

The Amended Child Protective Services Law: New Requirements for Professional Counselors as Mandated Reporters in Pennsylvania

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Over the past several years, the Child Protective Services Law (CPSL) in Pennsylvania has undergone an extensive evaluation, which added numerous amendments that went into effect on December 31, 2014 and have a direct impact on professional counselors in Pennsylvania as mandated reporters. This examination outlines the most significant changes in the CPSL that relate to mandated reporting with a specific focus on how those changes affect professional counselors across the Commonwealth.

Keywords: Mandated reporting; Pennsylvania; Child Protective Services Law; child abuse

Professional counselors in Pennsylvania have long been considered mandated reporters, and as such, have a legal and ethical responsibility to report instances of child abuse to the proper authorities. While these legal and ethical responsibilities are clear and unquestioned, the specific instances in which professional counselors must report abuse are often ambiguous. This ambiguity may be due to misunderstanding requirements of the legal statutes. Situations that require reporting almost always involve difficult circumstances that can challenge one's core beliefs about people and how the most vulnerable in society are treated.

The Commonwealth of Pennsylvania recognizes, in the Child Protective Services Act, (2015) that "abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment" (23 PA §6302). With this understanding, the Child Protective Services Act, also known as the Child Protective Services Law (CPSL), was enacted by the Pennsylvania legislature "to encourage more complete reporting of suspected child abuse" (23 PA §6302). Like most laws, the CPSL has undergone a number of modifications over the years including the most recent amendments, which immediately followed the Jerry Sandusky scandal and came as a direct result of the recommendations in the Report of the Task Force on Child Protection (2012).

The Pennsylvania Task Force on Child Protection was created by the Pennsylvania General Assembly and charged with the undertaking to "thoroughly review state laws and procedures governing child protection and the reporting of child abuse" (Task Force on Child Protection, 2015, About the Task Force, para. 1) in Pennsylvania. The findings and recommendations of the Task Force are the foundation of the newest amendments to the CPSL, which became effective for all mandated reporters in the Commonwealth on December 31, 2014. The most recent amendments to the CPSL have attempted to further clarify the definition of child abuse and who is mandated to report such abuse. The purpose of this examination is to outline the most significant changes in the CPSL that relate to mandated reporting, with a specific focus on how those changes affect professional counselors across the Commonwealth. In order to exemplify the impact of those changes, clinical case examples are provided throughout the text to bridge the mandates of the law with true to life counselor-client scenarios that may be encountered in practice.

Mandated Reporting

As defined by the CPSL, a mandated reporter is "a person who is required by this chapter to make a report

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of suspected child abuse” (23 PA § 6303). More specifically, the CPSL states that “the following adults shall make a report of suspected child abuse, subject to subsection (b), if the person has reasonable cause to suspect that a child is a victim of child abuse” (23 PA § 6311).

Overall, the CPSL defines 16 types of persons who are required to make such reports. For example, social workers, psychologists, medical doctors, and all school employees are considered mandated reporters. Child care workers, policeman, attorneys, and clergymen are considered mandated reporters as well. Even volunteers who come into contact with children and who are responsible for a child’s welfare are considered mandated reporters. In the helping professions, mandated reporters include mental health counselors, rehabilitation counselors, licensed professional counselors, and professional school counselors. It is important to note that the term adult is used when discussing those who are considered to be a mandated reporter. In the amended CPSL, an individual 14 and older can be considered to be a perpetrator for committing an act of abuse; however, children under the age of 18 (except parents) cannot be considered a perpetrator for failing to act or failing to report child abuse.

Reasonable Cause

Because mandated reporters are rarely a direct witness to child abuse, the decision to report suspected child abuse can become extremely complex. For the most part, the suspicion that child abuse has occurred can only be considered to a level or degree of certainty known as reasonable cause (see figure #1). Understanding reasonable cause is of great importance when it comes to mandated reporting laws in Pennsylvania, as it is the first requirement when



FIGURE 1

Child Abuse Degree of Certainty Pyramid

determining a basis to report (23 PA § 6311). According to Foreman and Bernet (2000), a state such as Pennsylvania, uses the term reasonable because it has specific legal meaning that holds mandated reporters to an objective standard. The reasonable cause standard for suspecting child abuse is meant to be a universal standard that is concerned with the reporter’s conduct (the decision to report suspected abuse) as opposed to state of mind (personal beliefs about whether abuse has occurred). Using reasonable cause as the standard for reporting suggests that all mandated reporters should make the same decision to report child abuse when presented with the same facts, regardless of one’s personal beliefs.

Therefore, for the purpose of this paper, reasonable cause will be defined as a rational suspicion that child abuse has occurred based on the mandated reporter’s training and experience and taken from specific facts. In the simplest terms, reasonable cause is having a degree of certainty greater than a “hunch.” It is suspecting that a child was abused, not necessarily believing that a child was abused. To test whether a mandated reporter is meeting this standard, one might ask the question: would a reasonable competent mandated reporter (an ideal model of conduct) make a report of suspected child abuse when confronted with a similar or like circumstance?

For example, in the case of *Vacchio v. St. Paul’s United Methodist Nursery School* (1995), a nursery school teacher noticed a child with a black eye and, with no other information, immediately contacted the New York State Central Registry on child abuse and maltreatment. The nursery school teacher had no further information regarding how the child received the injury, only the physical evidence that the child presented. Taking into consideration an ideal model of conduct, would a competent mandated reporter have made the same report when presented with a child with a black eye and no other information?

It was determined by the state, after an investigation with the parents, that the child was not a victim of abuse. In turn, the parents of the child brought civil suit against the teacher and the school stating that the teacher made a baseless report and that there were no facts to support physical abuse. The judge, in this case, ruled that making a report of child abuse without any supporting facts could be considered gross negligence. In this case, merely seeing a child with a black eye was not enough information for the teacher (a reasonable person) to make a rational inference that a child has been physically abused. It could be argued that the teacher could not even substantiate having a hunch that the child was physically abused. Thus, the conditions for reasonable cause were far from being met.

Given the above example, consider how

assessment of reasonable cause might change if the teacher knew the child's parents had been physically abusive in the past and then, one day, the child came to school with a black eye. There is still no evidence that the parents caused the child to have a black eye, but the mandated reporter would certainly be justified in having a hunch. It is important to note, however, that having a hunch is not quite fulfilling the requirement of reasonable cause. It is still possible that the child hit his eye playing catch with neighbors and the parents were not even aware of the injury. So what would give the teacher, in this case, reasonable cause to suspect the child was physically abused? Perhaps another student came before the teacher and disclosed that his peer received the black eye for not doing his homework. Or, maybe the child disclosed that his father told him that he is not allowed to talk about it. That would then give the mandated reporter reasonable cause to believe the child was abused.

Another example might include a school counselor working with a six-year-old girl who had been removed from her family at various intervals in the past year and had been placed in temporary foster care due to physical abuse by her biological parents. The child had recently returned to living with her biological parents and had visited the school counselor's office but was unwilling to sit down to talk. When the counselor addressed the reason for her not wanting to sit down, the child stated that she was told she could not talk about it and quickly changed the subject to a puppy that never sat because he loved to run around. The child's teacher later reported that the student appeared to be in pain when she attempted to sit down at her desk. In fact, the child avoided sitting whenever possible. In this example, the school counselor should report the child abuse even though the child did not expressively state that abuse occurred. The school counselor was able to make rational inferences that child abuse had occurred based on training and experience, as well as from specific facts (i.e., past history of physical abuse, exhibiting pain when sitting, and avoidance of discussion). If the school counselor had a reasonable cause that the child was abused, it should be reported.

Counselors do not need conclusive evidence or physical proof that abuse has occurred but simply need to have reasonable cause to suspect abuse as the grounds for filing a report. It has to be extremely clear to mandated reporters that there is not a need for concrete evidence of child abuse. The mandated reporter is not the person to determine whether or not child abuse has occurred; the mandated reporter is only responsible for having reasonable cause for suspicion that child abuse has occurred and, in turn, reporting information to the proper authorities.

Basis to Report

The law requires that a mandated reporter has a legal obligation to report child abuse when he or she has reasonable cause to suspect that a child is the victim of abuse under any of the following four circumstances: (1) the mandated reporter had to come into contact with an abused child through his or her employment (2) the mandated reporter has to be responsible for the care of the child either directly or through a specific affiliation (23 PA § 6311). However, a significant addition in the CPSL came regarding instances when (3) a person makes a specific disclosure to a mandated reporter in that an identifiable child was the victim of abuse. A second significant addition on the basis to report is when (4) an individual 14 years of age or older makes a specific disclosure to a mandated reporter that he or she was the individual who committed the act of child abuse (23 PA § 6311).

Section 6311 clarifies that the mandated reporter does not need to be able to identify the individual who committed the abuse nor does the child need to come before the mandated reporter. The mandated reporter does not need to speak with the child directly, nor even meet the child. If a third party discloses abuse to the mandated reporter, even if that abuse is committed by someone the mandated reporter cannot identify, a legal obligation exists to report the abuse. Furthermore, if an individual discloses that he or she is the person responsible for abusing a child, assuming the individual is 14 years of age or older, the mandated reporter is also legally obligated to report that disclosure.

For example, during a counseling session, a client states that she has been having a difficult time sleeping at night because she has a lot on her mind after she witnessed some "horrible" thing happen to her son's friend. As the topic is further explored, the client discloses that while she was on a late night jog last week, she witnessed a man physically assaulting a young child, whom she identified as her son's friend. The man was using a metal hanger to beat the child and the abuse took place in a detached garage of a house down the street. The client does not know the man's name or his relationship to the child, as the child lives only with his mother. She also has no knowledge of the man's name; however, the client does disclose the child's name and the address in which the abuse took place. In this case, even though the mandated reporter cannot identify the individual who has committed the abuse and has not met the child who was abused, the counselor has reason to believe the client's disclosure. Therefore, in this instance, a report must be made by the counselor under the CPSL.

It is important to acknowledge that the law previously required the mandated reporter only to report abuse when acting in the capacity of their employment or organized activity. The amended CPSL now requires reporters to disclose abuse in situations

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outside of their employment. In short, mandated reporters are always required to report abuse about which they learn, regardless of whether or not the reporter is acting in the capacity of their employment, or if the child is under their care.

For example, a school counselor from Pittsburgh is attending her 11-year-old niece's soccer game on a Sunday morning in Philadelphia. While standing on the sideline, the school counselor is engaged with several parents who are talking about another 11-year-old, identified by her full name, on the opposing team's bench. The child is unable to participate in today's game due to an injury to her left leg that causes her to walk with a limp. One of the parents discloses to the school counselor that she saw the girl's father throw a rock at her in the same leg that is causing the limp, but was afraid to report this to the police. In this case, the disclosure is enough for one to reasonably suspect the father has caused physical abuse to the child. Furthermore, even though the school counselor is not acting in the capacity of her employment and the child is not under her care, the school counselor is mandated to report the abusive incident under the CPSL, given that the child is identifiable by name. This would not have been the case prior to the most recent amendments to the law.

Staff Members of Institutions

Another significant change to the CPSL now requires the mandated reporter to personally make the report when working under the capacity of an institution (e.g. school, community agency, etc.). Prior to 2014, mandated reporters were only required to report child abuse to the person in charge of the institution for which they worked, such as a school principal, agency director, or designated agent. Once the person in charge of the institution was notified of suspected child abuse, that person in charge would then have assumed responsibility and had the legal obligation to make the report. The CPSL was amended to now require mandated reporters to directly report any child abuse to the Commonwealth, and then, only after the report has been filed, immediately report the abuse to the person in charge of the institution (23 PA § 6311). The person in charge of the institution is then legally required to cooperate with any subsequent investigation. In short, it is no longer legally permissible to report child abuse to one's supervisor with the assumption that the supervisor will pass the report to the proper authorities. The mandated reporter must make the report directly.

This change arose from the Jerry Sandusky scandal. During the Jerry Sandusky trial, Mike McQuery, a former Penn State assistant coach, testified that he saw Jerry Sandusky behind a boy in the shower

in 2001 and that he had reported what he believed to be a sexual act. This was reported to former head football coach Joe Paterno, former athletic director Gary Shultz, and former vice president Tim Curley. Prior to the amendments to the CPSL, McQuery would have satisfied his obligation as a mandated reporter by notifying Curley or Shultz, both administrators at Penn State, who in turn, would have been responsible for making the mandated report. Both Gary Shultz and Tim Curley were accused of failing to make the mandated report and the Commonwealth was never notified about the now convicted, Sandusky.

Failure to Report

Failing to make a mandated report of child abuse has always been a criminal offense in Pennsylvania. However, the 2014 amendments to the CPSL have increased the penalties for willfully failing to report under the law (23 PA § 6319). When a mandated reporter willfully fails to report child abuse, it is a misdemeanor of the second degree, which is punishable by 1-2 years in prison. However, the offense rises to the level of a third degree felony, punishable by 3 ½ - 7 years in prison, if the following three conditions apply: the mandated reporter willfully fails to report, the child abuse that has occurred meets the criteria for a first degree felony or greater, and the mandated reporter has direct knowledge of the nature of the abuse. The penalty is increased for multiple offenses (23 PA § 6319).

Immunity from liability

The fear of legal consequences for making a false allegation is a common one among mandated reporters, however, mandated reporters in Pennsylvania are protected from liability if they make the report in good faith (23 PA § 6318). It must be noted that the mandated reporter is presumed to have acted in good faith unless it can be proven otherwise (23 PA § 6318). For mandated reporters, the term good faith refers to the assumption that the reporter has reasonable cause to suspect that a child was subject to abuse and therefore filed the report (Child Welfare Information Gateway, 2012). Still, mandated reporters must always use professional judgment before making reports of abuse. For example, in the previously discussed Vacchio case, the judge ruled that reporting a case of child abuse without having any factual information that abuse had actually occurred was negligent and that this type of negligent reporting behavior cannot be protected. In this case, it is possible that the child's black eye was obtained through another means (such as play or accident) rather than as a result of physical abuse.

Reporting Procedures

Additional changes to the CPSL provide for electronic reporting of child abuse through the statewide ChildLine center (23 PA § 6313). Specifically, mandated reporters can now make reports through the Pennsylvania Department of Public Welfare's Child Welfare Web Portal, located at <https://www.compass.state.pa.us/cwis/public/home>. After creating an account, mandated reporters can use this online resource to report child abuse, as well as to apply for child abuse clearance certificates for employment and other purposes. The Department of Public Welfare website is available to mandated reporters, however, the law was also amended to encourage those who are not mandated to still report child abuse of which they are aware (23 PA § 6312). Child abuse reports can also be made through the ChildLine toll free hotline, 1-800-932-0313.

Additional Measures

Several other measures were enacted by the Pennsylvania Legislature during 2014 that impact mandated reporters, and specifically professional counselors. For example, Act 31 requires licensed professional counselors to receive ongoing training and education on the CPSL and to be able to provide proof of being trained as mandated reporters of child abuse. Individuals applying for a new license must show proof of completion of three hours of mandated reporter training along with their application materials. Licensed professional counselors seeking renewals are required to have two hours of training every 24 months. Online training is currently available free of cost through multiple providers.

Act 33 expanded the requirement for obtaining criminal and child abuse background checks to a wider range of organizations, including colleges and universities across Pennsylvania. Act 34 increased whistleblower protections related to child abuse charges and mandated reporting. Act 45 requires child abuse and criminal background checks for volunteers and other individuals who work with children that were not previously required by law. Such individuals include unsupervised parents who volunteer to work with children in schools and other settings. Act 117 expanded the definition of a perpetrator of child abuse and further limits the contact convicted perpetrators may have with children. Act 118 specifically identifies the intentional false reporting of child abuse as a crime as well as increases criminal liability for obstructing a child abuse investigation or intimidating or coercing a witness to an allegation of child abuse.

Two legislative acts have very specific implications for professional school counselors across

Pennsylvania. Act 126 requires training for all school employees on mandated reporting requirements and procedures, including the aforementioned changes to the CPSL. Act 120, the Educator Discipline Act, expressly criminalizes sexual and romantic contact between school employees and students. Under Act 120, such sexual misconduct includes romantic and sexual relationships, regardless of the ages of parties involved. All complaints of sexual misconduct must be reported and investigated, and under the act, school districts are barred from entering into confidential agreements with those accused of wrongdoing. School officials are provided legal immunity for providing accurate references for employees terminated for sexual misconduct, and the adjudication of all complaints made under this law are to be publicly reported.

Implications

These new amendments to the CPSL are intended to further strengthen the provisions and responsibilities for reporting suspected child abuse in Pennsylvania and have the potential to ultimately set a new standard of care nationwide. Specifically, these amendments have a direct impact on the way professional counselors in Pennsylvania address the legal and ethical ramifications of their duties as mandated reporters. There are several implications for Pennsylvania counselors related to reporting child abuse as a result of amendments to CPSL.

With greater responsibility to report suspected cases of abuse also comes trepidation related to over reporting of abuse. Specifically, concerns have been raised regarding the amount of time the county or regional child and youth agency personnel need to respond to suspected cases of child abuse and how they prioritize cases that need immediate attention. Due to the new law, there will undoubtedly be a significant spike in referrals causing strain on county or regional children and youth agency personnel to respond to and differentiate among cases in a timely manner. Furthermore, if extreme cases result in the necessity to remove children from their home environments, there will likely need to be a greater number of foster care families available across the Commonwealth.

If worry existed under the previous law that child abuse was being underreported, over reporting may be of equal concern now that the new law is in effect. The pendulum has potentially swung from failing to identify cases of child abuse in the past to the current state of classifying all potential cases as abuse, without question. Also, given that the reporter can no longer only be required to report to the person in charge of an institution, multiple reports may be made of the same incident of abuse. For example, if two teachers and a

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counselor all become aware of one incident of abuse, by law, all three individuals must make individual reports. Rather than one report, state authorities will now need to consolidate multiple reports in to one single case, potentially slowing response times.

The CPSL protects mandated reporters who act in good faith, however, there is concern for professional counselors who receive reports from people who may have ill intentions and seek to make allegations of child abuse as acts of retaliation or to make another individual appear unfit. These cases may place counselors in precarious situations as to whether or not they should report. For example, a counselor receives a phone call from a child's father (a 3rd party disclosure) who states that the mother's live-in boyfriend is physically abusing his child. The counselor then receives a second phone call from the child's mother expressing concern that the father would call and make an unfounded report of abuse because he is jealous of the new man in her life and wants to cause problems for her. Under the new law, the counselor is not expected to investigate which parent is telling the truth and which is not. It is the counselor's obligation to make the report and allow county or regional children and youth agency personnel to investigate appropriately. Even though it might be tempting for the counselor to interview the child in seeking "the truth," the counselor must make the report regardless, given the information that was presented to the counselor.

Additionally, the new law requires volunteers who work with children in schools and in the community to obtain child abuse clearance certificates and undergo criminal background checks. These requirements have caused significant delays in the processing of such requests. This new provision also has implications for school counselors who may rely on volunteers, such as parents, grandparents, and community members, for various building-wide initiatives. Given large caseloads and their many responsibilities, school counselors often rely on volunteers to assist in various programmatic needs. From career fairs to kindergarten registration, the need for school volunteers is ever present. When these amendments to the CPSL went in to effect in 2015, all volunteers were required to pay for and obtain clearance certificates before they were allowed to help in schools. Act 15 of 2015 does provide some relief to volunteers by eliminating fees for some clearance certificates. Specifically, volunteers can obtain the child abuse history certification and the Pennsylvania criminal history certifications at no cost (Pennsylvania Department of Public Welfare, 2015). However, for volunteers who require federal background checks, there are still costs associated with those clearance certificates. Given the confusion around the multitude of legal changes, the costs, and the time associated with obtaining clearance certificates, there is a potential that

the pool of volunteers may decrease (Murphy, 2015). This places greater burdens on school counselors and others to fulfill the needs formerly met by volunteers.

An additional consideration with the new law is that race, ethnicity, and diversity, in general, are factors that are not discussed in terms of the impact they have on childrearing practices. The law does discuss religion and addresses parents who withhold medical treatment for their child due to religious beliefs. There are, however, various non-western indigenous healing practices that involve bodily harm and injury. If a counselor is aware of a child who presents with a physical injury that was knowingly obtained via a spiritual practice, the counselor may question if a report of abuse is warranted. For instance, a Hmong child comes to a counselor's office and the counselor notices several bruises on the child's body. The counselor is aware that the family engages in massage as a cultural practice, but this is the first time the counselor has noticed actual bruising. The counselor is aware of the changes to the new law and knows that a report must be made, but feels a sense of guilt over not acknowledging that culture has a large impact on the family's beliefs, values, and rituals. Therein lies the question of whether or not religious or spiritual factors should be taken into consideration when it comes to causes of injury to a child. The law does not discuss how to interpret religious and spiritual practices that may cause bodily harm to a child.

Although all school employees are mandated reporters, many disclosures of abuse are made to teachers, who are looked up to as trusted adults in the eyes of children. Teachers are also the individuals children come into contact with on a daily and regular basis. It is no surprise then that teachers are often the eyes and the ears for school counselors. Even though teachers are trained to make reports in the same way that school counselors are, teachers may believe they lack the counseling expertise to be able to exchange in meaningful dialogue with a child who has been abused. As a result, they may report the concern to the school counselor and then ask the school counselor to make the mandated report. However, under the law, the teacher must make the report. It would likely not be best practice to discuss the abuse with the child again, which poses the risk of over-questioning a child who is already distressed. Additionally, there are instances, particularly with physical abuse, in which a child may need medical attention from a school nurse, who once again, may be tempted to question the child further. It is important to recognize that some school personnel may lack the formal counseling and interviewing skills needed to respond to children's disclosures of abuse in a sensitive and confidential manner.

Keeping the focus on schools where many child abuse cases are reported, school district policies and

procedures are not always directly aligned with state laws (Kenny, 2004). In addition, many schools establish their own policies and procedures for making mandated reports of child abuse. In these cases, it is extremely important to note that state laws always supersede school policies. When state laws and school policies are incongruent with each other, it creates uncertainty of a professional's responsibility to make a report (Kenny, 2004). As a result, school personnel may become confused as to whether or not they should follow procedures for reporting child abuse according to school district policies or according to requirements of the new law.

Conclusion

As described above, CPSL and the recent revisions have several implications for counselors who practice in a variety of settings including schools and communities. Many of the new policies serve to provide a greater degree of protection for children that previously did not exist. Thus, the ultimate purpose of this article is to highlight the requirements of the new law for counselors as mandated reporters. A secondary purpose is to illuminate some of the strengths and potential limitations pertaining to the reporting process that currently exist. It is the authors' hope that by discussing these considerations, counselors will become more informed practitioners with respect to reporting cases of child abuse.

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