



3-22-2020

We Are Guilty Of Falling Victim To A Hierarchy Reporting System: The Prosecution of Sideline Players In The Pennsylvania State University Football Sexual Assault Scandal

Caroline Fitzgerald

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/mslj>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Caroline Fitzgerald, *We Are Guilty Of Falling Victim To A Hierarchy Reporting System: The Prosecution of Sideline Players In The Pennsylvania State University Football Sexual Assault Scandal*, 27 Jeffrey S. Moorad Sports L.J. 101 (2020).

Available at: <https://digitalcommons.law.villanova.edu/mslj/vol27/iss1/4>

This Comment is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Jeffrey S. Moorad Sports Law Journal by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

WE ARE GUILTY OF FALLING VICTIM TO A HIERARCHY REPORTING SYSTEM: THE PROSECUTION OF SIDELINE PLAYERS IN THE PENNSYLVANIA STATE UNIVERSITY FOOTBALL SEXUAL ASSAULT SCANDAL

I. THE PRE-GAME SHOW: INTRODUCTION

On any given Saturday when the Pennsylvania State University (“Penn State”) football team hosts a visiting opponent, hundreds of thousands of students, alumni, legacy families, and visitors in town experience the electricity of attending a football game at Beaver Stadium gather in parking lots hours before kickoff.¹ University tour guides brag to visitors and potential future Nittany Lions that the volume of the cheers from the stadium are so loud, the roar registers on the Richter scale.² Throughout the game, the crowd chants the school’s beloved mantra, one that has been used since 1946: “We Are, Penn State.”³ However, in 2011, the all-encompassing admiration for the football program experienced an adversity much more devastating than a loss to their rival team: allegations of repeated child sexual abuse by one of the team’s former coaches, and a subsequent cover-up of this abuse by other highly-regarded leaders of the University and football community, came to the surface.⁴

1. See Edward Moran, *In Happy Valley, Penn State Football Means Big Business*, CHI. TRIB. (Nov. 9, 1997), <https://www.chicagotribune.com/news/ct-xpm-1997-11-09-9711090337-story.html> [<https://perma.cc/2LFC-ZPRS>] (detailing exciting environment that begins days before each Penn State home football game); see also Zach Spedden, *Fundraising Key to Future Beaver Stadium Plans*, FOOTBALL STADIUM DIGEST (May 9, 2018), <https://footballstadiumdigest.com/2018/05/fundraising-key-to-future-beaver-stadium-plans/> [<https://perma.cc/2RA4-FCHB>] (noting Beaver Stadium’s current capacity of 106,572).

2. See Maddie Brightman, *Top Five Whiteouts in Penn State History*, COMM RADIO SPORTS. TRIB. (Oct. 11, 2013), <https://commmedia.psu.edu/sports/story/top-five-whiteouts-in-penn-state-history> [<https://perma.cc/2M6Z-N5W7>] (describing Penn State football’s first ever white out game, which took place in 2005 against Ohio State); Interview with Bernadette Berger, Former Tour Guide, Pennsylvania State University Class of 2015, in Philadelphia, Pa. (Feb. 13, 2019).

3. See Richard T. Hughes, *“We are Penn State”: A Story to Help Us See in the Dark*, PENN LIVE (Jan. 2, 2012), https://www.pennlive.com/editorials/index.ssf/2012/01/we_are_penn_state_a_story_to_h.html [<https://perma.cc/ALJ3-G5X2>] (discussing ethical and political origin of Penn State’s chant).

4. See Adam Clark, *Students Question PSU Leadership*, MORNING CALL (Nov. 8, 2011), <https://www.mcall.com/news/local/mc-penn-state-sandusky-student-reaction-20111107-story.html> [<https://perma.cc/AUN7-J8ZE>] (discussing Penn State students’ responses of disappointment after learning of Sandusky’s abuse and failure of school leaders to “take child abuse seriously”); see also FREEH SPORKIN &

From 1977 to 1999, Gerald “Jerry” Sandusky served as defensive coordinator for Penn State’s football team, and he remained active in the Penn State football community well after his retirement.⁵ While employed with Penn State, Sandusky founded The Second Mile, a non-profit organization aimed at providing opportunities for young men with disadvantaged backgrounds.⁶ Ten males’ allegations of child abuse, each of whom formerly attended The Second Mile, formed the basis for Sandusky’s arrest and subsequent conviction.⁷ In June 2012, Sandusky was sentenced to a maximum of sixty years in prison for forty-five counts of child abuse.⁸

Although Sandusky alone was charged with committing acts of sexual assault, the Court of Common Pleas in Dauphin County and the Superior Court of Pennsylvania found that he was not the only person at fault for what happened to his victims.⁹ Graham Spanier, Tim Curley, and Gary Schultz, all of whom were high-ranking administrative officials at Penn State at the time Sandusky was committing abuse, were arrested and charged with “endangering the

SULLIVAN, LLP, REPORT OF THE SPECIAL INVESTIGATIVE COUNSEL REGARDING THE ACTIONS OF THE PENNSYLVANIA STATE UNIVERSITY RELATED TO THE CHILD SEXUAL ABUSE COMMITTED BY GERALD A. SANDUSKY, 8, 13 (2012), *available at* <https://www.documentcloud.org/documents/396512-report-final-071212.html> [<https://perma.cc/G4ZE-JA4M>] [hereinafter the “Freeh Report”] (“On November 4, 2011 the Attorney General . . . filed criminal charges against Gerald A. Sandusky . . . includ[ing] multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, corruption of minors, unlawful contact with minors and endangering the welfare of minors.”).

5. See CNN Library, *Penn State Scandal Fast Facts*, CNN, <https://www.cnn.com/2013/10/28/us/penn-state-scandal-fast-facts/index.html> [<https://perma.cc/DRT7-L6PQ>] (updated Nov. 27, 2019, 5:22 PM) (“June 1999 – Sandusky retires from Penn State after coaching there for 32 years, but receives emeritus status, with full access to the campus and football facilities.”).

6. See Commonwealth v. Spanier, 192 A.3d 141, 142 (Pa. Super. 2018) (observing Sandusky’s role as “founder of a non-profit charity for troubled youth”).

7. See *id.* at 143 (“In 2011, Sandusky was arrested and charged with forty-nine counts arising from his alleged abuse of ten child victims.”).

8. See Erica M. Kelly, *The Jerry Sandusky Effect: Child Abuse Reporting Laws Should No Longer Be Don’t Ask, Don’t Tell*, 17 U. PITT. L. REV. 209, 212 (2013) (“[Sandusky] was sentenced to 30 to 60 years in prison, which likely constitutes the equivalent of a life sentence, as Sandusky was 68-years-old at the time of his sentencing.”).

9. See Will Hobson, *Former Penn State President Graham Spanier Sentenced to Jail for Child Endangerment in Jerry Sandusky Abuse Case*, WASH. POST, (Jun. 2, 2017, 3:01 PM), https://www.washingtonpost.com/news/sports/wp/2017/06/02/former-penn-state-president-graham-spanier-sentenced-to-jail-for-child-endangerment-in-jerry-sandusky-abuse-case/?utm_term=.c4d56c4e75c9 [<https://perma.cc/UM3F-39F9>] (quoting Judge John Boccabella, who presided over charges brought against Graham Spanier, Tim Curley, and Gary Schultz, in regards to his disgust that “[a]ll three ignored the opportunity to put an end to [Sandusky’s] crimes when they had the chance to do so”).

welfare of a child.”¹⁰ Investigations into Sandusky’s case revealed records indicating Spanier, Curley, and Schultz were aware of prior sexual abuse acts by Sandusky, and that the three officials did not report such acts to police or any other regulatory authority tasked with investigating such types of allegations.¹¹ While the men admittedly regret their lack of action upon being made aware of Sandusky’s suspicious activity with minors, Spanier did not submit a guilty plea, even though Curley and Schultz did.¹² In fact, Spanier not only went to trial to fight the charges against him, he continued to resist his responsibility by appealing the trial court’s guilty verdict.¹³

*Commonwealth v. Spanier*¹⁴ examined the legal culpability of the university President who turned a blind-eye to reports of a university staff member sexually abusing minors.¹⁵ This case discussed duties implicit in Spanier’s job, particularly when he had knowledge of Sandusky’s actions, including providing protection for known victims on the university’s campus.¹⁶ Spanier’s failure to take further action against Sandusky or report the abuse to authorities led to his child endangerment conviction.¹⁷

10. *See id.* (“Three former Pennsylvania State University administrators, including former president Graham Spanier, were each sentenced to serve at least two months in jail Friday for failing to alert law enforcement about a 2001 incident involving retired football coach Jerry Sandusky and a boy in a campus shower.”).

11. *See* FREEH SPORKIN & SULLIVAN, LLP, *supra* note 4, at 14 (detailing results of extensive investigation into Penn State’s failures to realize and halt Sandusky’s abuse). For a further discussion of the Freeh Report, see *infra* notes 155–165.

12. *See* Hobson, *supra* note 9 (“All three men were convicted of the same misdemeanor charge of child endangerment, but Curley and Schultz both reached plea agreements and testified at Spanier’s trial in March. . . . The three former Penn State officials all apologized for their actions and to Sandusky’s victims before the sentences were handed down.”).

13. *See* *Commonwealth v. Spanier*, 192 A.3d 141, 142 (“Appellant, Graham B. Spanier, appeals from the judgment of sentence of four to twelve months of incarceration, imposed June 2, 2017, following a jury trial resulting in his conviction for one count of endangering the welfare of a child.”).

14. 192 A.3d 141 (Pa. Super. 2018).

15. *See id.* at 152 (“[O]ur focus is limited to a university president’s duty in the face of knowledge of allegations of on-campus sexual abuse of minors, in this case by a high-status former employee with access to campus facilities.”).

16. *See id.* at 153 (finding duty of care extended to Spanier). For a further discussion of Spanier’s trial, see *infra* notes 36–115 and accompanying text.

17. *See id.* at 142 (explaining court’s finding of duty based on Spanier having “occupied a position of high authority with respect to the site of the crime, personally oversaw the university’s response to the allegations, noted to other employees the risk of not reporting the coach to the police, and had sufficient information and authority to take action but declined to do so”). For a further discussion of Spanier’s child endangerment charge, see *infra* notes 73–115 and accompanying text.

This Comment argues that the Pennsylvania laws previously in place were predominantly deficient in protecting children, but revisions made since the incident have greatly increased the responsibility placed on individuals with reason to believe abuse is occurring.¹⁸ This Comment explores whether the level of responsibility Pennsylvania law placed on Penn State employees who were aware of Sandusky's child abuse is sufficient in providing justice for Sandusky's victims, as well as whether this accountability is adequate to deter adults in comparable positions from acting similarly.¹⁹ Despite this increase in protection, this Comment will argue for additional changes to relevant law in order to further enhance protection for minors.²⁰ Part II of this comment will provide a background of child endangerment and mandatory reporting laws in Pennsylvania.²¹ Additionally, Part II will specifically discuss Spanier's trial, along with the non-criminal consequences resulting from Sandusky's crimes.²² Lastly, Part III will analyze the shortcomings of the previous mandated reporting laws in Pennsylvania, as well as provide suggestions for additional improvements to further bolster child safety.²³

II. WATCHING GAME FILM: REVIEW OF LEGAL BACKGROUND

A. Penn State Football: A Dynasty Under Coach Joe Paterno

Between 2016 and 2017, Penn State University generated over thirty-five million dollars from sporting event ticket sales alone, of which football games accounted for over thirty-one million.²⁴ In total, the football program made over eighty-one million dollars, the difference of which is accounted for by concession sales, mer-

18. For a further discussion of Pennsylvania's mandated reporting laws, see *infra* notes 73–154 and accompanying text.

19. For a further discussion of punishments imposed on these employees, see *infra* notes 63–72 and accompanying text.

20. For a further discussion of suggested revisions to Pennsylvania, and adoption of federal, mandated reporting laws, see *infra* notes 211–244 and accompanying text.

21. For a further discussion of child endangerment and mandated reporting laws in Pennsylvania, see *infra* notes 73–154 and accompanying text.

22. For a further discussion of Graham Spanier's trial, see *infra* notes 69–115 and accompanying text. For a further discussion of the non-legal consequences faced by Penn State, see *infra* notes 155–193 and accompanying text.

23. For a further discussion of mandated reporting law suggestions, see *infra* notes 194–244 and accompanying text.

24. See Sarah Ravacz, *Not only is Penn State athletics self-sustaining, it's making a profit*, CENTRE DAILY TIMES (Mar. 8, 2018, 3:20 PM), <https://www.centredaily.com/sports/college/penn-state-university/article204119879.html> (reviewing Penn State's 2016–17 NCAA annual Financial Report).

chandise purchases, and media rights among other aspects.²⁵ While Penn State's reputation as a football powerhouse existed for decades, this notoriety did not begin until former coach Joe Paterno joined the team's leadership.²⁶

During Paterno's tenure at Penn State, he coached five undefeated teams, won two national championships, and won more games than any other coach in the history of college football.²⁷ In addition to being the "winningest" coach, Paterno's notoriety stemmed from his unprecedented view towards and demand of his players — that their success in the classroom be equally as important as their success on the football field.²⁸ Paterno's dedication to the interweaving of academics and athletics proved lucrative when his football players graduated at a rate of nineteen points above the national average.²⁹ Further, Paterno was not only known for his unyielding dedication to Penn State, but for instilling the practice of humility in his players, regardless of their individual and team achievements.³⁰ The adoration felt by Penn State students and

25. See Ben Jenkins, *Penn State Release Revenue Information for Athletics*, DAILY COLLEGIAN (Mar. 8, 2018), https://www.collegian.psu.edu/sports/article_e11e9abc-22e7-11e8-a58e-87d56b34320c.html [<https://perma.cc/RM93-C9GZ>] (comparing Penn State football team's revenue to other university's teams).

26. See Ivan Maisel & Mark Schlabach, *Joe Paterno Leaves Lasting Legacy*, ESPN (Jan. 22, 2012), https://www.espn.com/college-football/story/_/id/7488107/joe-paterno-leaves-legacy-penn-state [<https://perma.cc/WA79-JKGZ>] (noting through all major changes college football faced during Paterno's time as coach, Penn State's "rise . . . as an athletic and academic power" was most significant).

27. See *id.* (discussing Paterno's monumental moments, including 409 games he won).

28. See *id.* (summarizing Paterno's implementation of this unique and ideological viewpoint, which Paterno himself called "the Grand Experiment").

29. See *id.* ("Over the next four-plus decades, Paterno and his university — and the two became interchangeable in the minds of the nation — made the Grand Experiment a success. As late as 2007, the NCAA reported that Penn State football players graduated at a rate of 74 percent, 19 points above the national average.").

30. See *id.* (providing examples of various more-profitable options presented to Paterno while at Penn State, as well as discussing simplicity of Penn State's uniforms); see also Will Hobson, *Six Years Later; Penn State Remains Torn Over the Sandusky Scandal*, WASH. POST (Dec. 28, 2017), https://www.washingtonpost.com/graphics/2017/sports/penn-state-six-years-after-sandusky-scandal/?utm_term=.2d04fb1af668 [<https://perma.cc/S5BF-8H46>] ("In the venal world of college football, Paterno built a reputation as a coach who valued integrity over winning — 'Success with Honor' was his motto. . . ."). One opportunity turned down by Paterno was an offer to become a coach, general manager and part-owner of the Patriots, a National Football League (NFL) team that now is tied for the most Super Bowl wins. *Id.* (emphasizing his unwavering commitment to his collegiate team). The job-change would have increased Paterno's salary from thirty-five thousand dollars to one point four million dollars. *Id.* (accentuating his dedication even when it came to his financial disadvantage).

alumni towards Paterno was so great that the area directly outside of the football stadium was designated “Paternoville.”³¹

Unfortunately, outrage following the news of Sandusky’s rampant abuse was not primarily in reaction to Sandusky’s vicious actions, but rather in response to the suggestion of Paterno’s involvement.³² Following Sandusky’s arrest, Penn State fired Paterno from his job as head coach, removed an on-campus statute of Paterno, and renamed “Paternoville” as “Nittanyville.”³³ Today, a divide still exists as to whether Paterno should continue to be revered as the “greatest football coach in the history of the game,” or the coach who allowed his right-hand man to sexually abuse children.³⁴ This Comment does not discuss legal consequences Paterno may have faced in light of his documented awareness of Sandusky’s criminal behavior, as Paterno passed away two months after Sandusky’s arrest.³⁵

B. *Commonwealth v. Spanier*

Other Penn State employees implicated in the Sandusky scandal are Graham Spanier, Tim Curley, and Gary Schultz for their roles in failing to take appropriate measures upon learning of an inappropriate incident between Sandusky and a minor.³⁶ Spanier served as President of Penn State from 1995 to 2011 and Curley

31. See Adam Rittenberg, *Paternoville Changes Name to Nittanyville*, ESPN (Jul. 17, 2012), http://www.espn.com/blog/bigten/post/_/id/53295/paternoville-changes-name-to-nittanyville [<https://perma.cc/YVR3-93G9>] (describing Paternoville as “tent village[s] set up outside Gate A at Beaver Stadium before home games”).

32. See Don Van Natta Jr., *Joe Paterno Statue Taken Down*, ESPN (Jul. 23, 2012), http://www.espn.com/college-football/story/_/id/8188530/joe-paterno-statue-removed-penn-state-university-beaver-stadium [<https://perma.cc/9WMY-YXFF>] (describing disbelief of Penn State fans faced with idea that Paterno was involved in Sandusky scandal).

33. See Hobson, *supra* note 30 (discussing controversial actions taken by Penn State in immediate response to Sandusky’s indictment); see also CNN Library, *supra* note 5 (providing date Paterno was fired – November 9, 2011).

34. See Katie Reilly, *Penn State’s Joe Paterno Tribute Met With Standing Ovation and Protest*, TIME (Sept. 17, 2016), <http://time.com/4498286/penn-state-joe-paterno-tribute/> [<https://perma.cc/4E7M-VSGM>] (describing conflicting reactions to Penn State’s tribute to Paterno on his fiftieth anniversary as head coach); see also Time Molloy, *Penn State’s Joe Paterno Dead at 85 (Update)*, REUTERS (Jan. 21, 2012, 9:45 PM), <https://www.reuters.com/article/idUS133807577120120122> [<https://perma.cc/CX6U-YSW7>] (quoting Urban Meyer as saying “[Joe Paterno] will go down as the greatest football coach in the history of the game”).

35. See CNN Library, *supra* note 5 (providing Paterno’s date of death as Jan. 22, 2012).

36. See Hobson, *supra* note 9 (referring to sexual assault witnessed by graduate assistant Mike McQueary).

served as Penn State's athletic director from 1993 to 2011.³⁷ Schultz had been employed at Penn State since the mid-1970s, and eventually landed a position as Senior Vice President at the University.³⁸

1. *Delay of Game: University Administrators' Responses to Prior Reporting*

During the approximately thirteen-years in which Sandusky abused minors, Penn State administrators were made aware of two separate instances involving Sandusky and underage boys on the University's campus.³⁹ The first instance occurred in 1998 when Penn State Police received a report from an eleven-year-old boy's mother alleging that her child and Sandusky had taken a shower together.⁴⁰ While in the shower, the boy had tried to keep his distance from Sandusky, but was forced into making physical contact with him, being washed by him, being picked up by him and being hugged by him.⁴¹ Further investigation into the incident revealed details about additional inappropriate events preceding the shower.⁴² A wiretap conversation between the boy's mother and Sandusky recorded Sandusky admitting to showering with the boy, and led to him informing Penn State Police that he had hugged the boy while they were naked in the shower.⁴³ Although charges were

37. *See id.* (noting positions of Spanier and Curley at Penn State).

38. *See id.* (stating Schultz's position at Penn State).

39. *See* Commonwealth v. Spanier, 192 A.3d 141, 142–43 (Pa. Super. 2018) (documenting 2001 incident serving as basis for Spanier's conviction was not first time Spanier and other administrators were put on notice about suspect activity occurring between Sandusky and minor boys).

40. *See* Commonwealth v. Spanier, 132 A.3d 481, 482–83 (Pa. Super. 2016) (“When Sandusky returned the child to the boy's home, the child's mother noticed that his hair was wet and became upset when she discovered that he had showered with Sandusky.”).

41. *See id.* at 483 (“The youngster attempted to shower away from Sandusky, but Sandusky beckoned him closer and told him that he warmed up a shower for the child. Sandusky grabbed the boy from around his waist, lifting him into the air. He also washed the boy's back and bear hugged the child from behind, before rinsing the child's hair.”).

42. *See id.* at 482–83 (“On the way to [Penn State], Sandusky placed his right hand on the boy's thigh on multiple occasions. . . Sandusky then wrestled with the victim, before instructing the boy to shower.”).

43. *See id.* at 483 (“Sandusky admitted to showering naked with the child and at one point stated that he wished he were dead. He later told police that he hugged the child in the shower and admitted that it was wrong.”).

never filed as a result of this investigation, Spanier, Curley, and Schultz had received regular updates about the incident.⁴⁴

In February 2001, less than three years after the initial incident, Spanier, Curley, and Schultz were made aware of yet another event involving Sandusky and a young boy.⁴⁵ In this instance, a graduate assistant for the football team, Michael McQueary, witnessed Sandusky sexually assaulting a boy in the shower.⁴⁶ The following day, McQueary reported the incident to Paterno, who in turn shared the information with University administrators.⁴⁷ Later, McQueary met directly with both Curley and Schultz to speak about what he had witnessed.⁴⁸ The next day, Curley met with Spanier and Schultz to decide how to proceed with the situation.⁴⁹ The three of them initially decided Curley would have a discussion with Sandusky and contact both The Second Mile and the Department of Public Welfare.⁵⁰

After postponing the agreed upon plan for a couple of weeks, Spanier, Curley, and Schultz eventually decided to change their course of action and had a conversation with Sandusky to seek his cooperation before reaching out to other parties.⁵¹ Under this new

44. See *Spanier*, 192 A.3d at 142 (“Schultz and Curley corresponded regularly by email regarding the investigation. [Spanier] was a carbon-copy recipient of some of those emails. Ultimately, no criminal charges were filed . . .”).

45. See *id.* at 143 (“On February 12, 2001, following a routine president’s council meeting, Curley and Schultz met privately with [Spanier] to discuss Sandusky. They discussed the recent incident and the 1998 incident, which [Spanier] remembered.”).

46. See *id.* (“On the evening of February 9, 2001, Michael McQueary, a graduate assistant with the PSU football team, went into the Lasch Building. He heard noises and, upon investigating, observed Sandusky sexually assaulting a ten-to-twelve-year-old boy in the shower.”).

47. See *id.* (“On February 10, 2001, McQueary told head football coach Joe Paterno about what he had seen. On February 11, 2001, Paterno contacted Curley, who in turn informed Schultz.”).

48. See *Spanier*, 132 A.3d at 483 (“McQueary. . . stated that he told [Curley and Schultz] that he believed he saw Sandusky having anal sex with a minor boy.”).

49. See *Commonwealth v. Spanier*, 192 A.3d 141, 143 (Pa. Super. 2018) (“They devised a three-part plan: 1) speaking with Sandusky about appropriate use of facilities; 2) contacting the director of [The Second Mile]; and 3) contacting the Department of Public Welfare.”).

50. See *id.* (“[Spanier] put Curley in charge of executing the plan and keeping Schultz informed.”); see also Janice Crompton & Timothy McNulty, *PSU’s Jerry Sandusky ‘Found His Victims’ at Second Mile Group Home*, PITT. POST-GAZETTE (Nov. 6, 2011, 12:00 AM), <https://www.post-gazette.com/sports/psu/2011/11/06/PSU-s-Jerry-Sandusky-found-his-victims-at-Second-Mile-group-home/stories/201111060201> [<https://perma.cc/3KHZ-8KVL>] (describing Second Mile Foundation charity founded by Sandusky to provide opportunities for at-risk children in Pennsylvania).

51. See *Spanier*, 192 A.3d at 143 (“On February 27, 2011, Curley emailed Schultz and [Spanier] to say that he was no longer comfortable with the original

strategy of dealing with the allegations internally, Curley would approach Sandusky and inform him that he was no longer allowed to use Penn State facilities with boys from The Second Mile.⁵² When Curley approached Sandusky about this new prohibition, Sandusky denied any wrongdoing regarding the event McQueary had allegedly witnessed.⁵³ Curley then reached out to Jack Raykovitz, the director of The Second Mile, about the accusations and informed him that Sandusky was forbidden from bringing The Second Mile boys to Penn State facilities.⁵⁴ However, Penn State personnel were not notified of the implementation of this restriction on The Second Mile, and therefore, the restriction was not enforced.⁵⁵ Curley, Schultz, and Spanier did not bring this matter to anyone's attention other than Raykovitz's.⁵⁶

Sandusky's abusive behavior towards the victim that McQueary observed amounted to criminal conduct and would have been sufficient to justify taking legal action against Sandusky.⁵⁷ However, the absence of reporting the incident to the appropriate authorities enabled Sandusky to continue abusing minor boys.⁵⁸ Further, because Spanier, Curley, and Schultz neglected to invoke the ban against Sandusky bringing minor boys to the Penn State facilities, one of those boys was sexually assaulted on the campus.⁵⁹ This on-

plan. . . [Spanier] supported Curley's [new] plan, though he observed that if Sandusky did not cooperate, they would be vulnerable for not having reported the incident.”).

52. *See id.* (“Instead, Curley wanted to speak only with Sandusky at first to advise him to seek professional help, and to tell him he could no longer bring underage boys to PSU facilities. If Sandusky cooperated, Schultz, Curley and [Spanier] would inform only [The Second Mile]; otherwise, they would inform both [The Second Mile] and [the Department of Public Welfare].”).

53. *See id.* (“Sandusky denied any wrongdoing when Curley spoke to him.”).

54. *See id.* (“Curley spoke to Raykovitz and expected Raykovitz to enforce the limits on Sandusky's use of PSU facilities, but Curley did not offer Raykovitz any direction on how to proceed.”).

55. *See id.* (“Further, Curley did not inform campus police that Sandusky was not permitted to bring children into the facilities, or inform any other PSU personnel that they should enforce this rule. McQueary continued to observe Sandusky in the Lasch Building after hours.”).

56. *See id.* (“After speaking with Sandusky and Raykovitz, Curley informed [Spanier] and Schultz that he had done so. Curley never contacted [the Department of Public Welfare], Children and Youth Services, or the police.”).

57. *See* 18 Pa. Cons. Stat. § 3123(b) (2003) (“A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.”).

58. *See Spanier*, 192 A.3d at 143 (“Sandusky subsequently abused at least four more young boys, including one in the Lasch Building shower in the summer of 2002.”).

59. *See id.* (identifying Lasch Building as on-campus facility).

campus assault occurred in the same shower as the previous incident McQueary witnessed just one year earlier.⁶⁰ This boy was one of four known victims of abuse committed by Sandusky following McQueary's initial report in 2001.⁶¹

2. *Off-Sides Penalty: Legal Implications for the "Sideline Players" of the Assault*

When it came time to face the consequences of their inaction, Spanier, Curley, and Schultz were given a five-yard penalty for a violation that later became a fifteen-yard offense.⁶² Trials for each of the three men for their involvement in the cover up of Sandusky's child abuse were originally scheduled for March 2017.⁶³ However, one week prior to Spanier's anticipated trial date, Curley and Schultz each pled guilty to one misdemeanor count of endangering the welfare of a child.⁶⁴ Although initially charged with perjury, obstruction of justice, conspiracy, failure to report suspected child abuse, and endangering the welfare of children, many of these charges were dropped prior to trial.⁶⁵ Both Curley and Schultz were sentenced to a maximum of twenty-three months in prison.⁶⁶ However, Curley was given a seven-month minimum,

60. *See id.* at 143 n.3 ("The victim, John Doe, testified at [Spanier's] trial that in the summer of 2002, when he was approximately twelve or thirteen years old, Sandusky sexually assaulted him in the shower at the Lasch Building.")

61. *See id.* at 143 (noting that out of the ten total child victims Sandusky faced prosecution for four of them occurred after McQueary's report).

62. *See* Hobson, *supra* note 9 (listing limited sentences for each person).

63. *See* Charles Thompson, *Tim Curley, Gary Schultz Plead Guilty in Sandusky Coverup Case*, PENN LIVE, https://www.pennlive.com/news/2017/03/tim_curley_files_plea_in_sandu.html [<https://perma.cc/J5N4-7QEM>] (updated Jan. 5, 2019) ("The case has been winding its way toward trial for four years[.]").

64. *See id.* ("[Curley and Schultz guilty pleas were entered] just a week before all three men – Spanier, Schultz and Curley – were scheduled to stand trial on accusations they were criminally negligent in handling child-sex accusations against Sandusky in 2001.")

65. *See* Commonwealth v. Spanier, 132 A.3d 481, 482 (Pa. Super. 2016) ("We find that Ms. Baldwin breached the attorney-client privilege and was incompetent to testify as to the confidential communications between her and Spanier during her grand jury testimony. Accordingly, we reverse the trial court's determination otherwise, and quash the charges of perjury, obstruction of justice, and conspiracy related to those counts."). Cynthia Baldwin had expressed to Spanier that she would represent him before the grand jury. *Id.* at 484 (following receipt of Spanier's subpoena). However, Ms. Baldwin later stated that she only represented Penn State, and not any University administrators. *Id.* at 485 (contradicting her prior statement when court asked for clarification).

66. *See* Hobson, *supra* note 9 ("Former university athletic director Tim Curley, 63, received a sentence of seven to 23 months, with three months in jail, while former former [*sic*] vice president Gary Schultz, 67, was sentenced to six to 23 months, with two months in jail.")

while Schultz was given a six-month minimum.⁶⁷ This minor variation between the sentences was likely the result of Curley's responsibilities in "executing" the reporting plan in response to the McQueary incident, whereas Schultz had only been updated about the progress by Curley.⁶⁸

Although Curley and Schultz entered guilty pleas, Spanier proceeded to trial.⁶⁹ At trial in March 2017, after being charged with two counts of endangering the welfare of a child, and one count of conspiracy to endanger the welfare of a child, Spanier was found guilty of one charge of endangering the welfare of a child.⁷⁰ Following his sentencing of four to twelve months, Spanier appealed his conviction.⁷¹ In his appeal, Spanier argued that his guilty verdict should be overturned for various reasons, including that the appropriate statute of limitations had expired and he did not owe the child a duty of care.⁷²

3. *Personal Foul: Endangering the Welfare of a Child*

Under Pennsylvania law, a person is guilty of endangering the welfare of a child if the person "knowingly endangers the welfare of the child by violating a duty of care, protection or support."⁷³ Under the same statute, Pennsylvania law specifies that a person may be guilty of endangering the welfare of a child if the person is "[a] parent, guardian, or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises, such a person"⁷⁴ The statute further clarifies a "person supervising the welfare of a child" as "a person other than a parent or guardian that provides care, education, training or control of a

67. *See id.* (providing sentences for Curley and Schultz).

68. For further discussion of Curley's and Schultz's reporting plan, see *supra* notes 51–56 and accompanying text.

69. *See* Hobson, *supra* note 9 ("In a surprise, Spanier – the only one of the three to take his case to trial earlier this year – actually received the lightest sentence.").

70. *See* Commonwealth v. Spanier, 192 A.3d 141, 144 (Pa. Super. 2018) ("[T]he jury found [Spanier] had not engaged in a course of conduct with respect to the EWOC conviction, resulting in a conviction for a misdemeanor rather than a felony.").

71. *See id.* ("On June 2, 2017, the court sentenced [Spanier] to four to twelve months of incarceration followed by two years of probation. This timely appeal followed.").

72. *See id.* at 144–45 (listing questions submitted by Spanier to Appellate Court for review challenging accuracy of trial court's results).

73. 18 Pa. Cons. Stat. § 4304(a)(1) (2017) (defining child endangerment).

74. *Id.* (indicating who is subject to adherence of statute).

child.”⁷⁵ Additionally, a person is guilty of the same offense “if the person, in an official capacity, prevents or interferes with the making of a report of suspected child abuse” to child protective services in accordance with Pennsylvania law.⁷⁶

a. Possession of the Ball: A Duty of Care

The Pennsylvania statute defining child endangerment was amended in 2007 to include “a person who employs or supervises such a person” in the provision regarding who may be found guilty of the offense.⁷⁷ This amendment was a result of *Commonwealth v. Lynn*,⁷⁸ a case brought against a “high-ranking official in the Archdiocese of Philadelphia” for his failure to take action against priests sexually abusing children.⁷⁹ Initially, the grand jury in this case recommended against charging Lynn with child endangerment because “the statute was written too narrowly to sustain criminal charges against high-level Archdiocesan officials.”⁸⁰ However, the resulting decision not only convicted Lynn of child endangerment, but increased protections for future child victims due to requests for legislators to revise the statute based on the holding in *Lynn*.⁸¹

75. 18 Pa. Cons. Stat. § 4304(a)(3) (2017) (broadening liability under statute).

76. 18 Pa. Cons. Stat. § 4304(a)(2) (2017) (signifying that statute accountability is not restricted solely to those supervising).

77. See *Commonwealth v. Spanier*, 192 A.3d 141, 151–52 (Pa. Super. 2018) (“[T]he General Assembly amended § 4304 in 2007 to add the [italicized] clause: A parent, guardian, or other person supervising the welfare of a child under 18 years of age, or a *person who employs or supervises such a person*, commits an offense if he knowingly endangers the welfare of a child by violating a duty of care, protection or support.”) (internal quotation marks omitted).

78. 114 A.3d 796 (Pa. 2015).

79. See *Spanier*, 192 A.3d at 151–52 (“Lynn’s conduct predated the 2007 amendment of the EWOC statute In response, the General Assembly amended § 4304 . . .”).

80. *Id.* (summarizing Pennsylvania Supreme Court’s decision to convict Lynn, even though he was not directly in charge of children, against grand jury’s recommendation to not bring charges against Lynn under § 4304). The version of the statute in place at the time of Lynn’s prosecution provided that someone could not be guilty of endangering the welfare of a child unless that person directly supervised the child, which Lynn did not. *Id.* (interpreting statute narrowly and in defendant’s favor). The *Lynn* decision disregarded the narrowness of the statute and found him guilty regardless of his indirect supervisory role. *Id.* (taking more comprehensive approach to statute’s language). After the *Lynn* holding, the statute was amended in accordance with the decision, expanding the statute to those who not only supervise children, but the supervisors of those who directly supervise children. *Id.* (emphasizing child’s welfare, rather than child themselves, as target of statute’s protection).

81. See *id.* at 151–52 (discussing Lynn’s holding and resulting statutory amendment).

In *Lynn*, the Archdiocesan official who was charged insisted he was innocent because he did not directly supervise any children, and therefore did not have a duty of care.⁸² The court articulated its understanding of the child endangerment statute as not having a limited applicability solely to persons who personally supervise children.⁸³ Rather, the court felt that whether a person actually interacts with a child is not indicative of their liability under the statute.⁸⁴ Under this interpretation, a person who oversees those acting as chaperones for the child still carries a duty to protect the child's welfare.⁸⁵ The court in *Lynn* also advocated for the necessity of this perception, stating "[s]upervision is routinely accomplished through subordinates, and is no less supervisory if it does not involve personal encounters with the children."⁸⁶ The current statutory amendment was added after the *Lynn* holding in order to clarify the broadening scope of accountability for child endangerment.⁸⁷

Similar to *Lynn*, Spanier argued on appeal that he was wrongfully convicted of child endangerment because the court had not applied the appropriate child endangerment statute to his case.⁸⁸ Spanier based this argument on the notion that "state and federal constitutions prohibit the government from imposing punishment for conduct that was not criminal at the time of the conduct but was later criminalized."⁸⁹ Under this contention, Spanier argued the court should have looked to the version of the child endangerment statute in place at the time of his neglectful actions when consider-

82. *See id.* at 151 (reasoning that Lynn did not have to directly supervise children to be found guilty; rather, Court found that there was still enough to convict because he was "specifically responsible for protecting children from sexually abusive priests.").

83. *See id.* (discussing interpretation and application of statute).

84. *See id.* (providing reason for liability).

85. *See Commonwealth v. Lynn*, 114 A.3d 796, 798 (Pa. 2015) (finding that "requiring supervision of the child's welfare rather than of the child, the statute endeavors to safe-guard the emotional, psychological, and physical well-being of children").

86. *Id.* at 824. (discussing supervisory role).

87. *See Spanier*, 192 A.3d at 151 ("In response, the General Assembly amended § 4304 to add . . . 'or a person who employs or supervises such a person'" to those who are responsible under child endangerment statute).

88. *See id.* at 145 ("In 2001, when the alleged conduct at issue here occurred, the child-endangerment statute did not encompass someone who was employing or supervising someone else who was supervising the welfare of a minor child. . . . To the extent [Spanier's] child-endangerment conviction was based on his alleged employment or supervision of someone else who was supervising the welfare of a child, did the trial court err[?]").

89. *Id.* (distinguishing his actions from criminal activity based on governing criminal statute at time his actions occurred).

ing whether he was guilty.⁹⁰ The activity under scrutiny in front of the court occurred in 2001, and therefore, Spanier asserted the version of the statute effective at the time of the incident did not include the clause “or a person who employs or supervises such a person,” is the proper law to apply in his prosecution.⁹¹ The Court applied the *Lynn* decision, and concluded the question of whether Spanier directly supervised Sandusky’s victims or anyone else who interacted with the boys, was immaterial in determining his guilt.⁹²

The Superior Court further concluded that Spanier was guilty of endangering the welfare of a child, regardless of which version of the statute applied.⁹³ When citing relevant precedent to support its decision, the court included excerpts from previous cases that emphasized the expansive applicability of the statute.⁹⁴ In its decision of the *Lynn* case, the Supreme Court of Pennsylvania explained that, while most statutes’ ambiguous nature is generally read in favor of a presumption of innocence of the accused, the child endangerment statute is an exception to the rule.⁹⁵ In support of its decision, the Court explicitly stated:

[T]he statute [under review] is protective in nature, and must be construed to effectuate its broad purpose of sheltering children from harm. . . . The common sense of the community, as well as the sense of decency, propriety and

90. *See id.* (noting applied version of statute did not come into effect until six years after).

91. *See id.* (indicating that Spanier cannot be found guilty for something which was not criminalized, and therefore, he should not be held to acting as if he should have known such act was criminal).

92. *See id.* at 154 (“Here . . . there is no evidence that [Spanier] supervised anyone who interacted directly with Sandusky’s minor victims. As we have already explained above, the *Lynn* Court held that § 4304 applies to persons who supervise a child’s *welfare*, not persons who supervise a *child*. The absence of direct interaction between [Spanier], Shultz, or Curley and Sandusky’s victims therefore does not preclude [Spanier’s] conviction under the pre-2007 version of § 4304 as construed in *Lynn*.”).

93. *See Commonwealth v. Spanier*, 192 A.3d 141, 154 (Pa. Super. 2018) (“Regarding the EWOC conviction, we have concluded that the language added in 2007 or, more appropriately, the language not included in the pre-2007 version, does not alter the result here.”).

94. *See id.* at 150 (“Specifically, the purpose of such juvenile statutes is defensive; they are written expansively by the legislature to cover a broad range of conduct in order to safeguard the welfare and security of our children.” (quoting *Commonwealth v. Lynn*, 114 A.3d 796, 818 (Pa. 2015))).

95. *See Commonwealth v. Lynn*, 114 A.3d 796, 818 (Pa. 2015) (“Generally speaking, under the rule of lenity, penal statutes are to be strictly construed, with ambiguities resolved in favor of the accused. In the peculiar context of EWOC, however, we have held that the statute is protective in nature, and must be construed to effectuate its broad purpose of sheltering children from harm.”).

the morality which most people entertain is sufficient to apply the statute to each particular case, and to individuate what particular conduct is rendered criminal by it.⁹⁶

b. Time Left on the Clock: Statute of Limitations

Another defense Spanier presented in opposition to his conviction was that the applicable statute of limitations had expired and, therefore, he was precluded from receiving a guilty verdict.⁹⁷ As was the case with the child endangerment statute, Spanier believed the incorrect statute of limitations was applied during his trial.⁹⁸ This assertion was based upon two theories: (1) the subsection detailing exceptions to the general statute of limitations was substantially amended subsequent to the 2001 events being examined at trial; and, (2) the defendant had not engaged in the classification of activity necessary for an exception to the statute of limitations to be considered.⁹⁹

Pennsylvania statute section 5552(a) provides that “prosecution for an offense must be commenced within two years after it is committed” unless the crime committed is included in the statute’s exceptions.¹⁰⁰ Currently, section 5552(c)(3) specifies that “[a]ny sexual offense committed against a minor who is less than 18 years of age any time up to the later of the period of limitation provided by law after the minor has reached 18 years of age or the date the minor reaches 50 years of age.”¹⁰¹ The subsection continues to define “sexual assault” by listing a variety of pertinent offenses, including “Section 4304 (relating to endangering the welfare of

96. *Id.* (explaining court’s interpretation of statute as broadly encompassing acts that may not otherwise be criminalized under narrow reading of statute).

97. *See Spanier*, 192 A.3d at 146 (“The Commonwealth filed its complaint against [Spanier] on November 1, 2012, more than eleven years after the February 9, 2001 offense and well outside of the general two-year limitations period of § 5552(a).”).

98. *See id.* at 147 (noting Spanier asserted prosecution as untimely).

99. *See id.* at 147–48 (reviewing Spanier’s arguments set out to avoid court’s finding of prosecution as timely).

100. *See id.* at 146 (“If the period prescribed in subsection (a) . . . has expired, a prosecution may nevertheless be commenced for [exceptions].”); *see also* 42 Pa. Cons. Stat. § 5552(c) (2014) (enumerating multiple exceptions to general statute of limitations).

101. 42 Pa. Const. Stat § 5552(c) (3) (emphasizing inadequacy of two-year statute of limitations for offenses against minors); *see also Spanier*, 192 A.3d at 146 (providing manner of calculating this law’s statute of limitations).

children).”¹⁰² On appeal, Spanier argued the version of section 5552 effective at the time of the 2001 offense should have been applied, rather than the current version.¹⁰³ The prior statute asserted the applicable statute of limitations exception was “for a sexual offense committed against a minor less than 18 years of age, prosecution could be commenced within two years after the victim’s 18th birthday.”¹⁰⁴ The lower and Superior Court, however, did not find Spanier’s argument persuasive because the victim of the 2001 incident had not yet surpassed eighteen by the time the revised and more protective version of section 5552(c)(3) was implemented.¹⁰⁵

At trial, the jury found Spanier guilty of misdemeanor child endangerment, as opposed to the higher degree felony child endangerment charge brought by the Commonwealth of Pennsylvania.¹⁰⁶ In order to convict for a felony offense of child endangerment, the jury needed to find that Spanier engaged in a “course of conduct,” which they did not.¹⁰⁷ Spanier incorrectly reasoned that this lack of “course of conduct” finding should bar his conviction altogether.¹⁰⁸ However, Pennsylvania law does not support such reasoning given that a finding of a child endangerment

102. § 5552(c)(3) (informing various avenues one may be implicated under crimes of sexual assault of minor); *see also Spanier*, 192 A.3d at 146 (highlighting only offense listed in subsection relative to review of this case).

103. *See Spanier*, 192 A.3d at 144-47 (noting that current version of statute took effect in 2007).

104. *Id.* at 147 (“Pursuant to the version of § 5552(c)(3) extant at the time of the 2001 offense, therefore, the Commonwealth had until two years after the victim’s 18th birthday to commence this prosecution against [Spanier].”).

105. *See id.* (“At trial, the Commonwealth presented unchallenged evidence that the victim was 10 to 12 years old at the time of his February 9, 2001 sexual assault. Therefore, on January 29, 2007, when the current version of § 5552(c)(3) took effect, the victim was no more than 18 years old. Because the existing statute had yet to expire at the time of its amendment, the amended statute applies to this prosecution.”).

106. *See id.* at 146 (“Established Pennsylvania law states a defendant can be convicted of a crime that was not actually charged when the uncharged offense is a lesser-included offense of the charged crime. As long as the conviction is for a lesser-included offense, the defendant will have been put on notice of the charges against him and can adequately prepare a defense.” (quoting *Commonwealth v. Houck*, 102 A.3d 443, 449-50 (Pa. Super. 2014))).

107. *See id.* (“At trial the Commonwealth sought a felony conviction for EWOC under § 4304(b)(1)(ii), which requires proof that the perpetrator engaged in a course of conduct. . . . The jury, however, found no course of conduct and therefore found [Spanier] guilty of the lesser-included misdemeanor offense under 18 Pa. Cons. Stat. § 4304(b)(1)(i).”).

108. *See id.* at 147 (“While it is true the jury’s rejection of a course of conduct defeated the Commonwealth’s attempt to secure a conviction for EWOC as a felony, [Spanier’s] argument that the rejection of a course of conduct finding rendered this prosecution untimely is misplaced.”).

misdemeanor charge does not require the jury to find that the defendant participated in a “course of conduct.”¹⁰⁹

Additionally, Spanier sought reconsideration of his conviction on the basis of him not actually abusing the minors.¹¹⁰ While the statute of limitations exception does apply directly to sexual offenses against minors, section 5552(c)(3) specifically cites sexual assault as encompassing the child endangerment statute.¹¹¹ The child endangerment statute lacks a requirement that the accused must have been the actual abuser in order to be found guilty.¹¹² Moreover, when analyzing the child endangerment statute, the court underscored its finding of the statute as one that is broad and protective in nature, and therefore directed its interpretation in favor of protecting children.¹¹³ Further, the appellate court referenced Pennsylvania law, which indicated that a statute articulated with sufficient specificity will not be construed as ambiguous under judicial review.¹¹⁴ For these reasons, the appellate court affirmed the correct statute of limitations was applied in the district court.¹¹⁵

109. *See* Commonwealth v. Spanier, 192 A.3d 141 (Pa. Super. 2018) (noting difference in elements that must be proven based on degree of conviction).

110. *See id.* at 149 (“[Spanier] also seeks to avoid the application of § 5552(c)(3) by arguing that he did not personally commit a sexual offense.”).

111. *See id.* at 146 (“Any sexual offense committed against a minor who is less than 18 years of age. . . As used in this paragraph, the term ‘sexual offense’ means a crime under the following provisions. . . Section 4304 (relating to endangering welfare of children)” (quoting Pa. Cons. Stat. § 5552(c)(3) (2019))).

112. *See* § 4304(a)(1) (“A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.”); *see also* Spanier, 192 A.3d at 150 (“Furthermore, § 4304, by its clear terms, does not require sexual misconduct on the part of the perpetrator.”).

113. *See* Spanier, 192 A.3d at 150 (“[W]e have held that the statute is protective in nature, and must be construed to effectuate its broad purpose of sheltering children from harm.”).

114. *See id.* (“[Spanier] would have us find statutory ambiguity where none exists, a course of action not permissible under the rules of statutory construction. 1 Pa. Cons. Stat. § 1921(b) (‘When the words of the statute are free and clear from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.’).”).

115. *See id.* (“Because § 5502(c)(3) clearly lists EWOC as a sexual offense, and because EWOC does not require the perpetrator to be the person committing sexual abuse, [Spanier]’s argument fails.”).

C. Defense Wins Championships: Responsive Revisions to Pennsylvania's Mandated Reporting Laws

1. *The Referees: Required Reporters*

Pennsylvania law mandates certain groups of individuals report suspected child abuse and specifically enumerates which groups are required to report instances of abuse.¹¹⁶ Some individuals include social service agency employees, school employees, foster parents, and leaders of religious organizations.¹¹⁷ Under the statute, those obligated to report suspected child abuse must only do so if they have “reasonable cause” to believe abuse is occurring.¹¹⁸

Categorizations of those required to report under Pennsylvania law were not always as broad as they are now.¹¹⁹ Changes resulting in this over-inclusivity have occurred in the last five years.¹²⁰ Previously, Pennsylvania statute section 6311(a) specifically included school nurses, teachers, and administrators.¹²¹ Notably, this version of the statute did not include coaches or any school personnel other than administrators, teachers, and nurses.¹²² Currently, the statute imposes the duty to report on any “school employee,” casting a wider net of responsibility throughout the institution and hopefully resulting in less cases of child abuse going unreported.¹²³ The inaction of Spanier and others who had knowledge of Sandusky's behavior sheds light on the importance of both mandating reporting by individuals who have knowledge of sexual misconduct and compelling bystanders through a legal obligation to protect

116. See 23 Pa. Cons. Stat. § 6311(a) (specifying an exclusive list through use of the word following in the state: “[t]he following adults shall make a report of suspected child abuse . . .”); see also Kelly, *supra* note 8, at 213 (“It is notable that Pennsylvania is currently one of 32 states that limits who is required to report suspected abuse by including this list of ‘mandated reporters.’”).

117. See § 6311(a)(1)–(16) (providing examples of only four out of sixteen categories listed as appointed as “Mandated Reporters”).

118. See *id.* (“The following adults shall make a report of suspected child abuse. . . if the person has reasonable cause to suspect that a child is a victim of child.”).

119. See Kelly, *supra* note 8, at 216 (“In Pennsylvania, there have been several proposed revisions to the statute enumerating mandated reporters of child abuse since November 15, 2011 (notably 10 days after Sandusky was arrested).”).

120. See § 6311 (noting effective date of July 1, 2015).

121. See § 6303 (current version at 23 Pa. Cons. Stat. § 6311(b) (2015)) (accentuating previously much smaller scale of mandated reporters).

122. See Kelly, *supra* note 8, at 216 (“On [November 15, 2011], the Senate proposed to add ‘school staff member,’ ‘school faculty,’ and ‘coach’ to § 6311(b).”).

123. See § 6311(a)(4) (“The following adults shall make a report of suspected child abuse. . . if the person has reasonable cause to suspect that a child is a victim of child abuse. . . [a] school employee.”).

children.¹²⁴ The conversations had by members of the Penn State administration behind closed doors represent the exact problems associated with *not* reporting this type of behavior.¹²⁵

2. *Throwing Flags: The Reporting Process*

Pursuant to Pennsylvania statute section 6311(c), when a person required to report suspected child abuse is acting in their “capacity as a member of the staff of a . . . school,” they must first act in accordance with the “reporting procedures” detailed in section 6313.¹²⁶ The reporting procedures necessitate the mandated reporter to immediately make an oral or written report to Child Protective Services (“CPS”).¹²⁷ Further, the statute dictates that, should someone choose to make an oral report, such reporter must follow-up by submitting a written report within forty-eight hours of the oral report to CPS.¹²⁸ Following the oral and written submissions, the reporter must then “immediately notify the person in charge of the . . . school” of the suspected abuse.¹²⁹ Once the person in charge is made aware of the reporter’s suspicion, that person is then tasked with ensuring the organization is cooperating adequately in the investigation.¹³⁰

Similar to expanding the list of persons identified as mandated reporters, Pennsylvania law has also significantly developed the prescribed process for these reporters in attempt to reduce cases that

124. For further discussion of the Penn State administration’s inaction and the consequences, see *infra* notes 40–62 and accompanying text.

125. For further discussion of the duty of care and the importance of reporting, see *infra* notes 78–98 and accompanying text.

126. See § 6311(c) (“Whenever a person is required to report . . . in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall report immediately in accordance with section 6313 . . .”).

127. See § 6313(a)(1) (“A mandated reporter shall immediately make an oral report of suspected child abuse to the department via the Statewide toll-free telephone number . . . or a written report using electronic technologies . . .”).

128. See § 6313(a)(2) (“A mandated reporter making an oral report . . . of suspected child abuse shall also make a written report, which may be submitted electronically, within 48 hours to the department or county agency assigned to the case in a manner and format prescribed by the department.”).

129. See § 6311(c) (“Whenever a person is required to report . . . that person shall report immediately in accordance with section 6313 and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.”).

130. See *id.* (“Upon notification, the person in charge or the designated agent, if any, shall facilitate the cooperation of the institution, school, facility or agency with the investigation of the report. Any intimidation, retaliation or obstruction in the investigation of the report is subject to [penalties under Pennsylvania law].”).

otherwise may have fallen through the cracks.¹³¹ Most notably, reporters are now instructed to directly communicate with CPS.¹³² Before its most recent amendment, section 6311 required reporting to CPS in much more limited circumstances.¹³³ In the previous version, only people “who, in the course of employment, occupation or practice of a profession, [came] into contact with children” were required to notify CPS of the suspected abuse.¹³⁴ The statute set out a different approach for the remainder of those listed as “persons required to report.”¹³⁵ Rather than file a report directly with CPS, as well as a subsequent report with senior personnel at their school, section 6311(c) instructed required reporters to simply tell the person in charge of the school about the suspected abuse.¹³⁶ At that point, the person in charge would “assume the responsibility and have the legal obligation to report or cause a report to be made”¹³⁷

3. *Loss of Yardage: Penalties Imposed*

A major distinction between required reporters and encouraged or voluntary reporters is the repercussions at stake for failing to report an incident.¹³⁸ With the development of section

131. See Kelly, *supra* note 8, at 217 (“The legislature also proposed revisions to the reporting procedure . . .”).

132. See *id.* (emphasizing CPS’s heightened role).

133. See *id.* at 215 (“Under [Pennsylvania’s] current law . . . football coach Joe Paterno . . . only had a duty to report to someone above him in the school’s hierarchy.”).

134. See § 6311(a) (“Persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when they have reason to believe, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child.”).

135. See § 6311 (2007) (current version at § 6311(c)) (referring to differences between “general rule” and specifically described staff members’ obligations).

136. See *id.* (“Whenever a person is required to report . . . in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.”).

137. *Id.* (“Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.”).

138. See Anna Stolley Persky, *The Penn State Scandal: Child Abuse Reporting Laws*, 26 WASH. LAW. 23, 28 (2012) (“Pennsylvania lawmakers . . . are looking at tougher penalties for individuals who have a duty to report, but fail to do so.”).

6311 came reforms to section 6319, which outlines potential penalties required reporters face if they forego their legal obligations.¹³⁹

Pennsylvania has consistently used a tiered system to determine the appropriate punishment for a required reporter neglecting their reporting duty.¹⁴⁰ Originally, section 6319 treated an individual's first failure to report equivalent to low-level crimes, such as loitering and disorderly conduct.¹⁴¹ Any violations following the first offense were characterized as a third-degree misdemeanor.¹⁴² The first reformation of section 6319 converted the penalties for a first offense to a third-degree misdemeanor and for any subsequent offenses to second-degree misdemeanors.¹⁴³ Presently, the statute does not solely differentiate degrees of punishment based on the number of violations committed.¹⁴⁴ There are now two subsections detailing events in which a required reporter's failure to disclose child abuse may result in a felony charge.¹⁴⁵ One instance in which a reporter may be charged with a felony is if the reporter "willfully fails" to report child abuse they had "direct knowledge" of, and such abuse amounted to at least a felony of the first degree.¹⁴⁶ The

139. *See id.* at 28 ("Pennsylvania lawmakers are discussing changing the requirements on to whom a report must be made. They also are looking at tougher penalties for individuals who have a duty to report, but fail to do so."); *see also* §§ 6311, 6319 (noting effective dates of most recent versions are December 31, 2014 and July 1, 2015).

140. *See* § 6319 (regulating required reporters' penalties consistently based on number of times reporter had duty to report but did not).

141. *See* § 6319 (2007, 2014) (current version at 23 Pa. Cons. Stat. § 6311(b) (2015)) ("A person or official required by this chapter to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation . . ."); *see also* *Summary Offenses in Pennsylvania*, CMTY. LEGAL SERVS., (Apr. 22, 2014), <https://clsphila.org/learn-about-issues/dealing-summary-offenses> [<https://perma.cc/4K62-ZUWA>] ("A summary offense is the most minor type of criminal offense in Pennsylvania, and is often called a 'non-traffic citation.' A conviction for a summary offense usually results in a fine.").

142. *See* § 6319 ("A person or official required by this chapter to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.").

143. *See id.* ("A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities who willfully fails to do so commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation."). This version became effective in 2007. *Id.* (noting date of enactment).

144. *See* § 6319(a)(3) ("An offense not otherwise specified in paragraph (2) [as a felony of the third degree] is a misdemeanor of the second degree.").

145. *See* § 6319 (detailing penalties based on their corresponding offense and/or degree).

146. *See* § 6319(a)(2) ("An offense under this section is a felony of the third degree if: (i) the person or official willfully fails to report; (ii) the child abuse

second way a reporter can be charged with a felony is by a showing of repetitive failure to report child abuse.¹⁴⁷ Furthermore, mandatory reporters may be subject to lesser-included charges of misdemeanors in the first or second degree.¹⁴⁸

Additionally, the current version of section 6319 is the first to address the statute of limitations for the offenses.¹⁴⁹ Prior to this version's enactment, it could be inferred that the general statute of limitations would have been applied.¹⁵⁰ During the effective periods of the previous versions of section 6319, the statute of limitations for bringing suit against an abuser for the physical assault of a minor was five years after the child's eighteenth birthday, and subsequently extended to twelve years after the child's eighteenth birthday.¹⁵¹ Accordingly, a mandated reporter who failed to report suspected child abuse would not face legal punishment if the victim did not disclose their abuse until after two years had passed.¹⁵² The Pennsylvania legislature acknowledged this potentially unsatisfactory consequence and, in turn, included a statute of limitations pro-

constitutes a felony of the first degree or higher; and (iii) the person or official has direct knowledge of the nature of the abuse.”).

147. See § 6319(c) (“A person who commits a second or subsequent offense under subsection (a) commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offenses is a felony of the second degree.”).

148. See § 6319(a)(3) (“An offense not otherwise specified in paragraph (2) [as a felony of the third degree] is a misdemeanor of the second degree.”); see also § 6319(b) (“If a person's willful failure under subsection (a) continues while the person knows or has reasonable cause to believe the child is actively being subjected to child abuse, the person commits a misdemeanor of the first degree[.]”).

149. See § 6319 (lacking any reference to statute of limitations).

150. See § 5552–5553 (2019) (providing statute of limitations of two years for misdemeanors and thirty days for summary offenses).

151. See § 5552(c)(3) (“If the period prescribed. . . has expired, a prosecution may nevertheless be commenced for. . . any sexual offense committed against a minor who is less than 18 years of age any time up to the period of limitation provided by law after the minor has reached 18 years of age.”); see also § 5552(b.1) (“A prosecution for any of the following offenses . . . must be commenced within 12 years after it is committed . . . sexual abuse of children.”); § 5552(b) (“A prosecution for any of the following offenses must be commenced within five years after it is committed. . . sexual abuse of children.”).

152. See Alyssa Choiniere, *Local experts say shame, trauma delay reporting of child sex abuse*, HERALD STANDARD (Aug. 19, 2018), https://www.heraldstandard.com/new_today/local-experts-say-shame-trauma-delay-reporting-of-child-sex/article_e8bbb195-099d-55ee-ac32-0e8c252c90cd.html (“It is common for victims to come . . . for counseling and other services after the statute of limitations has passed[.] Sometimes victims report sexual assault to the district attorney's office beyond the statute of limitations[.]”). Consider this untimely reporting, which, when applied to previous versions of § 5552, already gave a child who had been sexually assaulted up until thirty years of age to report the abuse, as opposed to the mere two years previously allotted for penalizing mandated reporters' offenses (comparing inconsistent attributions of time for offenses revolving around identical events).

vision in the most recently enacted section 6319.¹⁵³ This provision asserts that the statute of limitations for charging a mandatory reporter who neglects to report suspected child abuse may be based on the statute of limitations of either the crime committed by the abuser, or five years after the minor's eighteenth birthday, whichever is greater.¹⁵⁴

D. Penn State's New Play Book: The Freeh Report Recommendations

Following the outrage that erupted once Sandusky's actions became public knowledge, Penn State's Board of Trustees hired the law firm of Louis Freeh, a former federal judge and director of the FBI, to conduct an internal investigation.¹⁵⁵ Specifically, this investigation's aim was to identify omissions and oversights within the University's hierarchy system of reporting and recognition of abuse.¹⁵⁶ The report (hereinafter the "Freeh Report") concludes with recommendations for the University to implement in order to ensure such failures will not be repeated in the future.¹⁵⁷

The Freeh Report began its description of the investigation's findings boldly: "The most saddening finding by the Special Investigative Counsel is the total and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky's child victims."¹⁵⁸ In the explanation of its findings, the report dis-

153. See § 6319(d) (containing a new subsection solely addressing statute of limitations, effective December 31, 2014).

154. 23 Pa. Cons. Stat. § 6319(d) (emphasizing change in statute).

155. See Kelly, *supra* note 8, at 211 ("On July 12, 2012, Louis J. Freeh, a former director of the F.B.I. hired by Penn State trustees, issued a report. . . explaining the failures of top officials in the chain of command at Penn State."); see also Will Hobson, *Six Years Later; Penn State Remains Torn Over the Sandusky scandal*, WASH. POST (Dec. 28, 2017), https://www.washingtonpost.com/graphics/2017/sports/penn-state-six-years-after-sandusky-scandal/?utm_term=.2d04fb1af668 ("A former federal judge who led the FBI from 1993 until 2001, Freeh had entered the lucrative world of leading internal investigations for troubled organizations. This assignment, which earned his firm \$8.3 million, was his most high-profile case.")

156. See Freeh Report, *supra* note 11, at 8 ("FSS was asked to perform an independent, full and complete investigation of: the alleged failure of Pennsylvania State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach . . . ; the circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.").

157. See *id.* ("In addition, the Special Investigative Counsel was asked to provide recommendations regarding University governance, oversight, and administrative policies and procedures that will better enable the University to prevent and more effectively respond to incidents of sexual abuse of minors in the future.").

158. *Id.* at 14 (condemning Penn State administration for perpetuating problem).

cusses Spanier, Curley, Schultz, and Paterno's failure to inquire further about the 2001 incident.¹⁵⁹ The report further touched upon their absence of empathy or regard for the child abused during the incident, as well as the unrestricted and unsupervised access to the University's football facilities provided to Sandusky.¹⁶⁰ Additionally, the report attributed blame to the Board of Trustees for neglecting to supervise University officials, as well as exhibiting an overall lack of awareness of reporting policies.¹⁶¹

Freeh's counsel provided the Board with one hundred twenty recommendations and categorized them into eight target areas, with an overarching goal of enhancing protections for children at Penn State.¹⁶² Among these target areas were "Penn State Culture", "Monitoring Change and Measuring Improvement", "Board of Trustees Responsibilities and Operations", and "Programs for Non-Student Minors and Access to Facilities."¹⁶³ Further recommendations included creating an ethics council, decreasing the independent power of University executives, establishing a way to track all mandated employee training, promoting accessibility and encouragement to report concerns, and closely monitoring children participating in youth programs on Penn State's campus.¹⁶⁴ One of the sanctions imposed on Penn State by the NCAA was a require-

159. *Id.* (criticizing their hands-off approach to reports of Sandusky's activity).

160. *See id.* at 14–15. ("[Spanier, Schultz, Curley and Paterno] exhibited a striking lack of empathy for Sandusky's victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001. Further . . . [they] empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims.").

161. *See id.* at 15 (addressing Spanier, Schultz, Curley and Paterno's actions, made capable through being "unchecked by the Board of Trustees that did not perform its oversight duties . . .").

162. *See id.* at 17–18 ("From the results of interviews . . . and benchmarking similar practices at other large universities, the Special Investigative Counsel developed 120 recommendations for consideration by University administrators and the Board . . . These steps should assist the University in improving structures, policies and procedures that are related to the protection of children.").

163. *See* Freeh Report, *supra* note 4, at 17 (listing all eight areas for improvement, and others of which were Administration and General Counsel Structure, Policies and Procedures, Compliance Risk and Reporting Misconduct, Athletic Department Integration and Compliance, and University Police Department Oversight, Policies and Procedures).

164. *See id.* at 127–44 (listing all 120 recommendations in one chapter, divided into eight sub-chapters).

ment to adopt all 120 of the recommendations presented in the Freeh Report.¹⁶⁵

E. Benched and Berated: Responses and Repercussions from the NCAA

The National Collegiate Athletics Association (“NCAA”), founded in 1906, is the central agency for college athletics consisting of over 1,200 university-level institutions.¹⁶⁶ In addition to the commonplace issues faced when regulating collegiate athletics, such as the hosting of events and determination of eligibility standards, the NCAA has tasked itself with holding the leagues, teams, and players’ conduct and ethics to high standards.¹⁶⁷ Because the NCAA regulates its member institutions, punishment primarily arises out of an institution’s violation of or non-compliance with NCAA promulgated rules.¹⁶⁸

The NCAA’s punitive response to the incidents at Penn State was heavily criticized, with advocates on both sides of the argument.¹⁶⁹ The association’s involvement was heavily debated due in

165. See Brian L. Porto, *Can the NCAA Enforcement Process Protect Children from Abuse in the Wake of the Sandusky Scandal*, 22 WIDENER L.J. 555, 576 (2013) (“Indeed, the first requirement that the corrective component of the NCAA sanctions imposes on Penn State is to ‘adopt all recommendations for reform delineated in Chapter 10 of the Freeh Report.’”).

166. See *id.* at 558–59 (“The NCAA is a voluntary association comprised of more than 1,200 public and private four-year colleges and the athletic conferences to which they belong.”); see also Vincent Nicastro, Deputy Commissioner for the Big East Conference & Adjunct Professor for Villanova University Charles Widger School of Law, (Jan. 23, 2019) (presenting on history of NCAA, which was initially founded in 1906 as Intercollegiate Athletics Association and changed name to NCAA in 1910).

167. See Porto, *supra* note 165, at 559 (“[The NCAA’s] stated mission is ‘to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports.’ Accordingly, the NCAA is a regulatory body. It ‘regulates athletic competition among its members’ (for example, establishing game rules, eligibility standards for athletes, lengths of competitive seasons, etc.), ‘conducts championship events . . . enters into television and promotional contracts relat[ed] to [those] . . . events, and enters into agreements to license the NCAA name and logos.’”); see also Nicastro, *supra* note 166 (presenting on the history of the NCAA, providing its “initial purpose of ‘the regulation and supervision of college athletics throughout the US, in order that athletic activities . . . may be maintained on an ethical place in keeping with the dignity and high purpose of education’”).

168. See Porto, *supra* note 165, at 559 (“As part of its regulatory role, the NCAA investigates allegations of rules violations, adjudicates disputes arising from those allegations and penalizes the guilty parties.”).

169. See Hobson, *supra* note 9 (regarding an executive’s criticism of the way Penn State administration handled the scandal, “[w]hile some of . . . the trustees nodded their heads in agreement, some of the remaining . . . rolled their eyes or shook their heads in frustration. Some walked out”).

part to a lack of precedent with similar situations.¹⁷⁰ Scrutiny faced by the NCAA in this case primarily stemmed from the organization pivoting from its customary practice to circumvent involvement when allegations of criminal behavior are made against program members.¹⁷¹ Even when team doctors and student-athletes had been accused of sexual assault, the NCAA unwaveringly took a hands-off approach.¹⁷² The NCAA's past avoidance makes its involvement in this case even more surprising.¹⁷³ While the broader events implicated members of an NCAA institution's coaching staff, Sandusky was not a coach at the time of the McQueary incident and no athletes were involved in the crimes as either abuser or victim.¹⁷⁴ Further, the role of the NCAA in administering sanctions against teams has historically been confined to violations against the institu-

170. See Doug Lederman, *The NCAA Crosses a Line*, INSIDE HIGHER ED. (Nov. 23, 2011), <https://www.insidehighered.com/news/2011/11/23/ncaa-inquiry-penn-state-unprecedented-involvement-criminal-matter> [<https://perma.cc/35SA-NT8R>] (criticizing NCAA for acting outside the scope of its governance in punishing Penn State when NCAA regulations did not explicitly govern criminal behavior); see also Porto, *supra* note 165, at 555–57 (“[T]he customary critique morphed into a concern that the ad hoc procedure the NCAA used in the Penn State case would become the Association’s standard enforcement process, or at least its established emergency model, in the future.”).

171. See Lederman, *supra* note 174 (reviewing NCAA handling of Penn State case).

172. See Cheyna Roth, *The NCAA Tells Michigan State No Rules Violated in Larry Nassar Scandal*, NPR (Aug. 30, 2018, 5:37 PM), <https://www.npr.org/2018/08/30/643465851/the-ncaa-tells-michigan-state-no-rules-violated-in-larry-nassar-scandal> [<https://perma.cc/7UMY-7VVU>] (reporting on the NCAA’s finding zero violations against former Michigan State University’s team physician who has been found guilty of sexually abusing over 150 women); see also Joe Drape and Marc Tracy, *A Majority Agreed She Was Raped by a Stanford Football Player. That Wasn’t Enough*, N.Y. TIMES (Dec. 29, 2016), <https://www.nytimes.com/2016/12/29/sports/football/stanford-football-rape-accusation.html> [<https://perma.cc/6QUV-CWP3>] (quoting member of NCAA Commission to Combat Campus Sexual Violence, stating he did not see reason to suspend Stanford football player found to have committed sexual assault); see also Anya Alvarez, *The NCAA Must End Their Silence on Sexual Violence in College Sports*, GUARDIAN (Jun. 15, 2018), <https://www.theguardian.com/sport/2018/jun/15/the-ncaa-must-end-their-silence-on-sexual-violence-in-college-sports> [<https://perma.cc/K3EH-2V8F>] (disclosing receipt of full scholarship by NCAA member institution University of Central Oklahoma to football player who took plea for charge of rape against him).

173. See Roth, *supra* note 176 (discussing NCAA’s handling of Michigan State); Drape & Tracy, *supra* note 176 (reviewing NCAA’s handling of Stanford); Alvarez, *supra* note 176 (reporting on NCAA’s handling of Central Oklahoma).

174. See *id.* at 556 (“[I]t involved no wrongdoing (for example, violation of NCAA rules) by an athlete, unlike most college sports scandals, which feature athletes accepting improper inducements to attend a particular college or under-the-table payments after they enroll, or perhaps receiving passing grades for courses in which they did no work or excessive academic assistance from tutors.”).

tion's own bylaws, rather than in response criminal activity.¹⁷⁵ Rather than utilize its normal adjudicative process, the NCAA relied on the evidence and holdings presented in court to determine the infractions and penalties appropriate for Penn State.¹⁷⁶ The NCAA reasoned that their own proceedings would not have resulted in a data compilation as extensive as the Freeh Report.¹⁷⁷

Following the NCAA's response, Penn State and the NCAA entered into a consent decree in July 2012, agreeing that the Freeh Report presented findings of NCAA constitution and bylaws violations.¹⁷⁸ While the NCAA cited specific provisions of its founding documents that were breached, the consent decree more generally referenced broad expectations of NCAA institutions that were not met by Penn State under the circumstances.¹⁷⁹ Specifically, the

175. See Hobson, *supra* note 9 (“The NCAA traditionally didn’t venture into criminal matters at universities, instead dealing with rules violations within athletics.”).

176. See Porto, *supra* note 165, at 574 (“[T]he Supreme Court of the United States has held that the NCAA is not a ‘state actor’ for purposes of the Fourteenth Amendment, which means that it is not required to provide due process to institutions and individuals accused of violating its rules.”); see also *id.* at 559–564 (“If the NCAA decides to investigate, the president of the subject institution will receive a ‘notice of inquiry’ . . . [t]he notice of allegations will notify the accused institution of the alleged violations of NCAA rules uncovered by the enforcement staff . . . the institution and accused individuals will have [ninety] days in which to respond . . . [a]fter the institution responds, the parties attend a prehearing conference to identify the issues . . . [a]n accused institution may choose not to contest the charges against it, opting instead for ‘summary disposition’ . . . [e]nforcement matters not resolved by summary disposition proceed to a hearing before the [Committee on Infractions] . . . during hearings, the COI considers allegations brought by the enforcement staff, reviews documentary evidence and records of witness testimony, makes factual findings, and imposes penalties if it concludes that violations have occurred[.]”).

177. See *id.* at 569 (“[T]he need for an NCAA investigation was obviated here by the evidence resulting from the criminal investigation of Sandusky by Pennsylvania authorities and from the investigative [Freeh] report . . . which Penn State had commissioned. The Freeh Report was based on interviews with more than 430 persons . . . and on the analysis of more than 3.5 million pieces of electronic data and documents. The NCAA would have been hard-pressed to match that degree of thoroughness and, even if it had, its report likely would have been duplicative of the Freeh Report.”).

178. See *id.* at 570 (“Based on the findings of that [Freeh Report], the NCAA and Penn State signed a consent decree dated July 23, 2012, in which Penn State (1) acknowledged that facts found by the Freeh Report amounted to violations of the NCAA’s constitution and bylaws and (2) accepted the consent decree and waived any right it would otherwise have to an enforcement hearing before the COI, an appeal . . . or judicial review of the subjects of the consent decree.”).

179. See *id.* at 573–74 (“[I]n the Penn State case, reflecting the inapplicability of NCAA bylaws to criminal behaviors . . . the findings reveal violations . . . of general principles underlying the Association’s governance of college sports.”); see also *id.* at 571–72 (“Noting that ‘[t]he NCAA seeks to foster an environment and culture of honesty,’ the consent decree specifically referenced, as indicative of that aim, Bylaws 10.01.1 (requiring coaches, athletes, and academic administrators to

consent decree stated that Penn State “fail[ed] to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program”¹⁸⁰ The consent decree continued by declaring that Penn State exhibited “unethical conduct,” lacked maintenance of “minimal standards of appropriate and responsible conduct,” and failed to adhere to “fundamental notions of individual integrity.”¹⁸¹

Relying on the Freeh report, the NCAA accepted the conclusion that Spanier, Schultz and Curley neglected to inform authorities about Sandusky’s misbehavior “‘to avoid the consequences of bad publicity’ for the University and its cherished football program by ‘repeatedly conceal[ing] critical facts relating to Sandusky’s child abuse.’”¹⁸² The consent decree also partially attributed the administration’s oversight of Sandusky’s abuse to the loyalty and admiration exhibited towards Penn State’s football program.¹⁸³ Consequently, the NCAA issued a variety of sanctions against the University and football team.¹⁸⁴

Penn State feared the NCAA violations would result in the so-called “death penalty,” which would cancel the next year’s football season.¹⁸⁵ It is speculated that Penn State’s agreement to enter

‘act with honesty and sportsmanship at all times’); 10.1 (providing examples of errors of omission or commission amounting to ‘unethical conduct’ under NCAA rules); and 11.1.1. (. . . requiring athletic administrators and coaches to ‘act with honesty and sportsmanship at all times’) . . . [T]hey violated Bylaw 19.01.2, which requires employees associated with college athletic programs to model ethical behavior in order ‘for intercollegiate athletics to promote the character development of participants to enhance the integrity of higher education [,] and to promote civility in society.’”).

180. *Id.* at 570 (describing penalty rationale as holistic, rather than specific).

181. *Id.* at 571 (explaining which provisions of NCAA rules were violated).

182. Porto, *supra* note 165, at 572 (discussing Spanier’s, Schultz’s, and Curley’s intentional concealment).

183. *See id.* at 573 (“Also contributing to that failure were . . . [a] ‘culture of reverence for the football program that [was] ingrained at all levels of the campus community’ at Penn State.”).

184. *See id.* at 575 (“Like the process the NCAA followed in the Penn State case, the penalties it imposed were somewhat unusual, particularly because they included not only the customary punitive component, but a corrective component too.”).

185. *See* Hobson, *supra* note 9 (“Rumors swirled that the NCAA was considering imposing the ‘death penalty,’ the cancellation of an entire football season.”); *see also* *Penalties – Frequently Asked Questions*, NCAA ENFORCEMENT PROCESS, <http://www.ncaa.org/enforcement/enforcement-process-penalties> [<https://perma.cc/W45D-4X9D>] (last visited Jan. 28, 2020) (providing list of circumstances and elements NCAA considers when determining whether to give death penalty); *see also* Eric Dodds, *The ‘Death Penalty’ and How the College Sports Conversation Has Changed*, TIME (Feb. 25, 2015), <https://time.com/3720498/ncaa-smu-death-penalty/>

into a consent decree, rather than participate in an NCAA investigation process, was principally decided in order to avoid the death penalty.¹⁸⁶ Although Penn State successfully evaded the death penalty, the football program was unable to escape harsh punishments.¹⁸⁷ In addition to a sixty million dollar fine, the NCAA also banned the football team from participation in any postseason games for four years, decreased the amount of scholarship money available for future players, and retracted the football team's wins from the first year the administrators were made aware of Sandusky's child abuse.¹⁸⁸ The reduction in wins was especially impactful for Penn State football fans because it resulted in removing Coach Paterno's record as the "winningest" coach of college football.¹⁸⁹

A lawsuit emerged when the NCAA rejected Pennsylvania lawmakers' request to spend the sixty million dollars from Penn State in Pennsylvania.¹⁹⁰ This lawsuit generated unfavorable evidence for the NCAA, including communications between NCAA personnel about imposing punishment on Penn State solely to enhance the NCAA's reputation, rather than punish the school for its bad acts.¹⁹¹ Additional documentation indicated that NCAA officials had not only failed to thoroughly review the Freeh Report, but

[<https://perma.cc/6K58-JTRN>] (detailing events surrounding NCAA's creation and first use of "death penalty" against Southern Methodist University for paying its football players in 1987).

186. *See id.* ("Do whatever you need to do to keep the NCAA from giving us the 'Death Penalty,' [one] trustee . . . wrote In response to alumni outrage, [then University president] Erickson explained that NCAA officials had made clear Penn State had no choice to avoid the death penalty. [President of the NCAA] Emmert indicated that [Penn State's] only chance to avoid a death penalty along with sanctions might be to opt for a consent decree It was a take-it-or-leave-it proposition.") (internal quotation marks omitted).

187. *See id.* ("While Penn State leaders were relieved to avoid the death penalty, some alumni seethed.")

188. *See* Porto, *supra* note 165, at 575–76 (recounting all punishments given to Penn State).

189. *See* Hobson, *supra* note 9 ("[V]erdict capped an unimaginable downfall for Paterno, who just eight months before seemed poised to retire as the winningest, most respected head coach in the history of college football. In 46 years as head coach, he had piled up 409 wins and two national championships . . .").

190. *See id.* (discussing spending clash between NCAA and Pennsylvania lawmakers).

191. *See id.* ("One staffer, in an email, wrote that NCAA punishments for Penn State would be unneeded and excessive, but 'new NCAA leadership is extremely image conscious, and if they conclude that pursuing allegations against PSU would enhance the association's standing with the public, then an infractions case could follow.'").

had not reviewed the report whatsoever.¹⁹² Ultimately, the NCAA settled the case, agreeing to spend Penn State's fine within the state, as well as the restoration of the team's wins.¹⁹³

III. DRAFTING PLAYS AND MAKING PROJECTIONS: ANALYSIS

A. Call Overturned After Replay Review: Applying Reformed Pennsylvania Mandated Reporting Laws to the Sandusky Scandal

To an uninterested third-party, it may seem as if the edits to the Pennsylvania Child Protective Services statutes, particularly those made to section 6311, consist of only slightly different ways to convey the same ideas.¹⁹⁴ Analyzing the changes in light of the Sandusky scandal, however, proves the revisions make an impactful difference.¹⁹⁵

Although the negligent actions of Spanier, Curley, and Schultz served as the basis for their prosecution, their punishments were lenient in comparison to the extent of their involvement.¹⁹⁶ Previous versions of Pennsylvania law only designated Spanier, Curley, and Schultz as "responsible for reporting" during the exchange of information about the 2001 event, which was not an expansive enough network to ensure protection.¹⁹⁷ Spanier's, Curley's, and Schultz's positions classified them as "school administrators," and therefore, each were reporters within the statute's scope.¹⁹⁸ Mc-

192. *See id.* ("[NCAA executive committee chair] acknowledged he never actually read the report because he was vacationing in Hawaii at the time.")

193. *See id.* ("In January 2015, the case settled. The NCAA agreed to spend the money in Pennsylvania and reduced other sanctions, including restoring Paterno's win total to 409.")

194. *See* § 6311 (2007, 2015) (comparing revisions of applicable statutory language throughout different versions).

195. *See* Kelly, *supra* note 8, at 225 (concluding that efforts of multiple state legislatures to revise mandatory reporter statutes seek to "better protect children" through "preventing a reoccurrence of a scandal like that involving Sandusky and Penn State").

196. *See generally* Hobson, *supra* note 9 ("Three former Pennsylvania State University administrators, including former president Graham Spanier, were each sentenced to serve at least two months in jail Friday for failing to alert law enforcement about a 2001 incident involving retired football coach Jerry Sandusky and a boy in the campus shower."). For further discussion of the facts and the aftermath of the 2001 event, *see supra* notes 45–56 and accompanying text.

197. *See* § 6311(a) (enumerating required reporters, which at time included school administrators, but not school employees generally).

198. *See id.* (requiring any school administrator to report suspected instances of child abuse); *see also* Commonwealth v. Spanier, 192 A.3d 141, 142 (Pa. Super. 2018) (providing title for Spanier (President), Schultz (Vice President for Finance and Business), and Curley (Athletic Director)).

Queary and Paterno, however, were not obligated to report because school coaches and employees were absent from section 6311's enumerated list.¹⁹⁹ Regardless, McQueary and Paterno followed the chain-of-command reporting policy laid out for required reporters in the statute.²⁰⁰ The outcome of the events surrounding the McQueary incident proved Penn State's hierarchical structure was clearly insufficient to ensure the safety of children.²⁰¹

According to past Pennsylvania law, Curley and Schultz fulfilled what was demanded of them under the statute by bringing the report of suspected abuse to the university's premier executive.²⁰² As the University's President, Spanier alone was tasked with expediting the report to CPS for inspection.²⁰³ Conversely, had the current version of section 6311 been effective, McQueary, Paterno, Curley, Schultz, and Spanier all would have been legally required to first and foremost report the suspected abuse to CPS.²⁰⁴ Moreover, they each would have been responsible for complying with the section 6313 standards in their reports to CPS to guarantee the reported suspicion would be investigated.²⁰⁵ Only after completing reports with CPS would McQueary, Paterno, Curley, and Schultz have needed to adhere to the statute's secondary measure

199. See § 6311(a) (requiring that any school administrator, but not any employee, coach or student, report suspected instances of child abuse); see also *Spanier*, 192 A.3d at 143 (providing roles of Paterno and McQueary).

200. See § 6311(c) (instructing required reporters to inform their superiors of suspected abuse); see also *Spanier*, 192 A.3d at 143 (detailing timeline of reporting from each subordinate to their superior during February 2001).

201. See *Spanier*, 192 A.3d at 143 ("After speaking with Sandusky and Raykovitz, Curley informed [Spanier] and Schultz that he had done so. Curley never contacted [the Department of Welfare], Children and Youth Services, or the police. Further, Curley did not inform campus police . . .").

202. See § 6311(c) (instructing school administrators to inform person in charge of school of suspected abuse); see also *Spanier*, 192 A.3d at 143 (describing Curley and Schultz's disclosure to Spanier on February 12, 2001 regarding what McQueary had witnessed three days prior).

203. See § 6311(c) (passing legal responsibility to the person in charge that the required reporter notified: "Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made").

204. See § 6311(a)-(c) (requiring school employees to report suspected child abuse immediately to authorities — whether McQueary would have been required to notify the State is dependent upon whether graduate assistant is considered school employee or if they retain their student status).

205. See § 6313(a) (mandating that any reporter who makes oral report of suspected abuse must also follow-up with written report within forty-eight hours of their original report).

of protection for the child by notifying their superiors of the suspected abuse.²⁰⁶

Further, the penalties faced by the mandated reporters would have rightfully been much more excessive if the currently effective statutes had been in place.²⁰⁷ Today, Paterno, Curley, Schultz, and Spanier would [each] have been charged with at least one felony of the third degree for their involvement in ignoring Sandusky's behavior.²⁰⁸ Additionally, if the state could prove the reporters had reason to believe Sandusky was still abusing children, it could have charged the mandatory reporters with multiple third-degree felonies under the "continuing course of action" section of the statute.²⁰⁹ Lastly, the Pennsylvania Legislature's implication of the statute of limitations is detrimental to cases given that many instances of child abuse are not reported within two years.²¹⁰

B. Left in the Dust: Absence of Justice for Sandusky's Subsequent Abuse Victims

While the changes to Pennsylvania's mandated reporting laws are a step in the right direction to protect children from abuse, more still can, and should, be done to punish those whose ignorance left children in a vulnerable state.²¹¹ Although these revisions would have held Spanier, Graham, Curley, and Paterno more accountable for the victim involved in the McQueary incident, the four victims who were abused by Sandusky subsequent to that incident may not have been abused if Sandusky was immediately reported in 2001.²¹²

206. See § 6311(a)–(c) (requiring school employees to report suspected child abuse immediately to authorities, and thereafter notify person in charge of school).

207. See § 6319 (comparing current and previous versions).

208. See *id.* (contrasting current and previous versions of statute).

209. See *id.* (discussing § 6319's updated penalties).

210. See Pennsylvania Coalition Against Rape, *PCAR urges legislators to remove the statute of limitations for child sexual assault cases*, PA COALITION AGAINST RAPE (Aug. 14, 2018), <http://www.pcar.org/news/pcar-urges-legislators-remove-statute-limitations-child-sexual-assault-cases> [<https://perma.cc/UCG8-M3CA>] (discussing strong efforts towards eliminating statute of limitations for sexual assault of minors because "[t]he experience of sexual assault often causes victims to feel confused, scared, embarrassed, shamed and humiliated. When people who perpetrate abuse also manipulate the naivete of youth, these feelings are exacerbated. This is why it is normal for survivors of sexual assault to wait years and decades before telling anyone what was done to them").

211. See §§ 6311–19 (comparing previous version of statute to current version).

212. See 18 Pa. Cons. Stat. § 3123 (2003) (defining involuntary deviate sexual intercourse with minor as first-degree felony); see also 18 Pa. Cons. Stat.

Currently, the mandated reporting laws have expanded penalties imposed on mandated reporters to address instances in which a child's offender continues to abuse the child.²¹³ This portion of the law provides liability for additional charges when "a person's willful failure . . . continues while the person knows or has reason to believe the child is actively being subjected to abuse"²¹⁴ The present provision limits the liability of the reporter in two ways: (1) when a reporter "knows or has reasonable cause to believe," and (2) the abuse is being committed against "a child the reporter was aware of."²¹⁵

In order to protect future potential victims, the Pennsylvania legislature should expand this provision to safeguard a broader audience.²¹⁶ First, lawmakers should elaborate on what constitutes a "reasonable cause to believe."²¹⁷ In doing so, a *per se* rule should be implemented to mandate a reporter who is aware of a child abuse occurrence, but has not reported that person, or knows that person has not faced investigation or prosecution by law enforcement, should assume the abuse is continuing.²¹⁸ Under the current law, this loophole works in favor of ignorance by the reporter, who will have the ability to avert responsibility by claiming they had no "reasonable cause to believe" the abuse continued to happen after

§ 106(b)(2) (1997) ("A crime is a felony of the first degree . . . a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is more than ten years."); *Commonwealth v. Spanier*, 192 A.3d 141, 142 (Pa. Super. 2018) ("After speaking with Sandusky and Raykovitz, Curley informed [Spanier] and Schultz that he had done so. Curley never contacted DPW, Children and Youth Services, or the police . . . McQueary continued to observe Sandusky in the Lasch Building after hours. Sandusky subsequently abused at least four more young boys, including one in the Lasch Building shower in the summer of 2002.") (detailing timeline of Penn State officials discussing 2001 incident with one another without bringing issue to authorities, followed by Sandusky's continuation of abusive behavior).

213. *See* § 6319 (discussing penalties for failing to report child abuse).

214. *Id.* (explaining statute's imposition of liability for person exhibiting willful ignorance of child abuse).

215. *Id.* (providing criterion that must be met to be held liable for inaction as mandated reporter).

216. *See* Peter Garsden, *Mandatory Reporting – The Legal Case for Change*, 2 IALS L. REV. 29, 32–35 (2014) (discussing enhanced sentences for repeat offenders, but not repeat ignorers).

217. *See* § 6319(b) ("If a person's willful failure under subsection (a) continues while the person knows or *has reasonable cause to believe* the child is actively being subjected to child abuse") (emphasis added).

218. *See* Zachary Myers, *Enhanced Sentences for Repeat Sexual Offenders Against Children*, 63 U.S. ATT'YS. BULL. 65, 65 (2015) ("Furthermore, many offenders who are identified and prosecuted have been previously accused or convicted of sexual offenses involving minors.").

the first event.²¹⁹ It is in the best interest of public policy for any suspicion whatsoever to be looked into by a reporter, rather than to encourage those reporters to protect themselves by avoiding involvement in the situation.²²⁰

It is not uncommon for criminal offenders to have multiple victims and Pennsylvania needs to revise its mandated reporting statute to reflect this and expand its protection of children.²²¹ Specifically, Pennsylvania needs to address that, when a mandated reporter has reasonable belief that an adult is abusing a child, the reporter must assume that child is not the offender's only victim.²²² The implications of such a statutory requirement provide due process that should be guaranteed to the abused.²²³ Under this revised, strict interpretation, victims whose abuse occurs subsequent to the incident causing the mandated reporter's reasonable belief will be able to seek justice for the reporter's silence, rather than solely limiting such reconciliation to the victim involved in the incident.²²⁴ The need for this type of rigorous standard was made apparent in the Sandusky case, given that each of Sandusky's victims following the McQueary event could not bring action against the reporters who could have protected them.²²⁵

C. Changes to League Policy: A Call for the Adoption of Federal Mandated Reporting Laws

The absence of federal legislation standardizing mandatory reporting laws on a national level contributes to gaps in reporting.²²⁶ Just as various sports leagues leave punishment decisions for certain

219. See Garsden, *supra* note 216, at 32 ("The law is written so that someone may report with suspicion only, not certainty but it appears that many do not because of a fear that they might be wrong.").

220. See *id.* (noting mandated reporters who are suspicious avoid further investigation).

221. See Myers, *supra* note 218, at 65 ("Furthermore, many offenders who are identified and prosecuted have been previously accused or convicted of sexual offenses involving minors.").

222. See *id.* at 65–67 (discussing enhanced sentences for repeat offenders, but not repeat ignorers).

223. See Garsden, *supra* note 216, at 32–35 (reviewing due process concerns).

224. See *id.* (discussing mandated reporters).

225. For a comprehensive discussion of Pennsylvania's mandated reporting statutes and its relation to the Penn State Scandal, see *supra* notes 140–154 and accompanying text.

226. See Leonard G. Brown III & Kevin Gallagher, *Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States' Current Mandatory Reporting Laws with a Review of the Laws in the Commonwealth of Pennsylvania*, U. VILL. L. REV. TOLLE LEGE 37, 38 (2013) (noting differences between strict versus lenient nature of state statutes).

types of misbehavior to the discretion of each team, federal law puts each state in charge of drafting, effecting, implementing, and overseeing their own mandatory reporting laws.²²⁷ Currently, the only federal regulation addressing governing mandated reporting is the Child Abuse Prevention and Treatment Act (“CAPTA”).²²⁸ Rather than resolve discrepancies between the states’ mandatory reporting laws, CAPTA simply conditions a state’s receipt of federal funding on its passage of legislation governing mandatory reporting.²²⁹

Ever since the extent to which child abuse goes unreported and unprosecuted has gained public attention, there have been calls for consistency in mandated reporting laws through the enactment of a federal statute.²³⁰ However, each attempt to adopt such a law has been unsuccessful.²³¹ The implementation of a federal law governing mandatory reporting would not only eliminate confusion, but, more importantly, would set a minimum standard for each state.²³² Setting this bar would be vital given that some states only provide basic regulations for child protection through reporting, and such low requirements are adverse to safeguarding minors.²³³

D. More Than Just Jerseys: Uniform Mandated Reporters

Because of a lack of uniformity throughout the states, reports of suspected child abuse are often times missed because it is un-

227. *See id.* at 42 (“As Justice Louis D. Brandeis opined, one of the benefits of federalism is that states can act as laboratories of experimentation. Left to their own devices, states can craft different solutions to the same problem and implement them in order to achieve the best possible system.”).

228. *See id.* at 37–38 (“The federal government’s first major foray into the area of child abuse prevention occurred on January 31, 1974, when Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA).”).

229. *See id.* at 38 (“CAPTA has no federal mandatory reporting provision, but rather requires states to pass their own mandatory reporting provisions in order to receive federal grants.”).

230. *See id.* at 45 (“Justice Department findings that [ninety] percent of all child abuse cases do not go forward to prosecution.” (citing *The Treatment of Child Abuse Allegations and Victims in the Judicial and Victims Services System: Hearing Before the Committee on the Judiciary*, 101st Cong. 2 (1989)) (referring to statement of Senator Harry Reid)).

231. *See id.* at 46 (“[T]he 101st Congress decided ultimately not to adopt a federal mandatory reporting provision and continue to abdicate the issue to the states.”).

232. *See* Brown & Gallagher, *supra* note 226, at 44 (“CAPTA does not have a federal uniform provision about mandatory reporting because the drafters of CAPTA decided that it was not purposed to create a federal strategy to deal with child abuse in its totality.”).

233. *See id.* at 38 (“[T]he least comprehensive statutes require on a small list of named professional groups to report.”).

known who possesses legal responsibility for the reports.²³⁴ Following the Sandusky scandal at Penn State, Pennsylvania reformed its statute to include a greater number of categories of adults responsible for reporting suspected abuse.²³⁵ Pennsylvania was not the only state to respond this way, as bills in many other states were initiated soon thereafter.²³⁶ Because each state is responsible for adoption and implementation of their own mandated reporting laws, there is no ultimate authority advising the states regarding which categories of adults must be considered mandated reporters.²³⁷ While some states are extremely broad in their inclusivity, others narrowly tailor their legislation.²³⁸

Although efforts to institute federal legislation regulating mandated reporting have fallen short, defining the persons legally required to report is only one part of a multi-faceted regulatory issue.²³⁹ Providing uniform characterization of groups of adults responsible for reporting suspected child abuse would not only be helpful, but should be necessary.²⁴⁰ Furthermore, all adults should be designated as mandatory reporters.²⁴¹ Multiple inconsistent and conflicting versions of the statute lead to confusing responsibilities

234. *See id.* at 55 (“[Senator Bob Casey] proposed the legislation to close a loophole that allows abusers to get away with heinous crimes and emphasize the responsibility of all adults to protect children from abuse and neglect.”) (internal quotation marks omitted).

235. For a further discussion of Pennsylvania’s mandated reporting laws, see *supra* notes 116–154 and accompanying text.

236. *See* Brown & Gallagher, *supra* note 226, at 50–51 (“Although the scandal erupted in Pennsylvania, the fury over Sandusky’s high-profile abuse has spread beyond the borders of the Commonwealth, affecting change across the nation.”); *see also* Kelly, *supra* note 8, at 215 (“As of June 2012, approximately 105 bills had been introduced in 30 states and the District of Columbia. Since then, many states have continued to introduce and amend several bills, and Florida Kentucky, Louisiana, the District of Columbia, Montana, and New York have enacted laws to prevent similar instances of child abuse.”) (remarking on national effect Penn State Scandal has had on child abuse statutes.).

237. *See* Brown & Gallagher, *supra* note 226, at 38 (“States’ laws vary in their comprehensiveness with respect to mandatory reporting of abuse.”).

238. *See id.* at 38 (“The most comprehensive statutes require all persons who have reasonable cause to suspect abuse to report, while the least comprehensive statutes require only a small list of named professional groups to report.”); *see also* Kelly, *supra* note 8, at 218 (providing Nebraska’s proposed strict reporting requirements, noting Florida’s enhancement of failure to report to third-degree felony, and examining variety of other states’ reactive legislation changes).

239. *See* §§ 6311–19 (noting that § 6311 is only one part of statute).

240. *See* Brown & Gallagher, *supra* note 226, at 47 (calling for action that would abolish excuse of uncertainty about whether person was mandated reporter or had duty to report).

241. *See e.g., id.* at 51 (“[Missouri] called for a law requiring ‘any person who witnesses sexual abuse of a child to report it to law enforcement.’ . . . Missouri was not alone in its desire to change . . .”).

of a person based on their occupational position at the time of the suspicion, which state that person lives in a different state from the state in which they encountered the suspicion, as well as other shifting dependencies.²⁴² Opponents of the cumulative reporter definition defend their position by alleging such institution would result in a flood of unnecessary reports, ineffective allocation of time, and expensive costs to the departments responsible for these investigations.²⁴³ However, there is no evidence to support this conclusion because this has never been launched on a federal level.²⁴⁴

IV. CONCLUSION

Ensuring the protection of children is an undisputed governmental interest.²⁴⁵ Adults tasked with providing this protection are implicated through state mandated reporting laws.²⁴⁶ However, the language and governance of these laws are not always adequate.²⁴⁷ The weak nature of Pennsylvania's mandatory reporting laws became apparent through the ignorance of high-level administrators at Penn State toward Sandusky's repeated sexual abuse of minor boys.²⁴⁸ Although Pennsylvania laws have evolved since the incident, many victims were left to endure abuse as a result of prior deficiencies in legislation.²⁴⁹

The lack of uniformity in definitions and regulations of mandated reporting of child abuse, coupled with institutions' concerns

242. See *id.* at 55 (reviewing Senator Casey's proposed legislation).

243. See *id.* ("[This proposal] mobilized opponents of universal mandated reporting . . . writ[ing] that more mandated reporting will overload child protective service agencies, force people to call in cases that are 'patently absurd' because they fear penalties, and subject more children to the trauma of child abuse investigations, which usually include a 'visual inspection.'" (quoting Richard Wexler, *Increasing Mandatory Reporting of Alleged Child Abuse and Neglect Will Hurt Children*, NAT' COAL. FOR CHILD PROT. REFORM (Dec. 11, 2011), <http://www.nccpr.org/reports/mandatoryreporting>)).

244. See *id.* at 56 (stating it is unclear whether more comprehensive mandated reporting would help).

245. For a further discussion of endangering the welfare of a child statutes, see *supra* notes 73–115 and accompanying text.

246. For a further discussion of Pennsylvania's mandated reporting statutes, see *supra* notes 116–154 and accompanying text.

247. For a further discussion of Pennsylvania's mandated reporting statutes and its relation to the Penn State Scandal, see *supra* notes 36–154 and accompanying text.

248. For a further discussion of Pennsylvania's mandated reporting statutes and its relation to the Penn State Scandal, see *supra* notes 36–154 and accompanying text.

249. For a further discussion of Pennsylvania's mandated reporting statutes and its relation to the Penn State Scandal, see *supra* notes 36–154 and accompanying text.

for their image, places children at risk for *legal* ignorance by adults who are aware of their abuse.²⁵⁰ In order to remedy this situation, the fastest and most expansive reformation option to implement is to require all adults to act as mandatory reporters.²⁵¹ Penn State was not prepared to provide adequate protection of minors who were not on their campus as students.²⁵² Because of this, adults in charge at the school felt that protecting these children was not their legal responsibility and—because of the governing laws at the time of the incidents—they were right to some extent.²⁵³ Their level of culpability would have been much greater had the current Pennsylvania laws been in place at the time.²⁵⁴ This situation is only one example of why instituting stricter and broader mandated reporting laws are vital for our country's youth.²⁵⁵ Action must be taken to ensure abuse does not continue to happen.²⁵⁶

*Caroline Fitzgerald**

250. For a further discussion of Pennsylvania's mandated reporting statutes and its relation to the Penn State Scandal, see *supra* notes 36–154 and accompanying text.

251. For a further discussion of suggestion regarding uniform definition of a mandated reporter, see *supra* notes 234–244 and accompanying text.

252. For a further discussion of these shortcomings noted in the Freeh Report, see *infra* notes 155–165 and accompanying text.

253. For a further discussion of Pennsylvania's mandated reporting statutes and its relation to the Penn State Scandal, see *supra* notes 36–154 and accompanying text.

254. For a further discussion of the culpability of mandated reporters, see *supra* notes 127–149 and accompanying text.

255. For a further discussion of suggested revisions to Pennsylvania, and adoption of federal, mandated reporting laws, see *supra* notes 211–244 and accompanying text.

256. For a further discussion of suggested revisions to Pennsylvania, and adoption of federal, mandated reporting laws, see *supra* notes 211–244 and accompanying text.

* J.D. Candidate, May 2020, Villanova University Charles Widger School of Law; B.A. in Public Policy, University of Delaware, 2014. To my family—I cannot thank you enough for the relentless support and enthusiasm you have always shown me. To Greg, Cat, Alex, Jess, and Pat—thank you for all of the hard work you put into the Journal, and especially for your efforts in sharpening this article.

Finally, to Aaron Fisher and all of the other boys who were subject to the abuse central to this article—thank you. Your strength and courage to come forward did far more than stop one perpetrator—it ignited national efforts of public awareness and legal reform aimed at protecting children in hopes that one day experiences like yours will never happen again. Thank you.