



Oregon Law Institute
of Lewis & Clark Law School

26th Annual Ethics CLE
**Child Abuse Reporting:
Legal Obligations and
Professional Ethics**

November 8, 2013
Ambridge Event Center
1333 NE Martin Luther King Jr. Blvd.
Portland, Oregon

26th Annual Ethics CLE
**Child Abuse Reporting:
Legal Obligations and
Professional Ethics**

Course Materials from the
November 8, 2013 Program in Portland

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Schedule

4:05 Child Abuse Reporting: Legal
Obligations and Professional Ethics

John F. Casalino

5:05 ADJOURN

JOHN F. CASALINO

John F. Casalino is Senior Deputy District Attorney with Multnomah County DA's Office in Portland. He received his B.A. at Vassar College in 1990, and his J.D. at Temple Law School in 1996. John is a member of the Oregon State Bar since 1997. During his 15 years as a district attorney he has prosecuted property, drug, domestic violence, homicide, and gang crimes. He is a Multidisciplinary Child Abuse Team leader (MDT), prosecuting crimes with child victims, including child homicides, physical abuse, and sexual assaults.

**CHILD ABUSE REPORTING:
LEGAL OBLIGATIONS AND PROFESSIONAL ETHICS**

John F. Casalino

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Child Abuse Reporting

November 8, 2013
OLI's 26th Annual Ethics CLE



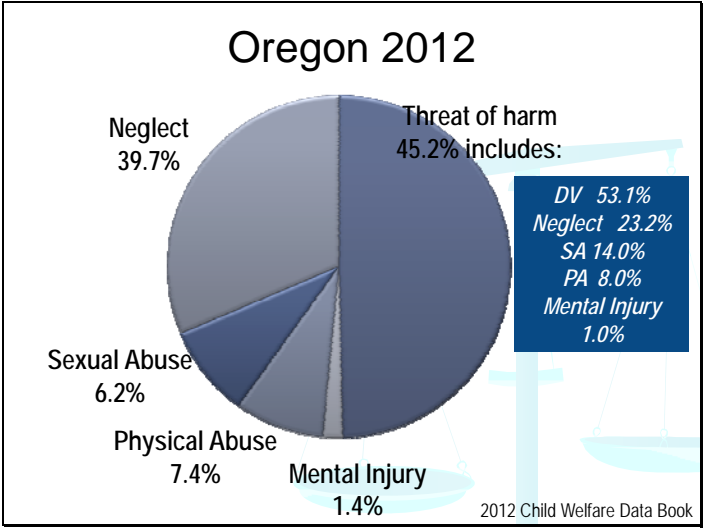
John Casalino
Senior Deputy District Attorney
Multidisciplinary Child Abuse Team
Multnomah County

In 2012, 69,096 reports of abuse and neglect were received.



Child Abuse in Oregon 2012

- In 2012, 69,096 reports of abuse and neglect were received
- 30,850 reports were referred for investigation
- 6,332 referrals were founded for abuse or neglect involving 10,054 victims. (20.5% of referrals)
- 48.5% of victims were younger than 6 years old



- ### Child Abuse Reports in Oregon 2012
- 71.2% of reports came from mandatory reporters
 - 36.3% came from schools and LE
 - 9.5% came from medical
 - 25.4% came from other mandated
 - 22.5% came from other non-man
 - 6.3% came from parent/self

- ### Child Abuse in Oregon
- According to the CDC, the leading cause of injury death to children in the United States is homicide.
 - In 2012, 17 children in Oregon were killed by abuse and neglect from causes related to familial/caregiver abuse and or neglect.

Child Fatalities in Oregon

Year	Abuse	Neglect	Abuse & Neglect
FFY 2012	8	6	3
FFY 2011	15	4	0
FFY 2010	7	12	3
FFY 2009	8	3	2
FFY 2008	2	10	2

2008-2012 Child Welfare Data Books

Seventeen Child Fatalities in 2012

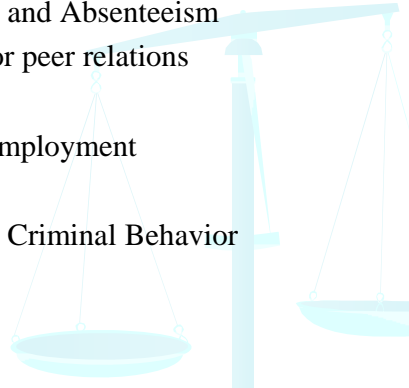
- 13 fatalities had at least one parent as a perpetrator. The relationship of the perpetrator(s) to the child:
 - The mother alone was the perpetrator in one fatality
 - The father alone was the perpetrator in six fatalities
 - The mother and father were the perpetrators in three fatalities
 - A step-parent alone was the perpetrator in one fatality
 - The mother and step-parent or live-in companion was the perpetrator in two fatalities
 - Relatives were the perpetrators in two fatalities
 - Non-relative, non-caregivers were perpetrators in two fatalities

Perpetrators of Founded Child Abuse and Neglect

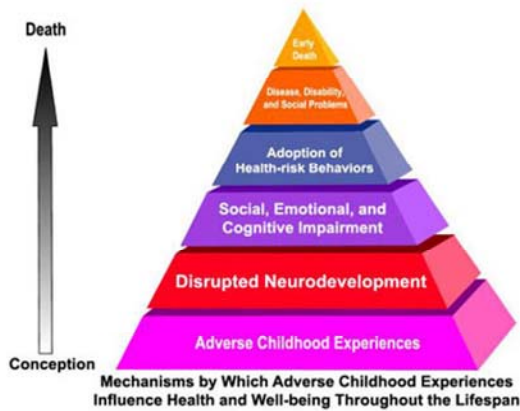
- FAMILIAL 94.1%
 - Mother 41%
 - Father 33.2%
 - Live-in Companion 7.2%
 - Relative 11.2%
 - Foster Parent/Home 0.8%
 - Guardian 0.2%

Social Consequences

- School Problems and Absenteeism
- Isolation and poor peer relations
- Homelessness
- Poverty and Unemployment
- Addictions
- Delinquency and Criminal Behavior

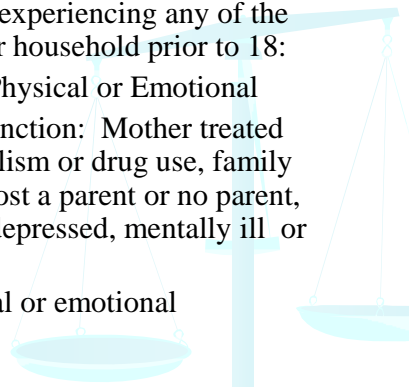


Lifetime Impacts



What is an Adverse Childhood Experience (ACE)?

- Growing up and experiencing any of the following in your household prior to 18:
- Abuse: Sexual, Physical or Emotional
- Household dysfunction: Mother treated violently, alcoholism or drug use, family member in jail, lost a parent or no parent, family member depressed, mentally ill or suicidal
- Neglect: physical or emotional



ACE Study 2003

- CDC and 17,421 adults at Kaiser Permanente's Department of Preventive Medicine in San Diego California
- Explored whether and how ACE affect adult health decades later
- Higher the ACE score more likely to have smoked, have COPD, use intravenous drugs, depression or suicide attempts

Social Overview

- The violence and negligence of parents and caretakers serve as a model for children as they grow up.
- The child victims of today, without protection and treatment, may become the child abusers of tomorrow.
- Child abuse and neglect is are problems for the whole community. DHS relies on coordination of many resources, groups, agencies and individuals.
- These parties are involved in the identification, reporting, investigation, assessment, and treatment of cases of child abuse.

Application of the Reporting Law

- **Applicable Code: ORS 419B.005-419B.050**
- Identify children who are victims of abuse or neglect
- Provide services needed to assist caretakers in resolving the problems underlying child maltreatment
- Criminal laws are separate from the reporting and juvenile court laws

“Reasonable Cause”

- No reported cases applying or interpreting this phrase specifically in connection with ORS 419B.010(1).
- As used in ORS 419B.010(1) and to qualify for immunity, “reasonable cause” is a good faith determination that child abuse has occurred based on facts reasonably believed by the reporter to be true. **ORS 419B.025**

What is the Duty to Report?

- Applies 24 hours/day, 365 days/year
- Can not be passed on to another
- “Immediately”

- The duty to report exists regardless of whether your employer or volunteer organization has internal policies for addressing reports. **ORS 419B.010(4)**

Who must Report? 419B.005(4) Public or Private Official means:

- Physician, Dentist, School Employee, LPN or RN
- Employee of DHS, OYA, County Health, Community mental health and developmental disabilities program
- Peace Officer, Psychologist, Clergyman, Licensed clinical social worker, Optometrist, Chiropractor
- Certified provider of day care, foster care or employee
- **Attorney 419B.005(5)(m)**
- Naturopathic physician, Firefighter, EMT, Licensed professional counselor, Licensed marriage and family therapist, Court Appointed Special Advocate, Legislator,

Failure to Report

- Two Top Officials Step Down Amid Penn State Scandal (Fox News Headline 11/7/11)
- 2002, a graduate assistant reported seeing Jerry Sandusky (left) sexually abuse a naked boy, estimated to be about 10 years old, in a team locker room shower
- Reported to Coach Joe Paterno (right)
- Reported to Athletic Director, Tim Curley (center)
- Reported to Gary Schultz, the school's senior vice president for business and finance
- **NEVER REPORTED TO POLICE**



Failure to Report

- Camp counselor Louis ReVille (from 2001 to 2003) at the Citadel invited boys into his room
- Showed them pornography and had them masturbate in front of him. He promised them pizza and other privileges not to tell.
- One of the boys disclosed in 2007 to the Citadel. The Citadel investigated but did not report to the police.
- ReVille was arrested on separate charges of abuse of five other boys in October 2012.

■ The Citadel



Sandusky Found Guilty



- Convicted of 45 counts of Sex Abuse after trial this past summer
- Sentenced to 30-60 years in prison
- Convicted for conduct with 10 boys

No Criminal Charges were filed against The Citadel



- ReVile pleaded guilty to abusing more than 30 boys in June 2012.
- He was sentenced to 50 years in prison.
- State Law Enforcement Division (SLED) determined not sufficient evidence to prosecute the school

April 2012 Amendments Who must report:

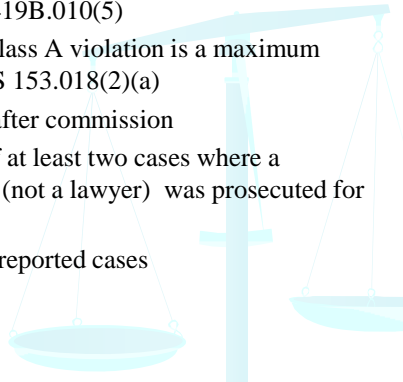
- Employee of a public or private organization providing child-related services or activities: 419B.005(5)(aa)
- Youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups,
- Centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and

Recent Additions to who must report April 2012:

- A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete 419B.005(5)(cc)
IF
- The athlete is a child
- Exceptions:
 - Community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking. 419B.005(5)(bb)(B)

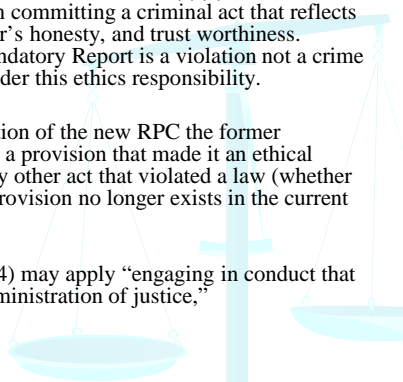
Penalty for Mandatory Reporters who fail to report

- Class A Violation 419B.010(5)
- The penalty for a Class A violation is a maximum fine of \$2,000 ORS 153.018(2)(a)
- SOL is 18 months after commission
- The Bar is aware of at least two cases where a mandatory reporter (not a lawyer) was prosecuted for failing to report.
- Civil liability? No reported cases



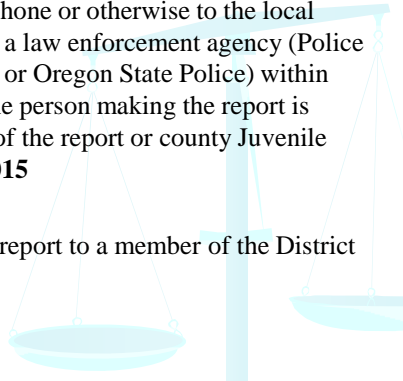
Ethics Violation?

- Oregon Rule of Professional Conduct 8.4 (a)(2) which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, and trust worthiness. Because Failure to Mandatory Report is a violation not a crime then it would not fit under this ethics responsibility.
- Prior to the 2005 adoption of the new RPC the former Disciplinary Rules had a provision that made it an ethical violation to commit any other act that violated a law (whether criminal or not)- that provision no longer exists in the current RPC.
- However RPC 8.4 (a)(4) may apply "engaging in conduct that is prejudicial to the administration of justice,"



Who to Contact/Form of Report

- Oral report by telephone or otherwise to the local office of DHS or to a law enforcement agency (Police department, Sheriff or Oregon State Police) within the county where the person making the report is located at the time of the report or county Juvenile department. **419B.015**
- **Does not** include a report to a member of the District Attorney's Office



DHS/Child Abuse Hotline
Multnomah County

- Call (503) 731-3100
- Fax (503) 731-3080
- Mult-DA.reports@state.or.us



DHS Hotline/CAT/DA MDT
Multnomah County



Reporting in all Counties

- DHS Link
<http://www.oregon.gov/DHS/children/abuse/cps/cw/branches.shtml>



Information needed in the Report 419B.015(1)(a) (if known)

- Names and addresses of the child and the parents of the child or other persons responsible for the care of the child
- The child's age
- The nature and extent of the abuse, (and any previous abuse)
- Explanation given for the abuse
- Any other info the reporter believes might be helpful in establishing the cause of the abuse and the identify of the perpetrator

Confidentiality of the Report

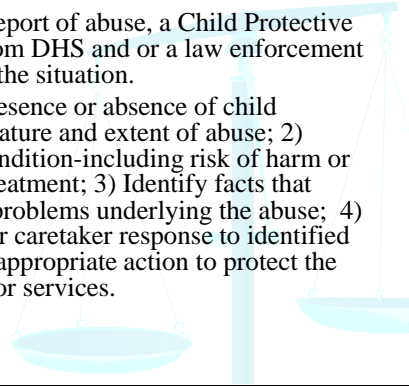
- Reports and records compiled under [the mandatory child abuse reporting law] are confidential and are not accessible for public inspection. ORS 419B.035
- The reporter's identity may be revealed if the reporter is called as a witness in criminal court.
- The judge may order that the reporter's name be disclosed.

Immunity for reporting

- Anyone participating in good faith in the making of a report and who has reasonable grounds for making the report, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to making or the content of the report.
- **ORS 419B.025**

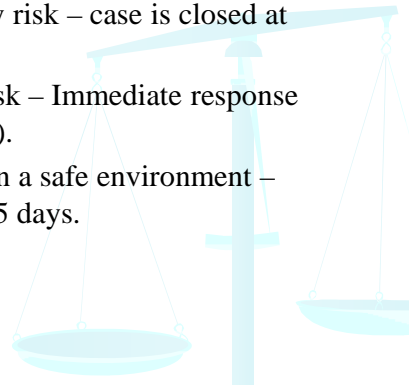
AFTER THE REPORT IS MADE Assessment and Agency Response

- Upon receipt of a report of abuse, a Child Protective Services worker from DHS and or a law enforcement official will assess the situation.
- 1) Determine the presence or absence of child maltreatment and nature and extent of abuse; 2) Evaluate child's condition-including risk of harm or need for medical treatment; 3) Identify facts that cause risk and the problems underlying the abuse; 4) Evaluate parental or caretaker response to identified problems; 5) Take appropriate action to protect the child and arrange for services.



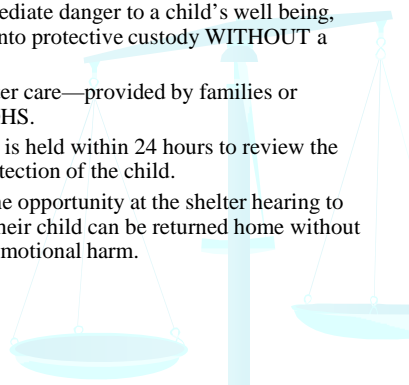
Levels of DHS Agency Response

- No current safety risk – case is closed at screening.
- Current safety risk – Immediate response (within 24 hours).
- Child currently in a safe environment – response within 5 days.



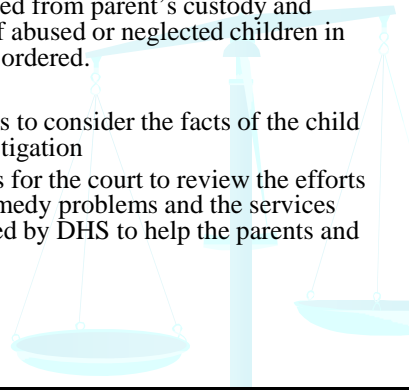
Protective Custody

- Where there is an immediate danger to a child's well being, DHS can take a child into protective custody **WITHOUT** a court order.
- Child is placed in shelter care—provided by families or facilities licensed by DHS.
- Juvenile Court hearing is held within 24 hours to review the need for continued protection of the child.
- Parents are provided the opportunity at the shelter hearing to present evidence that their child can be returned home without danger of physical or emotional harm.



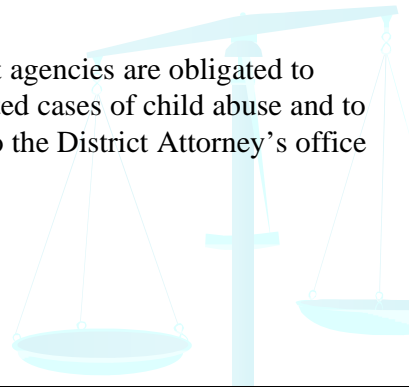
Juvenile Court Hearings

- Children are removed from parent's custody and DHS supervision of abused or neglected children in their own homes is ordered.
- "Shelter Hearing"
- Additional Hearings to consider the facts of the child abuse/neglect investigation
- Additional hearings for the court to review the efforts of the parents to remedy problems and the services arranged or provided by DHS to help the parents and the child.

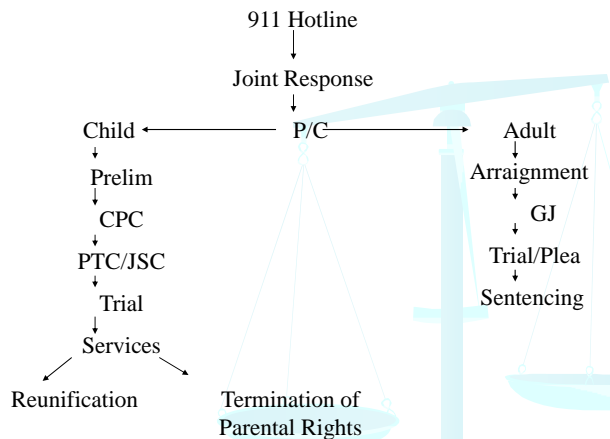


Criminal Prosecution

- Law enforcement agencies are obligated to investigate reported cases of child abuse and to submit a report to the District Attorney's office



Overview of Court Process



Recognizing Child Abuse

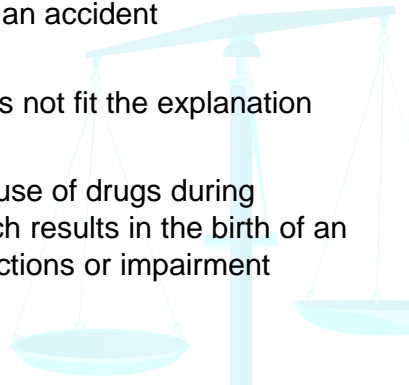
- Physical Abuse
- Threat of Harm
- Neglect
- Sexual Abuse and Exploitation
- Mental injury



TYPES OF ABUSE

Physical Abuse

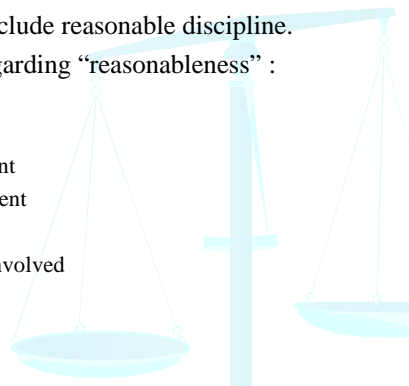
- *Injury that is not an accident
- *Injury which does not fit the explanation
- *Abuse includes use of drugs during pregnancy which results in the birth of an infant with addictions or impairment



Reasonable Discipline is not Abuse

ORS 419B.005(b) & ORS 161.205(1)

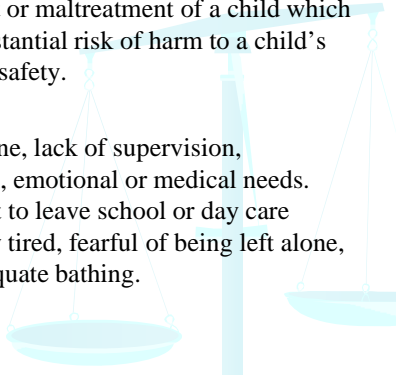
- “Abuse” does not include reasonable discipline.
- Facts to consider regarding “reasonableness” :
 - Reason for action
 - Age of child
 - Use of an implement
 - Type of an implement
 - Degree of force
 - Area of the body involved



TYPES OF ABUSE

Neglect

- Negligent treatment or maltreatment of a child which causes harm or substantial risk of harm to a child's health, welfare and safety.
- Possible indicators:
- Hunger, poor hygiene, lack of supervision, unattended physical, emotional or medical needs. Child does not want to leave school or day care provider, constantly tired, fearful of being left alone, dirty clothes, inadequate bathing.

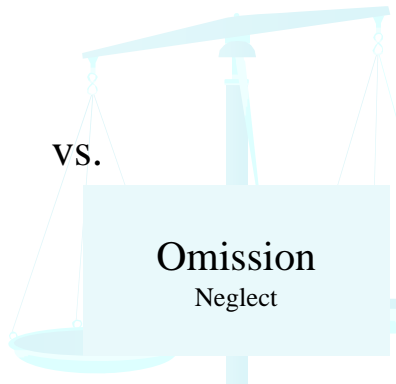


Commission

Physical abuse
Sexual abuse
Emotional abuse

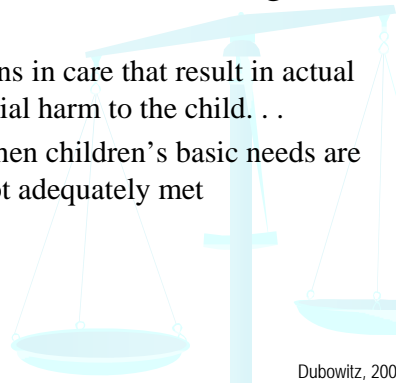
VS.

Omission
Neglect



Professional Definition: Neglect

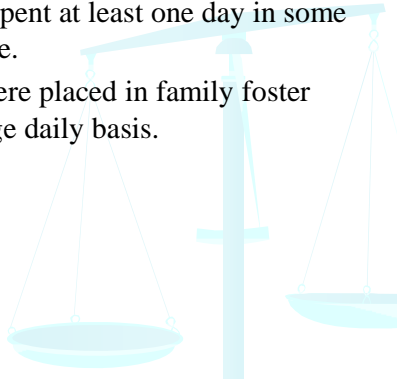
Parental omissions in care that result in actual or potential harm to the child. . .
neglect occurs when children's basic needs are not adequately met



Dubowitz, 2000

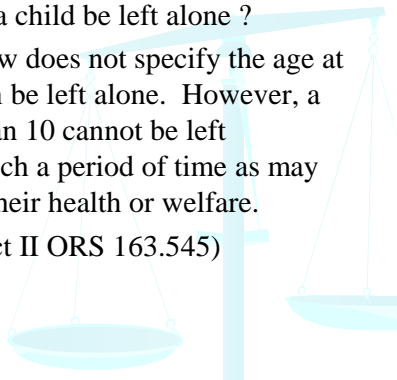
Foster Care in 2012

- 12,385 children spent at least one day in some kind of foster care.
- 6,592 children were placed in family foster care on an average daily basis.



Leaving kids alone?

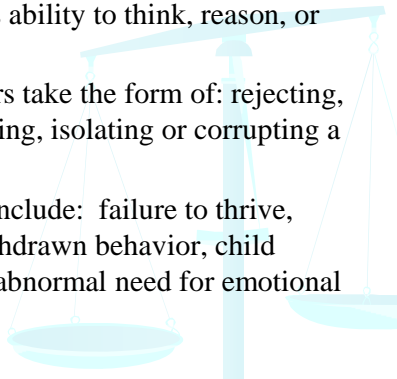
- At what age can a child be left alone ?
- **Answer** – The law does not specify the age at which a child can be left alone. However, a child younger than 10 cannot be left unattended for such a period of time as may likely endanger their health or welfare.
(Child Neglect II ORS 163.545)



TYPES OF ABUSE

Mental Injury

- Harm to a child's ability to think, reason, or have feelings.
- Parental behaviors take the form of: rejecting, terrorizing, ignoring, isolating or corrupting a child.
- Symptoms may include: failure to thrive, aggressive or withdrawn behavior, child demonstrates an abnormal need for emotional support.



FBI Sex Offender Classification

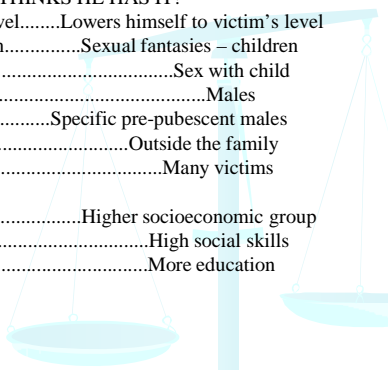
Situational Offenders

Preferential Offenders

Wants a consensual relationship
AND THINKS HE HAS IT!

Elevates victim to his social level.....Lowers himself to victim's level
Sexual fantasies – adult women.....Sexual fantasies – children
Sex with age appropriate.....Sex with child
Females.....Males
Pubescent females.....Specific pre-pubescent males
Inside the family.....Outside the family
Fewer victims.....Many victims

Lower socioeconomic group.....Higher socioeconomic group
Low social skills.....High social skills
Less education.....More education



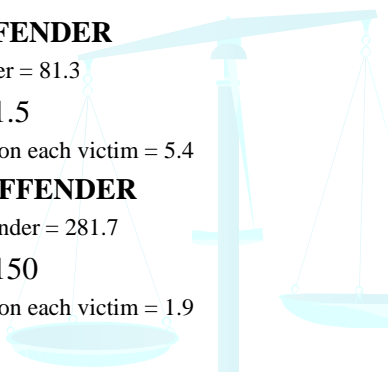
Study of Offenders (Via, 1996)

SITUATIONAL OFFENDER

- Av # sex acts per offender = 81.3
- Av # of victims = 1.5
- Av # of acts perpetrated on each victim = 5.4

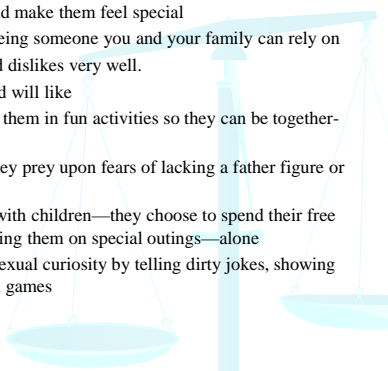
PREFERENTIAL OFFENDER

- Av # of sex acts per offender = 281.7
- Av # of victims = 150
- Av # of acts perpetrated on each victim = 1.9



How Child Molesters Gain Access to your child

- Pay attention to the child and make them feel special
- Present the appearance of being someone you and your family can rely on
- Know your child's likes and dislikes very well.
- Buy gifts or treats your child will like
- Isolate your child involving them in fun activities so they can be together—alone
- For single female parents they prey upon fears of lacking a father figure or stable home life
- If career involves working with children—they choose to spend their free time helping children or taking them on special outings—alone
- Take advantage of natural sexual curiosity by telling dirty jokes, showing them porn or playing sexual games



How Child Molesters Gain Access to your child (continued)

- Know more about what kids like than you do—music, clothing, video games, language, etc
- Make comments, like “Anyone who molests a child should be shot” or “Sexually abusing a kid is sick”
- If Abuser is a parent it is easier to control and molest own children without spouse suspecting. Gradually block the communication between child and other parent—make it look like “I’m the good guy . . .”
- Touch your child in your presence so that he/she thinks you are comfortable with the way he touches them

■ Center for Behavioral Intervention, Beaverton Oregon and Experience prosecuting child sex cases

How they keep children from telling

- I convince your child that they are responsible for my behavior.
- I make your child think no one will believe them if they tell on me.
- I tell your child that you will be disappointed in them for what they have done “with” me.
- I warn the child that they will be the one punished if they talk.
- I may threaten your child with physical violence against them, you a pet or another loved one.
- I may have gotten your child to feel sorry for me and believe that they are the only one that understands me.

How they keep children from telling (continued)

- If I am the parent or live with the children, my behavior may look accidental. I may “accidentally” expose myself or “accidentally” walk in on children while they are using the bathroom.
- If I am the father, my behavior may look “normal.” I do the bedtime routine and touch them when I tuck them in.
- I have told my children, “this is what all fathers do with their children” so they don’t know to tell.
- I may be so good at manipulating children they may try to protect me because they love me.
- “Protecting Your Children: Advice from Child Molesters”, CBI, Beaverton



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OREGON REVISED STATUTES 2011^{1}**
REPORTING OF CHILD ABUSE—ORS 419B.005 et seq.

419B.005 Definitions.

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) ‘Abuse’ means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child’s mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution or to patronize a prostitute, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child’s health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child’s health or safety.

(b) ‘Abuse’ does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) ‘Child’ means an unmarried person who is under 18 years of age.

(3) ‘Higher education institution’ means:

¹Oregon Revised Statutes 2011**

**Although the official version of the statutes incorporating changes from the 2012 and 2013 Sessions are not yet available, this document seeks to incorporate amendments from HB 4016 (2012) (eff. Jan. 1, 2013), HB 4025 (2012) (eff. Jan. 1, 2013), and HB 4165 (2012) (eff. March 6, 2012) related to child abuse reporting. Please note that although effective dates vary, all changes are incorporated. *We advise you to consult the official ORS and the above bills for the official text of the law.*

- (a) A community college as defined in ORS 341.005;
- (b) A public university listed in ORS 352.002;
- (c) The Oregon Health and Science University; and
- (d) A private institution of higher education located in Oregon.
- (4) “Law enforcement agency” means:
 - (a) A city or municipal police department.
 - (b) A county sheriff’s office.
 - (c) The Oregon State Police.
 - (d) A police department established by a university under ORS 352.383.
 - (e) A county juvenile department.
- (5) “Public or private official” means:
 - (a) Physician, osteopathic physician, physician assistant, naturopathic physician, podiatric physician and surgeon, including any intern or resident.
 - (b) Dentist.
 - (c) School employee, including an employee of a higher education institution.
 - (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide or employee of an in-home health service.
 - (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Council, Youth Development Council Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.
 - (f) Peace officer.
 - (g) Psychologist.
 - (h) Member of the clergy.
 - (i) Regulated social worker.
 - (j) Optometrist.
 - (k) Chiropractor.
 - (L) Certified provider of foster care, or an employee thereof.
 - (m) Attorney.
 - (n) Licensed professional counselor.
 - (o) Licensed marriage and family therapist.
 - (p) Firefighter or emergency medical services provider.
 - (q) A court appointed special advocate, as defined in ORS 419A.004.
 - (r) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
 - (s) Member of the Legislative Assembly.
 - (t) Physical, speech or occupational therapist.
 - (u) Audiologist.
 - (v) Speech-language pathologist.
 - (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
 - (x) Pharmacist.

- (y) An operator of a preschool recorded program under ORS 657A.255.
- (z) An operator of a school-age recorded program under ORS 657A.257.
- (aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.
- (bb) Employee of a public or private organization providing child-related services or activities:
 - (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and
 - (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.
- (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

419B.007 Policy. The Legislative Assembly finds that for the purpose of facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection of the child by stabilizing the family and improving parental capacity, it is necessary and in the public interest to require mandatory reports and investigations of abuse of children and to encourage voluntary reports. [1993 c.546 §13]

419B.010 Duty of officials to report child abuse; exceptions; penalty. (1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015. Nothing contained in ORS 40.225 to 40.295 or 419B.234 (6) affects the duty to report imposed by this section, except that a psychiatrist, psychologist, member of the clergy, attorney or guardian ad litem appointed under ORS 419B.231 is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295 or 419B.234 (6). An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.

(2) Notwithstanding subsection (1) of this section, a report need not be made under this section if the public or private official acquires information relating to abuse by reason of a report made under this section, or by reason of a proceeding arising out of a report made under this section, and the public or private official reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.

(3) The duty to report under this section is personal to the public or private official alone, regardless of whether the official is employed by, a volunteer of or a representative or agent for any type of entity or organization that employs persons or uses persons as volunteers who are public or private officials in its operations.

(4) The duty to report under this section exists regardless of whether the entity or organization that employs the public or private official or uses the official as a volunteer has its own procedures or policies for reporting abuse internally within the entity or organization.

(5) A person who violates subsection (1) of this section commits a Class A violation. Prosecution under this subsection shall be commenced at any time within 18 months after commission of the offense.

419B.015 Report form and content; notice. (1)(a) A person making a report of child abuse, whether the report is made voluntarily or is required by ORS 419B.010, shall make an oral report by telephone or otherwise to the local office of the Department of Human Services, to the designee of the department or to a law enforcement agency within the county where the person making the report is located at the time of the contact. The report shall contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for care of the child, the child's age, the nature and extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information that the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the

perpetrator.

(b) When a report of child abuse is received by the department, the department shall notify a law enforcement agency within the county where the report was made. When a report of child abuse is received by a designee of the department, the designee shall notify, according to the contract, either the department or a law enforcement agency within the county where the report was made. When a report of child abuse is received by a law enforcement agency, the agency shall notify the local office of the department within the county where the report was made.

(2) When a report of child abuse is received under subsection (1)(a) of this section, the entity receiving the report shall make the notification required by subsection (1)(b) of this section according to rules adopted by the department under ORS 419B.017.

(3)(a) When a report alleging that a child or ward in substitute care may have been subjected to abuse is received by the department, the department shall notify the attorney for the child or ward, the child's or ward's court appointed special advocate, the parents of the child or ward and any attorney representing a parent of the child or ward that a report has been received.

(b) The name and address of and other identifying information about the person who made the report may not be disclosed under this subsection. Any person or entity to whom notification is made under this subsection may not release any information not authorized by this subsection.

(c) The department shall make the notification required by this subsection within three business days of receiving the report of abuse.

(d) Notwithstanding the obligation imposed by this subsection, the department is not required under this subsection to notify the parent or parent's attorney that a report of abuse has been received if the notification may interfere with an investigation or assessment or jeopardize the child's or ward's safety. [1993 c.546 §15; 1993 c.734 §1a; 2005 c.250 §1; 2007 c.237 §1]

419B.016 Offense of false report of child abuse. (1) A person commits the offense of making a false report of child abuse if, with the intent to influence a custody, parenting time, visitation or child support decision, the person:

(a) Makes a false report of child abuse to the Department of Human Services or a law enforcement agency, knowing that the report is false; or

(b) With the intent that a public or private official make a report of child abuse to the Department of Human Services or a law enforcement agency, makes a false report of child abuse to the public or private official, knowing that the report is false.

(2) Making a false report of child abuse is a Class A violation. [2011 c.606 §2]

419B.017 Time limits for notification between law enforcement agencies and Department of Human Services; rules. (1) The Department of Human Services shall adopt rules establishing:

(a) The time within which the notification required by ORS 419B.015 (1)(a) must be made. At a minimum, the rules shall:

(A) Establish which reports of child abuse require notification within 24 hours after receipt;

(B) Provide that all other reports of child abuse require notification within 10 days after receipt; and

(C) Establish criteria that enable the department, the designee of the department or a law enforcement agency to quickly and easily identify reports that require notification within 24 hours after receipt.

(b) How the notification is to be made.

(2) The department shall appoint an advisory committee to advise the department in adopting rules required by this section. The department shall include as members of the advisory committee representatives of law enforcement agencies and multidisciplinary teams formed pursuant to ORS 418.747 and other interested parties.

(3) In adopting rules required by this section, the department shall balance the need for providing other entities with the information contained in a report received under ORS 419B.015 with the resources required to make the notification.

(4) The department may recommend practices and procedures to local law enforcement agencies to meet the requirements of rules adopted under this section. [2005 c.250 §3]

Note: 419B.017 was added to and made a part of 419B.005 to 419B.050 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

419B.020 Duty of department or law enforcement agency receiving report; investigation; notice to parents; physical examination; child's consent; notice at conclusion of investigation. (1) If the Department of Human Services or a law enforcement agency receives a report of child abuse, the department or the agency shall immediately:

(a) Cause an investigation to be made to determine the nature and cause of the abuse of the child; and

(b) Notify the Child Care Division if the alleged child abuse occurred in a child care facility as defined in ORS 657A.250.

(2) If the abuse reported in subsection (1) of this section is alleged to have occurred at a child care facility:

(a) The department and the law enforcement agency shall jointly determine the roles and responsibilities of the department and the agency in their respective investigations; and

(b) The department and the agency shall each report the outcomes of their investigations to the Child Care Division.

(3) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify by oral report followed by written report the local office of the department. The department shall provide protective social services of its own or of other available social agencies if necessary to prevent further abuses to the child or to safeguard the child's welfare.

(4) If a child is taken into protective custody by the department, the department shall promptly make reasonable efforts to ascertain the name and address of the child's parents or guardian.

(5)(a) If a child is taken into protective custody by the department or a law enforcement official, the department or law enforcement official shall, if possible, make reasonable efforts to advise the parents or guardian immediately, regardless of the time of day, that the child has been taken into custody, the reasons the child has been taken into custody and general information about the child's placement, and the telephone number of the local office of the department and any after-hours telephone numbers.

(b) Notice may be given by any means reasonably certain of notifying the parents or guardian, including but not limited to written, telephonic or in-person oral notification. If the initial notification is not in writing, the information required by paragraph (a) of this subsection also shall be provided to the parents or guardian in writing as soon as possible.

(c) The department also shall make a reasonable effort to notify the noncustodial parent of the information required by paragraph (a) of this subsection in a timely manner.

(d) If a child is taken into custody while under the care and supervision of a person or organization other than the parent, the department, if possible, shall immediately notify the person or organization that the child has been taken into protective custody.

(6) If a law enforcement officer or the department, when taking a child into protective custody, has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to disappear, the court may authorize a physical examination for the purposes of preserving evidence if the court finds that it is in the best interest of the child to have such an examination. Nothing in this section affects the authority of the department to consent to physical examinations of the child at other times.

(7) A minor child of 12 years of age or older may refuse to consent to the examination described in subsection (6) of this section. The examination shall be conducted by or under the supervision of a physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS chapter 678 and, whenever practicable, trained in conducting such examinations.

(8) When the department completes an investigation under this section, if the person who made the report of child abuse provided contact information to the department, the department shall notify the person about whether contact with the child was made, whether the department determined that child abuse occurred and whether services will be provided. The department is not required to disclose information under this subsection if the department determines that disclosure is not permitted under ORS 419B.035. [1993 c.546 §16; 1993 c.622 §7a; 1997 c.130 §13; 1997 c.703 §1; 1997 c.873 §33; 2007 c.501 §4; 2007 c.781 §1]

419B.022 Short title. ORS 419B.023 and 419B.024 shall be known and may be cited as “Karly’s Law.” [2007 c.674 §1]

Note: 419B.022 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 419B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

419B.023 Duties of person conducting investigation under ORS 419B.020. (1) As used in this section:

(a) “Designated medical professional” means the person described in ORS 418.747 (9) or the person’s designee.

(b) “Suspicious physical injury” includes, but is not limited to:

(A) Burns or scalds;

(B) Extensive bruising or abrasions on any part of the body;

(C) Bruising, swelling or abrasions on the head, neck or face;

(D) Fractures of any bone in a child under the age of three;

(E) Multiple fractures in a child of any age;

(F) Dislocations, soft tissue swelling or moderate to severe cuts;

(G) Loss of the ability to walk or move normally according to the child’s developmental ability;

(H) Unconsciousness or difficulty maintaining consciousness;

(I) Multiple injuries of different types;

(J) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or

(K) Any other injury that threatens the physical well-being of the child.

(2) If a person conducting an investigation under ORS 419B.020 observes a child who has suffered suspicious physical injury and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the person shall, in accordance with the protocols and procedures of the county multidisciplinary child abuse team described in ORS 418.747:

(a) Immediately photograph or cause to have photographed the suspicious physical injuries in accordance with ORS 419B.028; and

(b) Ensure that a designated medical professional conducts a medical assessment within 48 hours, or sooner if dictated by the child’s medical needs.

(3) The requirement of subsection (2) of this section shall apply:

(a) Each time suspicious physical injury is observed by Department of Human Services or law enforcement personnel:

(A) During the investigation of a new allegation of abuse; or

(B) If the injury was not previously observed by a person conducting an investigation under ORS 419B.020; and

(b) Regardless of whether the child has previously been photographed or assessed during an investigation of an allegation of abuse.

(4)(a) Department or law enforcement personnel shall make a reasonable effort to locate a designated medical professional. If after reasonable efforts a designated medical professional is not available to conduct a medical assessment within 48 hours, the child shall be evaluated by an available physician.

(b) If the child is evaluated by a health care provider as defined in ORS 127.505 other than a designated medical professional, the health care provider shall make photographs, clinical notes, diagnostic and testing results and any other relevant materials available to the designated medical professional for consultation within 72 hours following evaluation of the child.

(c) The person conducting the medical assessment may consult with and obtain records from the child's regular pediatrician or family physician under ORS 419B.050.

(5) Nothing in this section prevents a person conducting a child abuse investigation from seeking immediate medical treatment from a hospital emergency room or other medical provider for a child who is physically injured or otherwise in need of immediate medical care.

(6) If the child described in subsection (2) of this section is less than five years of age, the designated medical professional may, within 14 days, refer the child for a screening for early intervention services or early childhood special education, as those terms are defined in ORS 343.035. The referral may not indicate the child is subject to a child abuse investigation unless written consent is obtained from the child's parent authorizing such disclosure. If the child is already receiving those services, or is enrolled in the Head Start program, a person involved in the delivery of those services to the child shall be invited to participate in the county multidisciplinary child abuse team's review of the case and shall be provided with paid time to do so by the person's employer.

(7) Nothing in this section limits the rights provided to minors in ORS chapter 109 or the ability of a minor to refuse to consent to the medical assessment described in this section. [2007 c.674 §3; 2009 c.296 §1]

Note: 419B.023 was added to and made a part of 419B.005 to 419B.050 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

419B.024 Critical Incident Response Team for child fatality; rules. (1) The Department of Human Services shall assign a Critical Incident Response Team within 24 hours after the department determines that a child fatality was likely the result of child abuse or neglect if:

(a) The child was in the custody of the department at the time of death; or

(b) The child was the subject of a child protective services assessment by the department within the 12 months preceding the fatality.

(2) During the course of its review of the case, the Critical Incident Response Team may include or consult with the district attorney from the county in which the incident resulting in the fatality occurred.

(3) The department shall adopt rules necessary to carry out the provisions of this section. The rules adopted by the department shall substantially conform with the department's child welfare protocol regarding Notification and Review of Critical Incidents. [2007 c.674 §4]

Note: 419B.024 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 419B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

419B.025 Immunity of person making report in good faith. Anyone participating in good faith in the making of a report of child abuse and who has reasonable grounds for the making thereof shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report. [1993 c.546 §17]

419B.028 Photographing child during investigation; photographs as records. (1) In carrying out its duties under ORS 419B.020, any law enforcement agency or the Department of Human Services may photograph or cause to have photographed any child subject of the investigation for purposes of preserving evidence of the child's condition at the time of the investigation. Photographs of the anal or genital region may be taken only by medical personnel.

(2) When a child is photographed pursuant to ORS 419B.023, the person taking the photographs or causing to have the photographs taken shall, within 48 hours or by the end of the next regular business day, whichever occurs later:

(a) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional described in ORS 418.747 (9); and

(b) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in any relevant files pertaining to the child maintained by the law enforcement agency or the department.

(3) For purposes of ORS 419B.035, photographs taken under authority of this section shall be considered records. [1993 c.546 §18; 2007 c.674 §5]

419B.030 Central registry of reports. (1) A central state registry shall be established and maintained by the Department of Human Services. The local offices of the department shall report to the state registry in writing when an investigation has shown reasonable cause to believe that a child's condition was the result of abuse even if the cause remains unknown. Each registry shall contain current information from reports cataloged both as to the name of the child and the name of the family.

(2) When the department provides specific case information from the central state registry, the department shall include a notice that the information does not necessarily reflect any subsequent proceedings that are not within the jurisdiction of the department. [1993 c.546 §19]

419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section. The Department of Human Services shall make the records available to:

(a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;

(b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

(d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;

(e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect;

(f) The Child Care Division for certifying, registering or otherwise regulating child care facilities;

(g) The Office of Children's Advocate;

(h) The Teacher Standards and Practices Commission for investigations conducted under ORS 342.176 involving any child or any student in grade 12 or below; and

(i) Any person, upon request to the Department of Human Services, if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be disclosed in accordance with ORS 192.410 to 192.505; and

(j) The Child Care Division of the Employment Department for purposes of ORS 657A.030 (8)(g).

(2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the Department of Human Services may exempt from disclosure the names, addresses and other identifying information about other children, witnesses, victims or other persons named in the report or record if the department determines, in written findings, that the safety or well-being of a person named in the report or record may be jeopardized by disclosure of the names, addresses or other identifying information, and if that concern outweighs the public's interest in the disclosure of that information.

(b) If the Department of Human Services does not have a report or record of abuse regarding a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015, the department may disclose that information.

(3) The Department of Human Services may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the Director of Human Services gives prior written approval. The Department of Human Services shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this section. The name, address and other identifying information about the person who made the report may not be disclosed pursuant to this subsection and subsection (1) of this section.

(4) A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city attorneys with criminal prosecutorial functions and the Attorney General when the law enforcement agency determines that disclosure is necessary for the investigation or enforcement of laws relating to child abuse and neglect.

(5) A law enforcement agency, upon completing an investigation and closing the file in a specific case relating to child abuse or neglect, shall make reports and records in the case available upon request to any law enforcement agency or community corrections agency in this state, to the Department of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release. A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to law enforcement, community corrections, corrections or parole agencies in an open case when the law enforcement agency determines that the disclosure will not interfere with an ongoing investigation in the case. The name, address and other identifying information about the person who made the report may not be disclosed under this subsection or subsection (6)(b) of this section.

(6)(a) Any record made available to a law enforcement agency or community corrections agency in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Supervision or to a physician in this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board or physician. Any record or report disclosed by the Department of Human Services to other persons or entities pursuant to subsections (1) and (3) of this section shall be kept confidential.

(b) Notwithstanding paragraph (a) of this subsection:

(A) A law enforcement agency, a community corrections agency, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may disclose records made available to them under subsection (5) of this section to each other, to law enforcement, community corrections, corrections and parole agencies of other states and to authorized treatment providers for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release.

(B) A person may disclose records made available to the person under subsection (1)(i) of this section if the records are disclosed for the purpose of advancing the public interest.

(7) An officer or employee of the Department of Human Services or of a law enforcement agency or any person or entity to whom disclosure is made pursuant to subsections (1) to (6) of this section may not release

any information not authorized by subsections (1) to (6) of this section.

(8) As used in this section, “law enforcement agency” has the meaning given that term in ORS 181.010.

(9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation.

419B.040 Certain privileges not grounds for excluding evidence in court proceedings on child abuse. (1) In the case of abuse of a child, the privileges created in ORS 40.230 to 40.255, including the psychotherapist-patient privilege, the physician-patient privilege, the privileges extended to nurses, to staff members of schools and to regulated social workers and the husband-wife privilege, shall not be a ground for excluding evidence regarding a child’s abuse, or the cause thereof, in any judicial proceeding resulting from a report made pursuant to ORS 419B.010 to 419B.050.

(2) In any judicial proceedings resulting from a report made pursuant to ORS 419B.010 to 419B.050, either spouse shall be a competent and compellable witness against the other. [1993 c.546 §21; 2009 c.442 §37]

419B.045 Investigation conducted on public school premises; notification; role of school personnel.

If an investigation of a report of child abuse is conducted on public school premises, the school administrator shall first be notified that the investigation is to take place, unless the school administrator is a subject of the investigation. The school administrator or a school staff member designated by the administrator may, at the investigator’s discretion, be present to facilitate the investigation. The Department of Human Services or the law enforcement agency making the investigation shall be advised of the child’s disabling conditions, if any, prior to any interview with the affected child. A school administrator or staff member is not authorized to reveal anything that transpires during an investigation in which the administrator or staff member participates nor shall the information become part of the child’s school records. The school administrator or staff member may testify at any subsequent trial resulting from the investigation and may be interviewed by the respective litigants prior to any such trial. [1993 c.546 §22; 2003 c.14 §225]

419B.050 Authority of health care provider to disclose information; immunity from liability. (1)

Upon notice by a law enforcement agency, the Department of Human Services, a member agency of a county multidisciplinary child abuse team or a member of a county multidisciplinary child abuse team that a child abuse investigation is being conducted under ORS 419B.020, a health care provider must permit the law enforcement agency, the department, the member agency of the county multidisciplinary child abuse team or the member of the county multidisciplinary child abuse team to inspect and copy medical records, including, but not limited to, prenatal and birth records, of the child involved in the investigation without the consent of the child, or the parent or guardian of the child. A health care provider who in good faith disclosed medical records under this section is not civilly or criminally liable for the disclosure.

(2) As used in this section, “health care provider” has the meaning given that term in ORS 192.519. [1997 c.873 §27; 1999 c.537 §3; 2001 c.104 §150; 2005 c.562 §27]

HB 2183 (2011) (Laws 2011, c. 606, § 2, eff. Jan. 1, 2012) provides:

(1) A person commits the offense of making a false report of child abuse if, with the intent to influence a custody, parenting time, visitation or child support decision, the person:

- (a) Makes a false report of child abuse to the Department of Human Services or a law enforcement agency, knowing that report is false; or
- (b) With the intent that a public or private official make a report of child abuse to the Department of Human Services or a law enforcement agency, makes a false report of child abuse to the public or private official, knowing that the report is false.

(2) Making a false report of child abuse is a Class A violation.

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PRIVILEGES—ORS 40.225 & 40.252

40.225 Rule 503. Lawyer-client privilege. (1) As used in this section, unless the context requires otherwise:

(a) “Client” means a person, public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) “Confidential communication” means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(c) “Lawyer” means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(d) “Representative of the client” means:

(A) A principal, an officer or a director of the client; or

(B) A person who has authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client, or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the person’s scope of employment for the client.

(e) “Representative of the lawyer” means one employed to assist the lawyer in the rendition of professional legal services, but does not include a physician making a physical or mental examination under ORCP 44.

(2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(a) Between the client or the client’s representative and the client’s lawyer or a representative of the lawyer;

(b) Between the client’s lawyer and the lawyer’s representative;

(c) By the client or the client’s lawyer to a lawyer representing another in a matter of common interest;

(d) Between representatives of the client or between the client and a representative of the client; or

(e) Between lawyers representing the client.

(3) The privilege created by this section may be claimed by the client, a guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer’s representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(4) There is no privilege under this section:

(a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(b) As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(c) As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

(d) As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(e) As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

(5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication made to the office of public defense services established under ORS 151.216 for the purpose of seeking preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.

(6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained under this section for a communication that is made to the office of public defense services established under ORS 151.216 for the purpose of making, or providing information regarding, a complaint against a lawyer providing public defense services.

(7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication ordered to be disclosed under ORS 192.410 to 192.505.

[Laws 1981, c. 892, § 32; Laws 1987, c. 680, § 1; Laws 2005, c. 356, § 1; Laws 2005, c. 358, § 1; Laws 2007, c. 513, § 3, eff. June 20, 2007; Laws 2009, c. 516, § 1, eff. Jan. 1, 2010.]

40.252 Rule 504-5. Communications revealing intent to commit certain crimes. (1) In addition to any other limitations on privilege that may be imposed by law, there is no privilege under ORS 40.225, 40.230 or 40.250 for communications if:

(a) In the professional judgment of the person receiving the communications, the communications reveal that the declarant has a clear and serious intent at the time the communications are made to subsequently commit a crime involving physical injury, a threat to the physical safety of any person, sexual abuse or death or involving an act described in ORS 167.322;

(b) In the professional judgment of the person receiving the communications, the declarant poses a danger of committing the crime; and

(c) The person receiving the communications makes a report to another person based on the communications.

(2) The provisions of this section do not create a duty to report any communication to any person.

(3) A person who discloses a communication described in subsection (1) of this section, or fails to disclose a communication described in subsection (1) of this section, is not liable to any other person in a civil action for any damage or injury arising out of the disclosure or failure to disclose. [2001 c.640 §2; 2007 c.731 §4]

OREGON REVISED STATUTES 2011 TRAINING—ORS 418.702 & 9.114

418.702 Training and continuing education for mandatory reporters; notice to persons required to report child abuse. (1) The Department of Human Services shall implement a training and continuing education curriculum for persons other than law enforcement officers required by law to investigate allegations of child abuse. The curriculum shall address the areas of training and education necessary to facilitate the skills necessary to investigate reports of child abuse and shall include but not be limited to:

(a) Assessment of risk to the child;

(b) Dynamics of child abuse, child sexual abuse and rape of children; and

(c) Legally sound and age appropriate interview and investigatory techniques.

(2) The Oregon State Bar and each board that licenses, certifies or registers public and private officials required to report child abuse under ORS 419B.010 shall identify those persons regulated by the board who in their official capacity have regular and on-going contact with children and shall notify those persons every two years of their duty to report child abuse. Such notice shall contain what the person is required to report and where such report shall be made and also advise of the symptoms to look for and provide a contact number for further information.

(3) The department shall develop content of the notice for such a mailing. The cost of distribution shall be paid by the board.

(4) The department shall develop and make available, at cost, training materials that may be used at training conferences and other similar events involving such public and private officials, as defined in ORS 419B.005. [Formerly 418.749]

ORS 9.114 Mandatory training on duties relating to reporting child abuse. The Oregon State Bar shall require that attorneys complete one hour of training every three years designed to provide education on the duties of attorneys under ORS 419B.010. All training under this section shall be applied by the bar against the hours of continuing legal education required of attorneys as a condition of membership in the bar or as a condition to the practice of law in this state. Credit acquired under this section shall be applied first against any requirement of continuing legal education relating to ethics. [1999 c.953 §2]*

***Note:** Section 7 of HB 2205 (2013) amends the training requirement outlined in ORS 9.114, effective January 1, 2015 to provide “The Oregon State Bar shall adopt rules to establish minimum training requirements for all active members of the bar relating to the duties of attorneys under ORS 124.060 and 419B.010. Rules adopted under this section are subject to review and approval by the Supreme Court.”

Selected Oregon Rules of Professional Conduct

Rule 1.0 Definitions

* * *

(f) “Information relating to the representation of a client” denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer’s compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules;

(6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client’s identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer; or

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer’s clients, except to the extent reasonably necessary to carry out the monitoring lawyer’s responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

**QUESTIONS AND (Some) ANSWERS
ABOUT MANDATORY CHILD ABUSE REPORTING FOR LAWYERS**

Oregon State Bar General Counsel's Office

Question 1: What is Mandatory Child Abuse Reporting?

The Oregon Child Abuse Reporting Law is found at ORS 419B.005 to 419B.050. It imposes a legal obligation on certain “public and private officials” to report child abuse. The statute also expresses the state’s policy that all citizens have a responsibility to prevent abuse and protect children, and the statute encourages voluntary reporting in situations in which reporting is not required. Mandatory reporters are a critical link in the state’s system of child protection and account for approximately 75% of reports received.

Question 2: What Are Lawyers Required To Do?

Lawyers are included in the definition of “public or private officials” who have a duty to report child abuse. ORS 419B.005(3)(m). Physicians, nurses, dentists, compensated youth coaches, higher education employees, school employees, social workers, police, firefighters, clergy, psychologists, day care workers, youth camp workers, and members of the Legislative Assembly are among the other mandatory reporters. Reporting is required when a lawyer has “reasonable cause to believe that any child with whom the [lawyer] comes in contact has suffered abuse or that any person with whom the [lawyer] comes in contact has abused a child shall immediately report. . . .” ORS 419B.010(1).

Child abuse reporting is a 24-hour-a-day, 7-day-a-week responsibility. Originally, the statute required public and private officials to report only information they learned in the performance of official duties. In 1991, however, the statute was amended to eliminate that language, with the result that mandatory reporters are never “off-duty” for purposes of child abuse reporting.

The duty to report child abuse is personal to the mandatory reporter. *See* ORS 419B.010(4). A mandatory reporter is required to personally report even if his or her employer has internal policies or procedures for addressing reports of child abuse. *Id.*

Failure to report as required by the statute is a Class A violation. ORS 419B.010(5). The penalty for a Class A violation is a maximum fine of \$2000, according to ORS 153.018(2)(a).

Oregon Rule of Professional Conduct 1.6(a) prohibits a lawyer from revealing information relating to the representation of a client.¹ Oregon RPC 1.6(b)(5) *permits*, but does not require, a lawyer to disclose information relating to the representation of a client when required by law. A lawyer may thus report child abuse as required by law without violating the lawyer’s ethical duty of confidentiality to a client. Note that when one of the exceptions to reporting applies (discussed in Question 6, *infra*), the law does not require reporting, and therefore would not permit a lawyer to disclose information protected by Oregon RPC 1.6. In addition, Oregon RPC 1.6(b)(5) *permits*

¹ Lawyers are required by ORS 9.460 to “maintain the confidences and secrets of . . . clients consistent with the rules of professional conduct . . .” ORS 9.460 uses the terminology of *former* DR 4-101, which has been replaced by Oregon RPC 1.6.

disclosure to the extent that is required by law; it does not give a lawyer permission to reveal information about child abuse that the law does not require be reported. In other words, a lawyer cannot use the permission in the disciplinary rule to justify disclosing information about child abuse that is not required to be reported by the exceptions in ORS 419B.010.

Question 3: What Is “Reasonable Cause?”

There are no reported cases applying or interpreting this phrase specifically in connection with ORS 419B.010(1). One case interprets “reasonable cause” in connection with ORS 419B.020, a provision that requires the Department of Human Services to investigate a report of child abuse and make a determination of whether the allegations of abuse are “founded,” that is, whether there is “reasonable cause to believe that abuse has occurred.” ORS 419B.020(2). In *Berger v. State Office for Services to Children and Families*, 195 Or App 587, 98 P3d 1127 (2004), the court noted that the agency’s determination of whether charges are founded is limited only to “whether there is evidence that creates a reasonable suspicion of child abuse; [the agency] does not decide whether child abuse in fact occurred or even probably occurred.” *Id.* at 590.

Child Protective Services investigators who have *reasonable suspicion* that a suspicious physical injury is or may be the result of abuse are required to immediately photograph the injury and ensure that a medical assessment is conducted within 48 hours. ORS 419B.023(2). “Reasonable suspicion” in this context means “a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.” OAR 413-015-0115. The administrative rule further explains that “the belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.”

Similarly, “reasonable suspicion” for an officer to stop an individual in the criminal law context is defined as “a belief that is reasonable under the totality of the circumstances existing at the time and place the peace officer acts.” ORS 131.605(5). The standard is an “objective test of observable facts” and requires the officer “to point to specific articulable facts that give rise to a reasonable inference that a person has committed a crime.” *State v. Ehly*, 317 Or 66, 80, 854 P2d 421 (1993).

By contrast, the standard of “probable cause” for arrest in the criminal law context is generally thought of as a higher standard than that of “reasonable suspicion.” “Probable cause” is defined by ORS 131.005(11) as a “substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.”

“Reasonable cause,” has also been defined in a variety of criminal and civil cases and sometimes has been equated with “probable cause.” In *State v. Childers*, 13 Or App 622, 511 P2d 447 (1973), the court held that a police officer did not have probable cause to make a warrantless search for marijuana since he was uncertain whether he had smelled it. The court cited the probable cause standard as the existence of circumstances that would lead a reasonably prudent person to believe that an event has occurred, and it is distinguishable from “mere suspicion or belief, unsupported by facts of circumstances.” *Id.* at 629. This articulation of probable cause sounds more like the reasonable suspicion standard.

Interpreting “reasonable cause” in the context of obtaining a subpoena for bank records under ORS 192.565(6), the court in *State v. McKee*, 89 Or App 94, 99, 747 P3d 395 (1987) found that a showing of reasonable cause requires a recital of known facts, not merely conclusory statements. By contrast, a merchant was found to have reasonable cause to detain a suspected shoplifter when

the merchant saw the person leaving the store with unpaid-for merchandise partially concealed in a pocket. *Delp v. Zapp's Drug & Variety Stores*, 238 Or 538, 395 P2d 137 (1964). The statute cited in *Delp*, which allows merchants to detain suspected shoplifters, has since been amended to require “probable cause” as opposed to “reasonable cause.” See ORS 131.655(1).

As used in ORS 419B.010(1) and in order to qualify for immunity, “reasonable cause” is a good faith determination that child abuse has occurred based on facts reasonably believed by the reporter to be true. See ORS 419B.025.

Question 4: What Is “Comes In Contact?”

“Comes in contact” is a more nebulous phrase that is also not defined in the statute or case law. A dictionary definition of “contact” includes “coming together...,” “not being separated by space . . . ,” and “being in communication.” Webster’s *Illustrated Encyclopedic Dictionary*, Tormont Publications (Montreal: 1990). That definition and common usage suggest that a lawyer is required to report child abuse only when the lawyer has had some kind of physical contact with a person who has abused a child or with a child who has been abused. This does not necessarily mean “in person” contact; telephone or even email or written contact would likely suffice.

The “comes in contact” requirement does not appear to modify the “reasonable cause” requirement. In other words, the statute does not appear to require reporting only when the lawyer learns of the abuse directly from the child or abuser. Reliable second—or third-hand information may provide the reasonable cause to believe that abuse has occurred; reporting would then be required if the lawyer had come in contact with the abuser or the child. For example, if a neighbor tells a lawyer that she heard from another neighbor that a child living down the street (with whom the lawyer has occasional contact) appears to have been abused, the lawyer may have reasonable cause to believe that abuse occurred if the lawyer believes the neighbors are reliable sources of information.

It is sometimes suggested that, under a broad reading of the statute and its purpose, that contact includes knowledge of child abuse even without any physical contact with the victim or abuser. The Oregon Attorney General does not interpret the statute so broadly, opining that “physicians, psychologists and social workers who serve as members of the board of directors of a self-help child abuse prevention organization, but who do not provide direct services, are not required to report suspected child abuse...when they acquire that information indirectly in their official capacities as board members.” Oregon AG Opinion No. OP-5543 (1984). The basis for the opinion lies primarily in the fact that the list of mandatory reporters in Oregon consists of professionals and service providers who are most likely to come into direct contact with victims or perpetrators of child abuse. “We believe that if the drafter of [the statute] had intended to impose a mandatory reporting duty, violation of which is punishable by a substantial fine..., upon persons who merely have knowledge about child abuse, from whatever source, they would have said so clearly.” *Id.*

Question 5: How Is A Lawyer Expected To Identify Child Abuse?

The child abuse reporting statute identifies various types of conduct that constitute child abuse. ORS 419B.005(1)(a). Lawyers, like many mandatory reporters, may not be experts in identifying child abuse and are not expected to be. The intent of the statute is to get at-risk children into a system where the circumstances will be evaluated and, as necessary, addressed by qualified professionals. Hence, the standard for reporting is only “reasonable cause,” not “certainty.”

Abuse that leaves physical marks is relatively easy to recognize. Some forms of neglect are also visible, such as malnutrition or young children left unattended. Criminal assault and certain sex crimes constitute child abuse, as does allowing a child to be in a place where methamphetamines are

manufactured. Other kinds of child abuse, such as mental injury, may be more difficult to detect, particularly where contact with the child is limited. The mandatory reporting law does not require lawyers to conduct investigations into suspected child abuse, but lawyers should make reasonable inquiry where possible to follow up on initial observations or information that appears to involve child abuse to ensure that they have “reasonable cause” to believe that abuse has occurred.

The Oregon Department of Human Services publishes a booklet entitled “What You Can Do About Child Abuse—A Guide for Mandatory Reporters” that lawyers may find helpful. It is available on-line at <http://dhsforms.hr.state.or.us/Forms/Served/DE9061.pdf>. DHS will also answer questions and consult about whether a situation should be reported.

Question 6: Are There Any Exceptions To The Reporting Requirement?

There are three exceptions to the statutory reporting requirement:

A Lawyers, together with clergy, psychiatrists, psychologists and guardian ad litem appointed under ORS 419B.231 are not required to report information “communicated by a person if the communication is privileged under ORS 40.225 to 40.295 or 419B.234(6).”

B A lawyer is also not required to report child abuse based on information communicated to the lawyer “in the course of representing a client, if disclosure of the information would be detrimental to the client.”

C No official is required to report if the information about child abuse is acquired “by reason of a report” or “by reason of a proceeding arising out of a report” made under ORS 419B.010, provided the official “reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.” ORS 419B.010(2).

A. Privileged Communications

The first exception relates to statutory privileges. Lawyers are not required to report information that is “*privileged under ORS 40.225 to 40.295.*” ORS 40.225 is the lawyer-client privilege.² The reference, however, encompasses thirteen other privileges: psychotherapist-patient (40.230), physician-patient (40.235), nurse-patient (40.240), school employee-student (40.245), clinical social worker-client (40.250), husband-wife (40.255), clergy-penitent (40.260), counselor-client (40.262), stenographer-employer (40.265), public officer (40.270), disabled person-sign language interpreter (40.272), non-English speaking person-interpreter (40.273), and informer (40.275).

Clearly, if a lawyer learns in a privileged communication with a client that the client has abused a child, the lawyer is not required to report. What, however, of information protected by one of the other privileges contained in ORS 40.225 to 40.295? Can ORS 419B.010(1) be read to also exempt a lawyer from reporting information that is protected by any one of the other thirteen privileges even if it was not, for some reason, covered by the attorney-client privilege? For instance, what if the lawyer receives a report containing the client’s disclosure to a psychotherapist that the

² A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. A “confidential communication” is one that is “not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” Confidential communications include those (1) between the client or the client’s representative and the client’s lawyer or a representative of the lawyer, (2) between the client’s lawyer and the lawyer’s representative, (3) by the client or the client’s lawyer to a lawyer representing another in a matter of common interest, (4) between representatives of the client or between the client and a representative of a client, or (5) between lawyers representing the client. OEC 503 (ORS 40.225).

client committed child abuse, but the client has never made the disclosure directly to the lawyer. Is the lawyer exempted from reporting the information because it is protected by the psychotherapist-patient privilege? Or is the psychotherapist-patient privilege lost when the report is delivered to the lawyer? The first question to ask in a situation such as the foregoing is whether the information continues to be privileged; if so, there remains the unanswered question of whether a lawyer is excepted from reporting the information protected by the other privileges.

Although the plain language of the statute suggests that lawyers, psychiatrists, psychologists and clergy are excused from reporting information protected by all the statutory privileges, there is no authority interpreting the scope of the privilege exception. Given that absence of authority and the broad protective purpose behind the statute, prudence may dictate a less expansive reading.

B. Information Detrimental to Client if Disclosed

The second exception to mandatory reporting applies only to lawyers, and tracks to some extent a lawyer's ethical obligation to protect confidential client information. Lawyers are prohibited by Oregon RPC 1.6(a) from revealing "information relating to the representation of a client." "Information relating to the representation of a client" is defined in Oregon RPC 1.0(f) as both "information protected by the lawyer-client privilege under applicable law" and "other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."³

Clearly then, "information relating to the representation" is not limited to information that is privileged because communicated by the client. Information protected under Oregon RPC 1.6 includes information learned from witnesses and other third parties as well as information imparted by the client that is, for some reason, not covered by the privilege. All that is required is that it be gained during the course of the professional relationship between the lawyer and the client, and either that the client has requested it be "held inviolate" or that it would be embarrassing or detrimental to the client if revealed.

In creating the statutory exception for some of the information that would be protected by Oregon RPC 1.6,⁴ the legislature limited it to information that would be detrimental (not merely embarrassing) if disclosed. This appears to be the legislature's way of reconciling the sanctity of the lawyer-client relationship with the interest of protecting children. The legislature appears to have concluded that mere embarrassment to a client is not sufficient justification for the lawyer to ignore child abuse.

C. Information Learned from an Official Report

The final exception to the reporting requirement applies to all mandatory reporters. Reporting is not required of information learned "by reason of a report" or "by reason of a proceeding arising out of a report" made under the mandatory reporting statute. The exception applies if the reporter "reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services." This relatively new exception⁵ appears to be the legislature's attempt to clarify that mandatory reporters do not need to report when the only information they

³ These are the definitions, respectively, of "confidences" and "secrets" from *former* DR 4-101.

⁴ This exception was added by the 2001 Legislature in response to suggestions by lawyers that the exception for privileged communications could easily put lawyers in the difficult situation of having to violate their ethical duties to clients in order to comply with the statute.

⁵ This exception was also added by the 2001 Legislature.

have comes from an existing report. The language is not crystal clear, however, as it suggests that reports may be made and proceedings may arise therefrom, yet the information might not be known to DHS. Although it is difficult to image a situation where that could actually be the case, a lawyer who learns about abuse (involving a person with whom the lawyer has had contact) from another reporter's report would be prudent to confirm that DHS is aware of the situation. If DHS cannot confirm its existing knowledge of the abuse, the lawyer should report.

The effect of these statutory exceptions to the duty to report is that most of the information a lawyer will be required to report will be that learned outside the lawyer's "official capacity." For instance, witnessing an act of child abuse in a public place will trigger the reporting obligation, despite the fact that the lawyer may not have a lot of information to report. Similarly, information that a non-client friend or neighbor is abusing a child or is a victim of abuse must be reported.

Question 7: What If Someone Expresses The Intent To Commit An Act Of Child Abuse?

ORS 419B.010(1) mandates reporting only when there is reasonable cause to believe that a child "*has suffered abuse*" or that a person "*has abused* a child." It does not require advance reporting of possible future child abuse, except where the future abuse constitutes a "threatened harm" under ORS 419B.005(G). Threatened harm is defined broadly to include any situation that subjects a child to a substantial risk of harm to the child's health or welfare.

If the situation does not involve "threatened harm" within the meaning of ORS 419B.005(G), reporting may still be possible. Oregon RPC 1.6(b)(1) permits a lawyer to reveal confidential information to the extent the lawyer reasonably believes necessary "to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime." There is also no lawyer-client privilege under ORS 40.225(4)(a) "if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud." Oregon RPC 1.6(b)(2) permits a lawyer to reveal information otherwise protected to the extent the lawyer reasonably believes necessary "to prevent reasonably certain death or substantial bodily harm," whether or not a crime is involved. When used in reference to degree or extent, "substantial" denotes "a material matter of clear and weighty importance." Oregon RPC 1.0(o).

It is not clear that all incidents of child abuse identified in the statute constitute crimes. A lawyer whose client has expressed a clear intention to commit child abuse in the future should ascertain first whether the intended conduct is a crime or if it puts a person at risk of reasonably certain death or substantial bodily harm. If so, the lawyer may disclose information necessary to prevent the commission of the crime.

A voluntary report of suspected future abuse that is not required under ORS 419B.010 would nevertheless be subject to the same statutory confidentiality and immunity as a mandatory report.

Question 8: Are Lawyers Obligated to Report Child Abuse Occurring Outside Of Oregon?

While all states have adopted mandatory child abuse reporting laws, the laws are not uniform and lawyers are not mandatory reporters in all jurisdictions. Lawyers who are licensed in multiple jurisdictions should be attentive to the statutory requirements of each jurisdiction as well as to the interplay between those statutory requirements and the disciplinary rules to which the lawyer is subject.

Additionally, the scope of Oregon's mandatory child abuse reporting law is not clear with respect to incidents occurring outside of Oregon or involving abusers and victims who are not residents of Oregon. Nothing in ORS 419B.010 can be read to limit reporting only to incidents occurring within the state. The language of the statute sweeps broadly to include "any child" who

has been abused and “any person” who has abused on child. On the other hand, if a lawyer fails to report an incident of child abuse involving non-Oregonians and learned about while visiting another state, it may be difficult for Oregon to assert jurisdiction over the lawyer for purposes of citing a violation pursuant to ORS 419B.010(3).

A lawyer who wishes to act most cautiously should make a report to DHS of the out-of-state incident and allow DHS to determine whether and how to deal with the information. Reporting in that circumstance does not violate any ethical responsibility of the lawyer or violate any right of the persons involved; moreover, it is consistent with the policy behind the child abuse reporting statute to protect children not only by requiring reports, but also “to encourage voluntary reports.” ORS 419B.007.

Question 9: What Type Of Report Is Required And To Whom Must It Be Made?

The statute requires that reports be made “immediately,” ORS 419B.010(1), and the report must be “an oral report by telephone or otherwise.” ORS 419B.015. That combined language suggests that a letter will not suffice. (It has been suggested to the author that a fax, if sent during office hours, meets the requirement at least in part because it is transmitted by telephone.) In-person or telephone reports are obviously preferred. Reports must be made to the local office of the Department of Human Services, its designee, or a law enforcement agency within the county where the person making the report is located at the time of the contact. ORS 419B.005(4) defines a law enforcement agency to mean:

- A city or municipal police department;
- A county sheriff’s office;
- The Oregon State Police;
- A police department established by a university; or
- A county juvenile department.

Under ORS 419B.015(1)(a) report must contain, if known:

- the names and addresses of the child and the parents of the child or other persons responsible for care of the child,
- the child’s age,
- the nature and extent of the abuse, including any evidence of previous abuse,
- the explanation given for the abuse, and
- any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

When a report of child abuse is received by DHS, it is required to notify law enforcement, and vice versa. ORS 419B.015(1)(b), (2).

Question 10: Are Child Abuse Reports Confidential?

Notwithstanding Oregon's public records law, "reports and records compiled under [the mandatory child abuse reporting law] are confidential and are not accessible for public inspection." ORS 419B.035. DHS is required to make the reports available in some circumstances and permitted to do so in other circumstances. *Id.* In either case, however, the name, address or other identifying information about the reporter cannot be disclosed except on court order. ORS 419B.035(3). Recipients of records under DHS's mandatory or permissive disclosure authority are also required to maintain the confidentiality of the records and commit a Class A violation for failure to do so.

The confidentiality is not absolute, as a reporter may be required to testify in juvenile or criminal court proceedings relating to the report. In criminal proceedings, the alleged abuser's constitutional right to confront witnesses would override the statutory confidentiality.

Confidentiality may be enhanced by reporting anonymously. While there is no requirement in the statute that the reporter identify him- or herself, it is also clear that the statute does not contemplate anonymous reporting and it is likely not preferred by DHS. Law enforcement and DHS will accept anonymous reports, however. Because of the liability that can result from not reporting, lawyers should weigh the desire for confidentiality with the possible need for proof that a report was in fact made as required.

Question 11: What If I Am Wrong, And There Really Was No Abuse?

A person who acts in good faith in making a report of child abuse and who has reasonable grounds for doing so, is immune from civil or criminal liability for making the report and for the content of the report. Reporters have the same immunity with respect to their participation in any judicial proceeding resulting from the report. ORS 419B.025. *See McDonald v. State of Oregon*, 71 Or App 751, 694 P2d 569 (1984)(negligence claim against teacher dismissed because plaintiffs failed to assert any facts to negate teacher's good faith and reasonable grounds to report child abuse, notwithstanding the fact that the report was later determined to be unfounded).

The efficacy of the foregoing immunity provision may be open to question, based on the Oregon Supreme Court's decision in *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 23 P3d 333 (2001). That case held that the exclusive remedy of the Workers' Compensation statutes violated Article I, Section 10 of the Oregon Constitution to the extent it left the plaintiff without a remedy for an injury not compensable under the workers' compensation system. Similarly, the immunity granted by ORS 419B.025 may conflict with the arguable common-law right of an alleged abuser to sue a reporter for defamation.

This immunity provision will not shield an attorney from civil or criminal liability if he or she knowingly made a false report. It is a Class A violation to *knowingly* make a false child abuse report in order to influence a custody, parenting time, visitation or child support decision. ORS 419B.016.

Question 12: Are Lawyers Liable For *Not* Reporting Child Abuse?

As mentioned above, failure to report child abuse when required under the statute is a Class A violation punishable by a fine. The bar is aware of at least two cases in which a mandatory reporter (not a lawyer) was prosecuted for failing to report. In one case, the official informed the parents of the victim, who took immediate and apparently successful steps to protect her. The official also informed her supervisor. She was prosecuted for not reporting to DHS exactly as the statute required; she was eventually acquitted. In another case, a mother who was also a mandatory reporter was found to have violated her duty when she failed to immediately report the abuse of her own daughter. *See Dep't of Human Servs. v. F.L.B.*, 255 Or. App. 709, 711-12 (2013).

Civil liability is also a possibility. There are no reported cases in Oregon imposing liability on mandatory reporters for failure to report child abuse, but at least one jury has rendered a verdict in favor of a plaintiff based in part on the defendant's failure to report child abuse. *See Shin v. Sunriver Prep. School*, 199 Or App 352, 111 P3d 352 (2005). A statutory tort theory may provide the basis for liability because the mandatory reporting statute "imposes a duty to protect a specified group of persons." *Scovill v. City of Astoria*, 324 Or 159, 172, 921 P2d 1312 (1996)(setting forth statutory tort analysis in context of protective custody statute, ORS 430.399). In addition, the court of appeals has held that a child who had been sexually abused could state a claim for negligence against the Children's Services Division (CSD) by alleging that CSD breached its statutory duty to investigate abuse allegations. *Blachly v. Portland Police Dept.*, 135 Or App 109, 898 P2d 784 (1995).

Legislation that would have eliminated any private right of action under the mandatory child abuse reporting law was vetoed by the governor during the 1999 legislative session. Other jurisdictions have imposed liability on mandatory reporters for failure to report suspected abuse. *See Singley, Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J Juv L 236 (1998).

The Professional Liability Fund also has defended and settled two claims arising out of a lawyer's failure to report when there was no privilege or other exception to the duty to report. If you are an attorney in private practice, a claim for failure to report child abuse will be covered under the Professional Liability Fund Coverage Plan only if the claim falls within the definition of a "Covered Activity," that is, it arises from an act, error, or omission by a lawyer in rendering professional services in his or her capacity as a lawyer. In short, the lawyer must have obtained the information about child abuse while on the job, in the context of rendering professional legal services. *See* PLF Plan, Section V—*Exclusions from Coverage*, Comments to Exclusion 16. Claims not covered by the PLF may also be covered under a lawyer's commercial general liability policy or homeowner's policy.

Question 13: What Does The Law Require The Oregon State Bar To Do In Connection With Child Abuse Reporting?

The Bar is required to identify those persons regulated by the bar (Oregon lawyers) "who in their official capacity have regular and ongoing contact with children" and to notify them every two years of their duty to report child abuse. ORS 418.702(2). The notice must also advise them of the symptoms to look for and provide a contact number for further information. The bar meets this statutory obligation by publishing notice regularly in the *Oregon State Bar Bulletin*.

The Bar is also required to ensure that attorneys complete one hour of training every three years on the duties of attorneys under the mandatory child abuse reporting law. ORS 9.114. The legislature enacted this educational requirement in 1999, in the apparent belief that lawyers were not sufficiently aware of their duties as mandatory child abuse reporters. In 2013, the Legislature amended this requirement to include education on elder abuse, starting in 2015. HB 2205 (2013).

Question 14: Are Lawyers Also Mandatory Reporters Under The Elderly And Disabled Person Abuse Prevention Act, ORS 124.050, Et Seq.?

All lawyers will become mandatory reporters of elder abuse on January 1, 2015. In 2013, the Legislature enacted HB 2205 (2013), which amends the definition of "public or private official" to include lawyers. In the interim, the Legislature is convening an Elder Abuse Work Group to define what constitutes elder abuse, among other issues. The Work Group will provide its report no later than February 1, 2014.

At present, lawyers are only required to report abuse of elderly and disabled persons in limited situations. ORS 124.060 requires reporting of elder abuse by “any public or private official” who comes in contact with the abused elder or with the abuser while the reporter is “acting in an official capacity.” The definition of “public or private official” in ORS 124.050(5) does not specifically include lawyers. Cf. ORS 419B.005(m). However, “public or private official” does include “any public official who comes in contact with elderly persons in the performance of the official’s duties.” ORS 124.050(5)(k). Thus, although lawyers generally are not covered by the Act, lawyers who are public officials and who come in contact with elderly persons in the performance of their official duties must comply with the Elderly Abuse Reporting Act.

In addition, ORS 441.640 requires any public or private official to report abuse of a resident of a long-term care facility. The definition of “public or private official” in this section includes legal counsel for the resident, guardian or family member of the resident. ORS 441.630(6)(h). Long-term care facility means “a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the director, to provide treatment for two or more unrelated patients.” ORS 442.015(2)

Question 15: Are Lawyers Also Mandatory Reporters of Abuse of Adults with Mental Illness or Developmental Disabilities?

Yes. ORS 430.765(1) provides, “Any public or private official who has reasonable cause to believe that any adult with whom the official comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused an adult shall report or cause a report to be made in the manner required in ORS 430.743.” The legislature has defined “public or private official” to include attorneys. ORS 430.735(12)(i). Under the statute, “Adult” means any person 18 years of age or older with “(a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or (b) A mental illness who is receiving services from a community program or facility.” ORS 430.735(2).

The statute defines abuse to include: abandonment, physical abuse, sexual abuse, neglect, verbal abuse of a person with a developmental disability, financial exploitation of a person with a developmental disability, involuntary seclusion of a person with a developmental disability, the wrongful use of a physical or chemical restraint upon a person with a developmental disability (unless prescribed by a physician or court order), and any death of an adult caused by other than accidental or natural means. ORS 430.735(1).

Although this mandatory reporting requirement provides an exception for attorneys whose reports are based on information that is attorney-client privileged under ORS 40.225, unlike the mandatory child abuse reporting requirement, it does not recognize an exception for information that is confidential and detrimental to a client if disclosed. ORS 430.765(2).

Lawyers who make a report of abuse of an adult with a mental illness or developmental disability in good faith, based on reasonable grounds, are entitled to civil immunity, as well as immunity “with respect to participating in any judicial proceeding resulting from the report.” ORS 430.753.

Oregon State Bar
Minimum Continuing Legal Education
Recordkeeping Form

Pursuant to MCLE Rule 7.2, every active member shall maintain records of participation in accredited CLE activities. You may wish to use this form to record your CLE activities. **Do not send this form to the Oregon State Bar or the Oregon Law Institute. This form should be retained in your own MCLE file.**

Name: _____ Bar No. _____

Sponsor of CLE Activity: **Oregon Law Institute
of Lewis & Clark Law School**

Title of CLE Activity: **CHILD ABUSE REPORTING:
LEGAL OBLIGATIONS AND PROFESSIONAL ETHICS**

Date and Location: **Friday, November 8, 2013
Ambridge Event Center, Portland, Oregon**

Video Date and Location: _____

Full Credit. I attended the entire program and the total authorized credits are:

____ 1 _____ Child Abuse Reporting

Partial Credit. I attended ____ hours of the program and am entitled to the following credits*:

_____ Child Abuse Reporting

***Credit Calculation:**

One (1) MCLE credit may be claimed for each sixty (60) minutes of actual participation. Do not include registration or introductions. The **Oregon Law Institute, Lewis & Clark Law School** is an accredited sponsor of CLE activities for the Oregon State Bar. CAVEAT: If the actual program length varies from the credit hours approved, Bar members are responsible for making the appropriate adjustments in their compliance reports. Adjustments must also be made for late arrival, early departure, or other periods of absence or nonparticipation.

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