McCormack after Thomas falsely claimed to be Mary Ellen's father.<sup>29</sup> After Thomas's death, Mary McCormack remarried and the family moved into a tenement.<sup>30</sup> Mary McCormack (now Mary Connolly) brutally abused Mary Ellen: often beating her, refusing to show any affection towards her, and never letting her leave their apartment.<sup>31</sup> Eventually, Mary Ellen came to the attention of Etta Angell Wheeler, a mission worker

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suit for being too harsh with physical punishment. *Id.* The second theory was that it was to be discouraged for children to be wards of the public and that removing children from their homes only contributed towards making them a public burden. *Id.* at 300–01. Because the only recourse for protecting children was the application of criminal law, and society's preference was to leave families intact, the use of the law to protect children was sporadic and uneven. *See id.* at 299–308 (discussing the attitudes towards children in early American history as well as the use of the law to protect children).

27. Hafemeister, *supra* note 24, at 831 (discussing that the state would only get involved if there was a perceived risk for future criminal activity and that the impact of child abuse was not widely recognized).

28. *Mary Ellen Wilson*, AMERICAN HUMANE ASSOCIATION, <http://www.americanhumane.org/about-us/who-we-are/history/mary-ellen-wilson.html> (last visited Feb. 11, 2015) (citing Sallie A. Watkins, *The Mary Ellen Myth: Correcting Child Welfare History*, 35 SOC. WORK 500, 500–503 (1990)).

29. *Id.*

30. *Id.*

31. *Id.*

My father and mother are both dead. I don't know how old I am. I have no recollection of a time when I did not live with the Connollys. . . . Mamma has been in the habit of whipping and beating me almost every day. She used to whip me with a twisted whip—a raw hide. The whip always left a black and blue mark on my body. I have now the black and blue marks on my head which were made by mamma, and also a cut on the left side of my forehead which was made by a pair of scissors. She struck me with the scissors and cut me; I have no recollection of ever having been kissed by any one—have never been kissed by mamma. I have never been taken on my mamma's lap and caressed or petted. I never dared to speak to anybody, because if I did I would get whipped. . . . I do not know for what I was whipped—mamma never said anything to me when she whipped me. I do not want to go back to live with mamma, because she beats me so. I have no recollection ever being on the street in my life.

*Id.* (quoting Sallie A. Watkins, *The Mary Ellen Myth: Correcting Child Welfare History*, 35 SOC. WORK 500, 502 (1990)) (internal quotation marks omitted).

who often cared for families in the tenement.<sup>32</sup> Upon learning of Mary Ellen's plight and collecting detailed evidence about her situation, Etta Wheeler convinced Henry Bergh, founder of the American Society for the Prevention of Cruelty to Animals (ASPCA), to look into her situation.<sup>33</sup> Bergh eventually had one of his attorneys represent Mary Ellen, strictly in a personal capacity, before the court.<sup>34</sup> The state removed Mary Ellen from the Connolly home and eventually placed her with Etta Wheeler's own mother.<sup>35</sup> Mary Ellen Wilson grew up to be the mother of several well-adjusted and loving children.<sup>36</sup>

Mary Ellen's case caused a furor among New York citizens and spurred the child protection movement's growth,<sup>37</sup> including the formation of the New York Society for the Prevention of Cruelty to Children (NYSPCC) and similar organizations in other cities.<sup>38</sup>

## 2. *The Battered Child Syndrome and Its After-Effects*

The development of public policy in the late nineteenth and early twentieth centuries saw an emphasis on removing children from abusive home situations.<sup>39</sup> But slowly this emphasis shifted towards

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32. *Id.* (recalling an account by Etta Angell Wheeler of her involvement with the case of Mary Ellen Wilson).

33. *Id.*

34. *Mary Ellen Wilson*, *supra* note 28.

35. *Id.*

36. *See id.*

37. Thomasine Heitkamp & Tara Lea Muhlhauser, *Children in the Courts: Rethinking and Challenging Our Traditions*, 66 N.D. L. REV. 649, 650 (1990).

38. *Id.* at 650–51.

The society was formed to rescue children from vicious and immoral surroundings and to prosecute offenders, to prevent the cruel neglect, beating or other abuse of children, to prevent the employment of children for mendicant purpose or in theatrical or acrobatic performances, and for the enforcement of all laws for the protection of minors from abuse.

ROSWELL C. MCCREA, *THE HUMANE MOVEMENT: A DESCRIPTIVE SURVEY* 135–36 (1910). Similar societies were established in Rochester, Portsmouth, San Francisco, Philadelphia, Boston, Baltimore, Buffalo, Wilmington, and Brooklyn. *Id.* at 136. Many of those early organizations worked for the protection of both children and animals. *Id.*

39. Heitkamp & Muhlhauser, *supra* note 37, at 651; Thomas, Jr., *supra* note 23, at 310–11. The NYSPCC acquired police powers and was incorporated “under legislation that authorized cruelty societies to file complaints for the violation of any laws affecting children and that required law enforcement and court officials to aid agents of the societies in the enforcement of these laws.” Thomas, Jr., *supra* note 23, at 310. With that power, NYSPCC placed agents in all magistrate courts where they

developing a “system of child protection . . . emphasizing the support of families and recognizing the need for preventing cruelty to children in the familial context.”<sup>40</sup>

In 1962 another shift came, bringing concern for child abuse to the mainstream consciousness of America.<sup>41</sup> C. Henry Kempe and a team of colleagues published an article entitled “The Battered Child Syndrome” in the *Journal of the American Medical Association*.<sup>42</sup> This article gave an official, clinical name to child abuse and, because of the journal’s prominence, created an air of legitimacy to child abuse as a national problem.<sup>43</sup> Kempe and his colleagues shattered the myth that abuse occurred only to children born into families with a low socioeconomic status.<sup>44</sup> They further urged legislation encouraging physicians to report suspected cases of child abuse despite physicians’ apprehension with pointing a finger at the parents of a child.<sup>45</sup>

#### B. *Why Mandatory Reporting Laws?*

In the years following “The Battered Child Syndrome,” a number of states implemented laws designed to strengthen protection for children.<sup>46</sup> By 1967, every state had implemented laws requiring the

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advised judges about which children the courts should take and commit to institutions, as well as which institutions would be most beneficial for those children. *Id.*

40. Heitkamp & Muhlhauser, *supra* note 37, at 651.

41. Hafemeister, *supra* note 24, at 838. Although in the 1950s there existed some research and a few papers and articles about child abuse, child abuse was still considered relatively rare and a problem that was confined to “disadvantaged” classes. *Id.* at 837–38.

42. C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 JAMA 17 (1962).

43. Hafemeister, *supra* note 24, at 838.

44. *See* Kempe, *supra* note 42, at 24. In summing up his group’s research, Kempe challenged the status quo by stating that “[p]arents who inflict abuse on their children do not necessarily . . . come from borderline socioeconomic groups.” *Id.*

45. *Id.* at 23–24 (“Physicians, because of their own feelings and their difficulty in playing a role that they find hard to assume, may have great reluctance in believing that parents were guilty of abuse. They may also find it difficult to initiate proper investigation so as to assure adequate management of the case.”).

46. Monrad Paulsen, Graham Parker & Lynn Adelman, *Child Abuse Reporting Laws—Some Legislative History*, 34 GEO. WASH. L. REV. 482, 482 (1966) (indicating that forty-seven states had passed statutes designed to curb child abuse since 1962). The authors noted that, as of the date of the article’s publication, Hawaii, Mississippi, and Virginia had not passed any child-protection legislation. *Id.* at 482–83 n.1. The authors also compiled a complete list of all the statutes passed. *Id.*



reporting of suspected abuse to appropriate authorities.<sup>47</sup> However, most of those statutes focused on a narrow group of professionals, primarily physicians and other health workers, and did not generally fulfill the expectations of lawmakers.<sup>48</sup> The federal government provided the real impetus, however, for advancing child protection when Congress crafted a wide-ranging law, the Child Abuse Prevention and Treatment Act (CAPTA).<sup>49</sup> Enacted on January 31, 1974, CAPTA established a federal office of Child Abuse and Neglect, created a minimum definition of child abuse, mandated the creation of the Child Welfare Information Gateway (which compiles data related to child abuse), and authorized research into the incidents, causes, and treatments of child abuse.<sup>50</sup> The law also authorized the federal government to supply funding and support to state agencies to provide more directly for the care of children at a local level.<sup>51</sup> The states, however, had to meet several requirements to qualify for the grants and funding provided for by CAPTA.<sup>52</sup> CAPTA's passage led to consistency among state child abuse laws for two reasons. First, the funding eligibility requirements prescribed some elements that were required to be in each state's law. Second, CAPTA energized outside groups, which had begun drafting model legislation in the 1960s, to continue drafting better model legislation to assist states in their efforts.<sup>53</sup>

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47. Hafemeister, *supra* note 24, at 840.

48. *Id.* at 841 (discussing that because resources for following up on the reports were generally not in place, states quickly realized that the reporting was simply the first step and that determinations needed to be made both as to which children were actually at risk and when to intervene).

49. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (current version codified at 42 U.S.C. §§ 5101-5119 (2012)). For a more detailed examination of the current law, see discussion *infra* Part II.A.

50. Child Abuse Prevention and Treatment Act § 2.

51. *Id.* § 4(A).

52. *Id.* § 4(B)(2). The original Act listed ten requirements. *Id.* Among these were immunity from prosecution for persons reporting instances of abuse, reporting known and suspected abuse, a system for the prompt investigation of reports of known or suspected abuse, the appointment of guardians ad litem to represent abused children, and educating the public about the problems of child abuse. *Id.*

53. Hafemeister, *supra* note 24, at 843. Groups that had already drafted model legislation for the reporting of child abuse included the Children's Bureau, the American Humane Association, the American Medical Association, the Council of State Governments, and the Committee on the Infant and Preschool Child of the American Academy of Pediatrics. *Id.* at 839-840.

States now have a blueprint for creating child abuse laws that include provisions for the reporting of suspected child abuse.<sup>54</sup> Today, all fifty states, the District of Columbia, and most U.S. territories have comprehensive reporting laws.<sup>55</sup> Although each state law shares some basic provisions, there are differences between the laws that create stronger protections for children in some states.<sup>56</sup>

## II. CHILD PROTECTION: A LOOK AT THE LAWS

### A. *The Federal Law: Child Abuse Prevention and Treatment Act*

The federal government most recently addressed CAPTA when it reauthorized the legislation in 2010<sup>57</sup> and continued funding through the 2015 fiscal year.<sup>58</sup> CAPTA is an extensive piece of legislation that provides several important tools for protecting children in the United States.

CAPTA establishes, for example, the Office on Child Abuse and Neglect in the Department of Health and Human Services (HHS), which oversees all of the provisions of CAPTA and coordinates and oversees aspects of CAPTA that other offices in the Department perform.<sup>59</sup> It establishes an option for the HHS Secretary to create an advisory board to make recommendations to both the HHS Secretary and Congress relating to issues of child abuse and neglect.<sup>60</sup>

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54. *See id.* at 843.

55. Caroline T. Trost, *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments*, 51 VAND. L. REV. 183, 194 (1998).

56. *See id.* at 194–95.

57. CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320, 124 Stat 3459 (codified as amended at 42 U.S.C. §§ 5101-5119 (2012)). Congress spent some time noting the statistics of child abuse from fiscal year 2008, noting that in that year 772,000 children were the victims of child abuse and neglect. *Id.* § 101.

58. 42 U.S.C. § 5106h(a)(1) (2012) (authorizing funding for CAPTA in the amount of “\$120,000,000 for fiscal year 2010 and such sums as may be necessary for each of the fiscal years 2011 through 2015”).

59. *Id.* § 5101(a)-(b).

60. *Id.* § 5102. This advisory committee, by law, is to be composed of members from the public who “are . . . knowledgeable in child abuse and neglect prevention, intervention, treatment, or research.” *Id.* § 5102(c). Furthermore, the membership of the group should represent “(1) law . . . ; (2) psychology . . . ; (3) social services . . . ; (4) health care providers . . . ; (5) State and local government; (6) organizations providing services to disabled persons; (7) organizations providing services to adolescents; (8) teachers; (9) parent self-help organizations; (10) parents’ groups; (11) voluntary groups;

The CAPTA provisions that carry the most weight are those that provide generous financial support for states and organizations to fight abuse and neglect.<sup>61</sup> For a state to be eligible to receive grant funds, however, the state must meet a rather stringent set of eligibility requirements.<sup>62</sup> One of these requirements is a Governor's certification that the state has, and is currently enforcing, state laws relating to a wide variety of child abuse concerns.<sup>63</sup> Therefore, each state must identify at least one law that provides "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."<sup>64</sup> This section of CAPTA is the primary basis for state-mandated reporting laws.

### B. *The State Solutions to Mandatory Reporting*

Every state now has a mandatory reporting law that requires at least some people within the state to report any reasonable suspicion

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(12) family rights groups; (13) children's rights advocates; and (14) Indian tribes or tribal organizations." *Id.* § 5102(c)(1)-(14).

61. CAPTA provides three main types of grants to the states. The first is available to any state, Indian tribe, or public or private agency or organization for the purposes of training a variety of professionals who work with children or in legal or health fields to improve the identification, prevention, and treatment of abuse victims. 42 U.S.C. § 5106(a)(1)(A). Grants under this section may also be used for developing and implementing triage procedures, or for developing and providing support programs. *Id.* § 5106(a)(2) The second type of grant given to the states is for the purpose of developing and operating child abuse prevention and treatment programs. *Id.* § 5106a(a)(1)-(14). The third type of grant provides states funds for programs that investigate and prosecute child abuse cases. *Id.* § 5106c(a)(1)-(4).

62. *Id.* § 5106a(b). Under this law, § 5106a(a) first details a long list of programs and areas for which funds granted under this section may be used (e.g., intake, assessment, and screening; case management; developing technology systems to support the programs and track records; facilities development; and program development). *Id.* § 5106a(a). Second, § 5106a(b) details the eligibility requirements. *Id.* § 5106a(b). The first requirement is a state plan that specifically identifies the areas, outlined in § 5106a(a), in which funds will be expended. *Id.* § 5106a(b)(1). This plan must contain a long list of specific information. *Id.* § 5106a(b)(2). Third, each state must establish a series of "citizen review panels" to review the policies, procedures, and practices of the programs paid for by the grants. *Id.* § 5106a(c). Fourth, each state must provide an annual report to the Secretary of HHS containing a wide array of data about the programs and services provided under the grant. *Id.* § 5106a(d).

63. *Id.* § 5106a(b)(2)(B). Soon after CAPTA passed, states suddenly had ample financial incentive—in addition to a moral incentive—to tighten their laws regarding child abuse and neglect. Starla J. Williams, *Reforming Mandated Reporting Laws After Sandusky*, 22 KAN. J.L. & PUB. POL'Y 235, 251 (2013). "It was, however, economics that motivated lawmakers to support CAPTA due to its fiscal incentives to states that rallied around the law's robust child abuse reporting standards." *Id.*

64. 42 U.S.C. § 5106a(b)(2)(B)(i).

of child abuse.<sup>65</sup> The details of each state law share some similarities, but there are also key differences that provide protection that is more extensive for children in some states as opposed to others.

### 1. *Who Must Report?*

Given that the purpose of a mandatory reporting law is to protect children, it makes sense that all mandatory reporting statutes require *someone* to disclose suspected abuse.<sup>66</sup> The key question addressed by any mandatory reporting statute is: *Who* must report?

In all states, any person who suspects that someone has abused or is currently abusing a child may report that suspicion to authorities as

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65. ALA. CODE §§ 26-14-3, -4 (2009); ALASKA STAT. §§ 47.17.020-.023 (2012); ARIZ. REV. STAT. ANN. § 13-3620 (2010); ARK. CODE ANN. §§ 12-18-401, 12-18-402 (2014); CAL. PENAL CODE §§ 11165.7, 11166 (West 2011); COLO. REV. STAT. § 19-3-304 (2013); CONN. GEN. STAT. §§ 17a-101, 17a-103 (2013); DEL. CODE ANN. tit. 16, § 903 (2003); D.C. CODE § 4-1321.02 (2013); FLA. STAT. ANN. § 39.201 (LexisNexis 2013); O.C.G.A. § 16-12-100 (2011); O.C.G.A. § 19-7-5 (2010); HAW. REV. STAT. §§ 350-1.1, 350-1.3 (2008); IDAHO CODE ANN. § 16-1605 (2010); 325 ILL. COMP. STAT. ANN. 5/4 (West 2008); 720 ILL. COMP. STAT. ANN. 5/11-20.2 (West 2002); IND. CODE ANN. §§ 31-33-5-1, -2 (West 2008); IOWA CODE ANN. § 232.69 (West 2006); IOWA CODE ANN. § 728.14 (2013); KAN. STAT. ANN. § 38-2223 (2000); KY. REV. STAT. ANN. § 620.030 (West 2000); LA. CHILD. CODE ANN. art. 603 (2004); LA. CHILD. CODE ANN. art. 609 (2004); ME. REV. STAT. tit. 22, § 4011-A (2004); MD. CODE ANN., FAM. LAW §§ 5-704, -705 (West 2006); MASS. GEN. LAWS ANN. ch. 119, §§ 21, 51A (West 2008); MICH. COMP. LAWS ANN. §§ 722.623-.624 (West 2011); MINN. STAT. ANN. § 626.556 (West 2009); MISS. CODE ANN. § 43-21-353 (2009); MO. ANN. STAT. § 210.115 (West 2010); MO. ANN. STAT. § 352.400 (West 2001); MO. REV. STAT. § 568.110 (2012); MONT. CODE ANN. § 41-3-201 (2013); NEB. REV. STAT. § 28-711 (2008); NEV. REV. STAT. ANN. § 432B.220 (West 2010); N.H. REV. STAT. ANN. § 169-C:29 (2002); N.J. STAT. ANN. § 9:6-8.10 (West 2013); N.M. STAT. ANN. § 32A-4-3 (2013); N.Y. SOC. SERV. LAW § 413-14 (McKinney 2010); N.C. GEN. STAT. ANN. § 7B-301 (West 2004); N.D. CENT. CODE § 50-25.1-03 (2007); OHIO REV. CODE ANN. § 2151.421 (West 2004); OKLA. STAT. tit. 10A, § 1-2-101 (2009); OKLA. STAT. tit. 21, § 1021.4 (2002); OR. REV. STAT. §§ 419B.010, 419B.015 (2013); 23 PA. CONS. STAT. ANN. §§ 6311, 6312 (West 2010); R.I. GEN. LAWS §§ 40-11-3, -6 (2006); S.C. CODE ANN. § 63-7-310 (2010); S.D. CODIFIED LAWS § 26-8A-3 (2004); TENN. CODE ANN. § 37-1-403, -605 (2010); TEX. FAM. CODE ANN. § 261.101 (West 2014); UTAH CODE ANN. § 62A-4a-403 (LexisNexis 2011); VT. STAT. ANN. tit. 33, § 4913 (2001); VA. CODE ANN. § 63.2-1509 (2012); VA. CODE ANN. § 63.2-1510 (2012); WASH. REV. CODE § 26.44.030 (2012); W. VA. CODE ANN. § 49-6A-2 (West 2002); WIS. STAT. ANN. § 48.981 (West 2011); WYO. STAT. ANN. § 14-3-205 (2013).

66. *E.g.*, O.C.G.A. § 19-7-5 (“It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible.”); WASH. REV. CODE § 26.44.010 (“It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children.”); MINN. STAT. § 626.556 (“The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.”).

a “permissive” reporter.<sup>67</sup> Every state also requires certain individuals—mandated reporters—to report suspected child abuse.<sup>68</sup> Initially, in the aftermath of Dr. Kempe’s article, only physicians were required to report child abuse.<sup>69</sup> By the 1970s, however, in an effort to increase the chances of discovering and stopping child abuse, states began expanding the list of mandated reporters.<sup>70</sup> Today, all but two states require individuals who have frequent contact with children, or who work in professions that are typically devoted to the well-being of children, to report any suspected child abuse.<sup>71</sup> Examples of such mandated reporters typically include: social workers; teachers, principals and other school personnel; physicians and other health care workers; child care providers; counselors, therapists, and other mental health workers; clergy; and law enforcement officers.<sup>72</sup>

A sizeable minority of states require all adults within the state who reasonably suspect child abuse to report that abuse.<sup>73</sup> In most of these states, the mandatory reporting law specifies that certain professionals are mandatory reporters but then subsequently extends the reporting requirement to all persons.<sup>74</sup>

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67. MANDATORY REPORTERS, *supra* note 21, at 2.

68. *Id.* at 1–2.

69. Hafemeister, *supra* note 24, at 851.

70. *Id.*

71. MANDATORY REPORTERS, *supra* note 21, at 1–2. The two states that do not require particular professionals to report suspected child abuse are New Jersey and Wyoming, because those states require, as will be discussed later, that all adults in the state are mandated reporters. *Id.* at 2.

72. *Id.* Some states extend the list of required professions to include medical examiners, commercial film processors, parole officers, and workers of any type of program that provide organized activities for children (such as day camps). *Id.*

73. *Id.* The eighteen states that require mandatory reporting by all persons 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].” *Id.*

74. *Id.* For example, in New Mexico, the statute reads, in part: “Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately . . . .” N.M. STAT. ANN. § 32A-4-3 (2013).

## 2. *When Must a Report Be Made?*

The standards that specify the timing of a report vary from state to state, but they share a similar basic framework.<sup>75</sup> For the most part, the standard for reporting is that a report is appropriate whenever the reporter suspects or has reason to suspect child abuse or neglect.<sup>76</sup> Another standard that states often use—one that may seem obvious—is that if the reporter has actual knowledge of child abuse, or witnesses such abuse, they must make a report.<sup>77</sup> These standards for reporting apply to both mandated reporters and permissive reporters.<sup>78</sup>

If a person is a mandated reporter by virtue of their profession, the duty to report is usually limited to those children whom the professional encounters in an official capacity.<sup>79</sup> Therefore, a teacher must report his suspicions about a child in his classroom or on his school affiliated sports team, but is not required to report similar suspicions about a child he knows through a religious institution or social activity, or in his neighborhood.

Interestingly, most states only require a mandated reporter to file such a report when they have a reasonable suspicion that the victim of abuse or neglect is a child, with a statute defining “child” as a person under the age of eighteen.<sup>80</sup> Once the victim has turned eighteen, the duty to report disclosed abuse expires, even if the abuse happened to the child before her eighteenth birthday.<sup>81</sup>

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75. MANDATORY REPORTERS, *supra* note 21, at 3; Jon M. Hogelin, *To Prevent and to Protect: The Reporting of Child Abuse by Educators*, 2013 BYU EDUC. & L.J. 225, 234–35 (2013).

76. *E.g.*, ALA. CODE § 26-14-3 (2009) (“[Mandated reporters], when the child is known or suspected to be a victim of child abuse or neglect, shall be required to report . . . to a duly constituted authority.”).

77. MANDATORY REPORTERS, *supra* note 21, at 3; COLO. REV. STAT. § 19-3-304(1)(a) (2013 & Supp. 2014) (“[A]ny person specified in subsection (2) of this section . . . who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made . . .”).

78. MANDATORY REPORTERS, *supra* note 21, at 3.

79. *E.g.*, CONN. GEN. STAT. § 17a-101a(a) (2013 & Supp. 2014) (“Any mandated reporter . . . who in the ordinary course of such person’s employment or profession has reasonable cause to suspect or believe that any child under the age of eighteen years [] has been abused or neglected . . . shall report or cause a report to be made . . .”).

80. *E.g.*, *id.* (limiting the report of abuse to “any child under the age of eighteen years”); FLA. STAT. § 39.01 (LexisNexis 2013) (defining a child as “any unmarried person under the age of 18 years who has not been emancipated by order of the court”).

81. *See* CONN. GEN. STAT. § 17a-101a(a); *see also* FLA. STAT. § 39.01.

### 3. *Privilege and Immunity*

Most states address the issue of privileged communications in their mandatory reporting statutes.<sup>82</sup> The vast majority of states abrogate at least some privileged communications for the purposes of mandatory reporting.<sup>83</sup> The privileges most often preserved with respect to mandatory reporting of child abuse are the attorney-client privilege and the priest-penitent privilege.<sup>84</sup>

Although many state statutes discuss the abrogation of privilege with respect to reporting suspected child abuse, fewer states specifically address the use of privilege with respect to testifying in a legal proceeding.<sup>85</sup> It is clear that, in most states, a psychologist treating a patient who reveals that they are abusing a child is bound to report that abuse to authorities and may not use the psychologist–patient privilege as an excuse for failing to report.<sup>86</sup> What is less clear is what would happen if that psychologist were to testify in court about that abuse.

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82. MANDATORY REPORTERS, *supra* note 21, at 3.

83. *Id.* at 5–65 (outlining the specifics of each state’s mandatory reporting laws and giving an overview of the treatment of privilege for each state).

84. *Id.* at 3.

85. Hogelin, *supra* note 75, at 239. For example, Idaho’s mandated reporter statute addresses the concern of the evidentiary value of privileged communications:

Any privilege between husband and wife, or between any professional person except the lawyer-client privilege, including but not limited to physicians, counselors, hospitals, clinics, day care centers and schools and their clients shall not be grounds for excluding evidence at any proceeding regarding the abuse, abandonment or neglect of the child or the cause thereof.

IDAHO CODE ANN. § 16-1606 (2010).

86. MANDATORY REPORTERS, *supra* note 21, at 5–65. For example, in Georgia, the applicable statute reads:

Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of child abuse from the confession of the perpetrator.

O.C.G.A. § 19-7-5(g) (2010). Psychologists are expressly required under this statute to report, even if the information was originally privileged. *Id.* § 19-7-5(c)(1)(F).

CAPTA requires that state mandatory reporting laws provide immunity from liability for all reporters who make good faith reports of suspected abuse.<sup>87</sup> Furthermore, many states offer anonymous reporting options for permissive reporters and withhold the name of the reporter, if given, unless the law requires disclosure.<sup>88</sup>

### C. *The Mandated Reporter Law in Georgia*

The mandated reporting law in Georgia is codified in Title 19, Chapter 7, Article 5 of the Official Code of Georgia Annotated (the Statute). The purpose of the Statute is to “provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection.”<sup>89</sup> The Statute does not specifically declare that its purpose is to prevent future abuse to children in the state. However, the Statute’s first paragraph does direct that the section should be “liberally construed.”<sup>90</sup> From this language, it is reasonable to infer that the purpose of the Statute is not only to stop the abuse of a specific child, but also to protect future, additional, or unknown victims.

The Statute contains a long list of definitions<sup>91</sup> and describes child abuse as covering physical abuse, neglect or exploitation by a parent or caretaker, sexual abuse and sexual exploitation.<sup>92</sup> In turn, the Statute describes physical abuse and defines sexual abuse and sexual exploitation.<sup>93</sup> The Statute does not define neglect or exploitation

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87. 42 U.S.C. § 5106a(b)(2)(B)(vii) (2012).

88. MANDATORY REPORTERS, *supra* note 21, at 3–4.

89. O.C.G.A. § 19-7-5(a) (2010).

90. *Id.*

91. *Id.* § 19-7-5(b).

92. *Id.* § 19-7-5(b)(4).

93. *Id.* § 19-7-5(b)(4)(A) (describing physical abuse: “Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child”); *Id.* § 19-7-5(b)(10) (defining sexual abuse as “a person’s employing, using, persuading, inducing, enticing, or coercing any minor who is not that person’s spouse to engage in any act which involves [a long list of activities]”); *Id.* § 19-7-5(b)(11) (defining sexual exploitation as “conduct by any person who allows, permits, encourages, or requires that child to engage in: (A) Prostitution, as defined in Code Section 16-6-9; or (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as [later] defined”).



(when used in a non-sexual context), which is problematic because those two abuses are likely to be more difficult for the average person to define and recognize. Most adults are better able to understand and recognize physical and sexual abuse but may struggle with defining neglect or exploitation, especially neglect or exploitation that rise to the severity requiring a report. Furthermore, there is no mention of emotional abuse as grounds for reporting under the Statute.

The Statute requires particular professionals to report child abuse. The list of those required to report includes a wide variety of professionals and volunteers who are likely to interact often with children.<sup>94</sup> Georgia, like most other states, allows for permissive reporting of child abuse by anyone who is not required to report.<sup>95</sup> Both mandated and permissive reporters should report to the state whenever that person has “reasonable cause to believe that a child has been abused.”<sup>96</sup> There is nothing in the Statute that restricts professionals mandated to report to do so only for children with whom they interact in their official capacity.<sup>97</sup> However, the Georgia Supreme Court held in 2014, in a case of first impression, that those professionals designated in the Statute are only required to report suspected abuse of children with whom they work in connection with their profession.<sup>98</sup>

The Statute is unclear about how recent abuse must be to trigger a required report. If, hypothetically, a high school student discloses to

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94. *Id.* § 19-7-5(c)(1). The following persons are required in Georgia to report suspected child abuse: Physicians licensed to practice medicine, physician assistants, interns, or residents; hospital or medical personnel; dentists; licensed psychologists and persons participating in internships to obtain licensing; podiatrists; registered professional nurses or licensed practical nurses or nurse’s aides; professional counselors, social workers, or marriage and family therapists; school teachers; school administrators; school guidance counselors, visiting teachers, school social workers, or school psychologists; child welfare agency personnel; child-counseling personnel; child service organization personnel; law enforcement personnel; reproductive health care facility or pregnancy resource center personnel and volunteers. *Id.* Clergy are also required to report suspected child abuse subject to a limited privilege exception. *Id.* § 19-7-5(g).

95. O.C.G.A. § 19-7-5(d).

96. *Id.* §§ 19-7-5(c)(1), (d).

97. *See* O.C.G.A. § 19-7-5.

98. *May v. State*, 761 S.E.2d 38, 41 (Ga. 2014) (holding that “the obligation is limited, and school teachers and other reporters only have an obligation to report the abuse of children to whom they attend in connection with the profession, occupation, employment, or volunteer work by which they are identified in subparagraphs (c)(1)(A)-(O) as a mandatory reporter”).

his teacher that he was the victim of abuse while in elementary school, the Statute is silent on whether the teacher is still required to report the abuse. It is difficult to say whether a report is required because the Statute seems focused on currently injured or abused children.<sup>99</sup> Because prosecution for many of the crimes covered by the phrase *child abuse* has no statute of limitations if the victim was under the age of sixteen when the crime occurred,<sup>100</sup> it is reasonable to assume the report would be necessary, but the Statute does not make this clear. Furthermore, the Statute makes no provision for the reporting of abuse by an abuser who could be victimizing other children. If an eighteen-year-old discloses to his therapist or former teacher that he was sexually abused by a neighbor, the Statute is unclear about whether the therapist or teacher is required to report the abuse, regardless of whether the neighbor lives with minor children or could be actively abusing other children in the neighborhood.

Georgia provides immunity for reporters of child abuse as required under CAPTA.<sup>101</sup> The Georgia Supreme Court held in *O'Heron v. Blaney* that immunity attaches in one of two ways: (1) by having reasonable cause, or (2) by showing good faith.<sup>102</sup> This applies not only to individuals, but also to partnerships, corporations, hospitals, and other entities.<sup>103</sup>

With regard to reporting knowledge of child abuse gained through privileged communications, Georgia's mandated reporter statute abrogates all but one of the privileges that the state recognizes.<sup>104</sup> This only affects those privileges that can be claimed by those required to report under § 19-7-5(c)(1).<sup>105</sup> The one privilege retained

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99. See O.C.G.A. § 19-7-5(e). The specifications for the report refer to the "nature and extent of the child's injuries, including any evidence of previous injuries." *Id.* Furthermore, the Statute provides for photographing the injuries to establish evidence of the nature and extent of the injuries. *Id.*

100. O.C.G.A. § 17-3-2.1(b) (2013).

101. See O.C.G.A. § 19-7-5(f); 42 U.S.C. § 5106a(b)(2)(b)(vii) (2012).

102. 583 S.E.2d 834, 836 (Ga. 2003) (discussing that if a person has reasonable cause, then the report is always made in good faith, but that a person without reasonable cause may still make a report in good faith such that they will be immune from liability).

103. O.C.G.A. § 19-7-5(f).

104. *Id.* § 19-7-5(g).

105. See *id.* § 19-7-5(c)(1). This will primarily be the psychiatrist-patient privilege and the licensed psychologist/counselor-patient privilege, as Georgia does not have a statutorily recognized physician-patient privilege. See O.C.G.A. § 24-5-501 (2014).

by the Statute is the priest-penitent privilege.<sup>106</sup> However, if the clergy member learns of the abuse from any source other than the protected conversation (from the victim, abuser, or third party), he is required to report the abuse even if he also heard about the abuse through the confession of the abuser.<sup>107</sup>

### III. CHILD PROTECTION IN GEORGIA: EXPANDING MANDATORY REPORTING TO PROVIDE GREATER PROTECTION

Georgia's mandated reporter statute is fairly standard in its protection of children when compared to statutes in force in other states and when compared to the federal CAPTA requirements.<sup>108</sup> While this protection is average, it leaves gaps in the law that could allow abused children to slip through the cracks of a legal system designed specifically to protect them. In *May v. Georgia*, the Georgia Supreme Court held that a teacher who discovered the sexual abuse of a sixteen-year-old student by a teaching colleague was not required to report the abuse under the Statute because the student had recently transferred to a different school.<sup>109</sup> Furthermore, ambiguities

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106. O.C.G.A. § 19-7-5(g) (“[A] member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice.”).

107. *Id.*

108. See MANDATORY REPORTERS, *supra* note 21; 42 U.S.C. § 5106a(b)(2)(B) (2012). Georgia joins forty-seven other states in designating certain professionals as mandatory reporters as well as allowing permissive reporting by all other persons. MANDATORY REPORTERS, *supra* note 21, at 2. Georgia also requires religious ministers to report abuse under limited circumstances. *Id.* at 3. The standard for reporting abuse in Georgia is a reasonable belief that a child has been abused. O.C.G.A. § 19-7-5(d). Although language can vary from statute to statute, a “has reason to believe” is fairly typical language. MANDATORY REPORTERS, *supra* note 21, at 3. Regarding privileges, Georgia only allows the priest-penitent privilege as a bar to reporting (as do forty-four other states). *Id.* at 3 n.17. Attorney-client privilege is commonly affirmed, but not at issue in Georgia because attorneys are not identified as mandated reporters. O.C.G.A. § 19-7-5(c)(1); MANDATORY REPORTERS, *supra* note 21, at 3. With regard to the CAPTA requirements, the state must have a mandated reporter law that provides, among other things, for the immunity from liability for good faith reports, the confidentiality of the information, and certain procedural safeguards. 42 U.S.C. § 5106a(b)(2)(B).

109. 761 S.E.2d 38, 45–46 (Ga. 2014) (“Considering the words of paragraph (c)(1) and their legal context, the statutory obligation to report the abuse of a child is most reasonably understood as one limited to the abuse of a child to whom the mandatory reporter ‘attends . . . pursuant to [her] duties’ in the profession, occupation, employment, or volunteer work by which she is identified in subparagraphs (c)(1)(A)-(O) as a mandatory reporter. That is the meaning that we attribute to the statute.” (footnote omitted)).

in the law that require courts to reach for policy justifications, rather than simply applying enacted statutory law, hamper the prosecution of offenders. In light of high profile cases of abuse, especially the Jerry Sandusky case in Pennsylvania, many states have been reviewing or modifying their state statutes regarding mandatory reporting to expand the protection offered to children.<sup>110</sup> Considering the recent national dialog about child abuse, Georgia needs to modify its child abuse statute to expand the pool of children protected by the law and to aid in the identification and prosecution of those criminals who abuse children.

*A. Expand and Clarify the Definition of Abuse*

Georgia's Statute defines child abuse to include physical abuse, neglect or exploitation, sexual abuse, and sexual exploitation.<sup>111</sup> The Statute further provides specific definitions of physical abuse, sexual abuse, and sexual exploitation.<sup>112</sup> There is no mention of emotional abuse in the Statute, and, as such, mandatory reporters need not report suspected emotional abuse of a child.<sup>113</sup> This places Georgia outside the mainstream of similar statutes because forty-eight other states provide for the mandatory reporting of emotional abuse.<sup>114</sup> Furthermore, thirty-two states and the District of Columbia provide specific definitions of emotional abuse in their reporting statutes.<sup>115</sup> It may be uncomfortable to consider the emotional trauma inflicted on

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110. *See Mandatory Reporting of Child Abuse and Neglect 2013 Introduced State Legislation*, NCSL (Sept. 23, 2014), <http://www.ncsl.org/research/human-services/redirect-mandatory-rprtng-of-child-abuse-and-neglect-2013.aspx> (listing the 314 mandatory reporting bills that were introduced in forty-eight states and the District of Columbia from the 2012 legislative session through the 2014 legislative session).

111. O.C.G.A. § 19-7-5(b)(4)(A)-(D).

112. *Id.* § 19-7-5(b)(4)(A)-(D), (b)(10)(A)-(I), (b)(11)(A)-(B).

113. *See id.* § 19-7-5.

114. CHILD WELFARE INFO. GATEWAY, DEFINITIONS OF CHILD ABUSE AND NEGLECT 3 (2011) [hereinafter DEFINITIONS], available at [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/define.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf). Georgia joins Washington as the only two states that do not recognize emotional abuse of a child as reportable. *Id.* at 3 n.11.

115. *Id.* at 3. States with specific definitions of emotional abuse or mental injury include the following: Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Wisconsin, and Wyoming. *Id.* at 3 n.12.

children, but it is vital to stop this type of abuse.<sup>116</sup> While it is difficult to define emotional abuse exactly,<sup>117</sup> there is substantial language available from other states' statutes that provide at least a framework for Georgia to follow. The definitions can be as simple as "nonaccidental . . . mental injury"<sup>118</sup> or something much more elaborate and specific.<sup>119</sup> Regardless of the definition, the Georgia legislature needs to include emotional abuse as a ground for reporting.

Although Georgia takes care to define extensively sexual abuse and sexual exploitation, and gives a shorter definition of physical abuse,<sup>120</sup> there is no statutory definition in this section for "[n]eglect or exploitation."<sup>121</sup> This is problematic because neglect is by far the most prevalent form of child abuse,<sup>122</sup> and yet is one of the most

116. Emotional and psychological abuse has been referred to as "the most elusive and damaging of all types of maltreatment for a child." Peggy S. Pearl, *Psychological Abuse*, in *RECOGNITION OF CHILD ABUSE FOR THE MANDATED REPORTER* 119, 120 (James A. Monteleone ed., 2d ed. 1996). Pearl recognizes emotional and psychological abuse as "the core issue and major destructive factor in the broader topic of child abuse." *Id.*

117. There are many varied definitions in the professional fields:

Within the research and caring professions, the emotional abuse of children has been variously defined as: "persistent emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child's emotional development;" "damage to the child's psychological development and emerging personal identity, primarily caused by parents' or primary caretakers' ignorance, immaturity, defended lifestyle, and conscious or unconscious aggression toward the child;" "hostility, persistent coldness or rejection which impairs . . . the child's normal physical and/or emotional development or leads to behavioral disturbances;" "the severe adverse effect on the behaviour and emotional development of a child caused by persistent or severe emotional ill-treatment or rejection. All abuse involves some form of emotional ill-treatment or rejection; this category should be used where it is the main or sole form of abuse;" and "the sustained, repetitive, inappropriate emotional response to the child's experience of emotion and its accompanying expressive behavior. Emotional abuse repeatedly inflicts emotional pain upon the child (e.g. fear, humiliation, distress, despair, etc.)."

Sana Loue, *Redefining the Emotional and Psychological Abuse and Maltreatment of Children*, 26 *J. LEGAL MED.* 311, 313–14 (2005) (alteration in original) (footnotes omitted).

118. ALA. CODE § 26-14-1(1) (Westlaw 2014).

119. "'Mental injury' means an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional." S.C. CODE ANN. § 63-7-20 (2010).

120. O.C.G.A. § 19-7-5(b)(4)(A) (2010) ("Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child").

121. *Id.* § 19-7-5(b)(4)(B).

122. CHILD MALTREATMENT 2011, *supra* note 18, at ix (noting that in 2011, 78.5% of child abuse

underreported areas of abuse.<sup>123</sup> It is likely that many adults would have little difficulty understanding physical or sexual abuse when presented with a child who describes those types of abuses. However, determining exactly what constitutes neglect—more specifically, *reportable* neglect under the statute—becomes much more difficult because it requires a more subtle understanding of a child’s well-being. Because some researchers in the field suggest that neglect may be more detrimental to a child’s early brain development than physical or sexual abuse, it is critical to report this type of abuse.<sup>124</sup> If the purpose of a mandated reporter statute is to protect children from abuse, especially from the persons entrusted to protect and provide for them,<sup>125</sup> then reporters need to have guidelines of what constitutes neglectful abuse.

Here again, a survey of other states’ statutes can provide model language for Georgia to consider.<sup>126</sup> With regard to *exploitation*—as referred to in the context of non-sexual exploitation—there is no given definition.<sup>127</sup> There is, however, an extensive definition later in the Statute referring to *sexual exploitation*.<sup>128</sup> Perhaps non-sexual

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victims suffered from neglect).

123. DIANE DEPANFILIS, U.S. DEP’T. OF HEALTH AND HUMAN SERVS., CHILD NEGLECT: A GUIDE FOR PREVENTION, ASSESSMENT, AND INTERVENTION 9 (2006), available at <https://www.childwelfare.gov/pubs/usermanuals/neglect/neglect.pdf>.

124. James Garbarino & Cyleste C. Collins, *Child Neglect: The Family with a Hole in the Middle*, in NEGLECTED CHILDREN: RESEARCH, PRACTICE, AND POLICY 1, 2 (Howard Dubowitz ed., 1999).

125. O.C.G.A. § 19-7-5(a).

126. *E.g.*, ARIZ. REV. STAT. ANN. § 8-201(24) (2012) (“‘Neglect’ or ‘neglected’ means: (a) The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare, except if the inability of a parent, guardian or custodian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services. (b) Permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purposes of manufacturing a dangerous drug . . . (c) A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance . . . not the result of a medical treatment administered to the mother or the newborn infant by a health professional . . . (d) Diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects.”).

127. O.C.G.A. § 19-7-5(b)(4)(B) (“‘Child abuse’ means . . . [n]eglect or exploitation of a child by a parent or caretaker thereof . . .”).

128. *Id.* § 19-7-5(b)(11) (“‘Sexual exploitation’ means conduct by any person who allows, permits, encourages, or requires that child to engage in: (A) Prostitution, as defined in Code Section 16-6-9; or (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.”).

exploitation means, “the act of taking unjust advantage of another for one’s own benefit or selfish ends,”<sup>129</sup> but this definition would be unlikely to help the average reporter to understand what exploitation means in this context. The legislature should clarify this reference to *exploitation* so that it is understandable by reporters who are required to report any such abuse.

*B. Expand and Specify the Timeframe for Reporting Disclosed Abuse*

The cases of Jerry Sandusky and Kevin Ricks demonstrate that certain child abusers move from one victim to the next, always looking for and seeking out the next victim for abuse. Yet the mandated reporter laws in Georgia (and many other states) only require the reporting of abuse that occurs to a child under the age of eighteen.<sup>130</sup> There is no mention of what type of report is necessary if disclosure of the abuse occurs even one day after the child’s eighteenth birthday.

If, however, the law’s true purpose is to “prevent further abuses”<sup>131</sup> that victimize children, then Georgia ought to consider not only the current victims of serial abusers, but their next victims, as well. Washington state addresses this consideration in its child abuse reporting statute, which provides, in certain circumstances, for reporting of past abuse revealed after the victim has turned eighteen.<sup>132</sup> Minnesota also provides for reporting of past abuse that has occurred to a child within the past three years.<sup>133</sup> This allows for

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129. BLACK’S LAW DICTIONARY 700 (10th ed. 2014).

130. O.C.G.A. § 19-7-5(c)(1). Georgia’s Statute requires reporting only when there is “reasonable cause to believe that a child has been abused.” *Id.* *Child* is defined as a person under the age of eighteen. *Id.* § 19-7-5(b)(3). Many other states have similar reporting requirements and definitions of a child. *E.g.*, FLA. STAT. ANN. §§ 39.201(1)(a), 39.01(12) (LexisNexis 2013).

131. O.C.G.A. § 19-7-5(a).

132. WASH. REV. CODE § 26.44.030(2) (2012) (“The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.”).

133. MINN. STAT. ANN. § 626.556(3)(a) (West 2009) (“A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the

the reporting of abuse disclosed by a person who is between the ages of eighteen and twenty-one.

If a reporter receives information about past child abuse from a victim and reasonably believes that the perpetrator could be abusing another victim, the law should attempt to protect the new victims by mandating the reporting of that abuse. This type of legislation is not without potential drawbacks and, therefore, needs careful consideration. There are privacy issues implicated by the question of whether psychologists or other medical professionals should be required to report abuse disclosed to them by their adult patients. The benefit to new victims, however, might make a compelling policy justification to abrogate those privileges, and in the case of most mandated reporters—who are not covered by privilege of any kind—there would be no issue at all. Adult victims of past child abuse are a valuable and reliable source of information that could be used to prevent the victimization of other children. They could be instrumental in the case of abuse at the hands of a family member, where there are other children or extended family in the home that could reasonably be at risk, or in the case of a community leader or coach (such as Jerry Sandusky) who maintains constant contact with a large pool of youth.

Additionally, Georgia should add clarifying language to the Statute regarding the reporting of past child abuse of children who are still under the age of eighteen. Although the Statute states that a reporter who has “reasonable cause to believe that a child has been abused”<sup>134</sup> must report that abuse, knowing whether to report prior abuse may be difficult because of the length of time between the abuse and the disclosure. A hypothetical example previously mentioned described a high school student who discloses to a teacher that he was a victim of abuse while in elementary school.<sup>135</sup> In such a case, the teacher may not know whether to report. Although a reasonable reading of the Statute might indicate that the teacher should report the abuse, a

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information . . .”).

134. O.C.G.A. § 19-7-5(c)(1).

135. See discussion *supra* Part II.C.



clarification would be helpful to give clear guidance to the mandated reporters.

The Georgia legislature ought to adopt a scheme similar to Washington's standard of mandatory reporting of all child abuse, even abuse disclosed by an adult, if there is a reasonable chance that the abuser is victimizing other children.<sup>136</sup> This will maximize the protection afforded to future victims of abuse. Furthermore, the legislature should include language stating that the disclosure by a victim of abuse occurring at any time in his life, if that victim is under the age of eighteen, should result in a report. The Statute needs to have express language added to clarify the scope of qualifying abuse.

*C. Specify the Admissibility of Privileged Testimony as Evidence at Trial*

Privileges exist in the law as a public policy choice to provide for some perceived public good.<sup>137</sup> Georgia recognizes a variety of confidences and privileges in its evidence law.<sup>138</sup> The Georgia mandatory reporting Statute abrogates most privileges regarding the reporting of child abuse.<sup>139</sup> Physicians, psychologists, social workers, and other counselors are all required to report suspected child abuse even if the information comes from a privileged communication.<sup>140</sup> However, there is no mention in the Statute about the availability of that testimony for use as evidence in a judicial proceeding.<sup>141</sup> It is possible that a statement required under the reporting law would be excludable from a subsequent judicial proceeding due to a legally recognized privilege. This could require courts to exclude valuable

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136. WASH. REV. CODE § 26.44.030(2).

137. O.C.G.A. § 24-5-501(a) (2013).

138. *Id.* The following recognized privileges have the greatest potential of affecting reporting as they affect the relationships most likely to reveal abuse: husband-wife, attorney-client, psychiatrist-patient, psychologist-patient, social worker-patient, and counselor-patient (this general privilege covers almost all types of mental counselors who provide therapy if they are licensed by the state). *Id.*

139. O.C.G.A. § 19-7-5(g).

140. *Id.* § 19-7-5(c)(1), (g).

141. *See id.* § 19-7-5.

testimony or interpret policy decisions instead of following clearly defined law.

Eight states currently address the use of privileged statements as evidence in judicial proceedings in their mandatory reporting statutes—Georgia does not.<sup>142</sup> With respect to judicial proceedings, Georgia evidence laws abrogate the spousal privilege in criminal cases where one spouse is charged in connection with a crime where the victim is a child under the age of eighteen,<sup>143</sup> and there is no general physician–patient privilege in Georgia.<sup>144</sup> There are, however, privileges that cover communications with psychologists, therapists,<sup>145</sup> and religious ministers.<sup>146</sup> Although a psychologist may be required to report suspected child abuse based upon a privileged communication, that privilege would likely bar the psychologist from testifying at a subsequent judicial proceeding. A religious minister is barred from reporting incidents of child abuse disclosed during a confession or other similar ritual<sup>147</sup> and testifying at trial.<sup>148</sup>

To provide for the widest net of protection to be cast on behalf of children, Georgia should compel the reporting of suspected child abuse by religious ministers, even if they hear of the abuse through a confidential confession or similar dialogue. Georgia should consider adding language to the mandatory reporting law or the laws regarding the rules of evidence allowing otherwise-privileged communications between a psychologist and patient or a priest and penitent to be entered into evidence in judicial proceedings in cases of child abuse.

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142. MANDATORY REPORTERS, *supra* note 21, at 5–65. (listing Arkansas, Idaho, Minnesota, New Mexico, North Carolina, Ohio, Texas, and Utah).

143. O.C.G.A. § 24-5-503(b)(1).

144. *Gilmore v. State*, 333 S.E.2d 210, 211 (Ga. Ct. App. 1985). In this case, the court points out that there is no physician–patient privilege in the common law and that the Georgia legislature has declined to provide one. *Id.* The court further explains that although there are several laws that respect the confidences between a patient and his physician, those laws all state that upon a proper order a doctor can be compelled to give testimony regarding patient communication. *Id.*

145. O.C.G.A. § 24-5-501(a).

146. *Id.* § 24-5-502.

147. O.C.G.A. § 19-7-5(g) (2010).

148. O.C.G.A. § 24-5-502.

## CONCLUSION

Child abuse is a devastating crime that not only creates one-time victims but also tends to further a cycle of abuse where victims eventually become abusers. The protection of Georgia's most vulnerable citizens is a responsibility that all of society must embrace and share. Because child abuse often occurs in the shadows of society with victims incapable of fighting for themselves, the law must intervene and provide extraordinary resources to safeguard children and prosecute abusers.

The protections provided by Georgia's mandatory reporting law provide an adequate, but incomplete, security blanket for children. In light of the recent decision in *May v. Georgia*, the legislature needs to revisit, clarify, and restructure several aspects of the law. Although it meets the minimal requirements imposed by federal law, Georgia's law leaves too many opportunities to deny victims of abuse the help they need and leaves too many chances for more children to be victimized.

If the Georgia legislature were to examine its mandatory reporting law with an eye towards removing hurdles presented in the identification of victims and prosecution of their abusers, it could greatly strengthen this law. Instead of simply providing average protection for children, Georgia's statute could be a model for the rest of the nation to follow.