

Defining Child Abuse for Professional Counselors as Mandated Reporters in Pennsylvania under the Newly Amended Child Protective Services Law

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It is important that all counselors maintain their professional and ethical responsibilities by being knowledgeable and compliant with local laws and regulations (ACA Code of Ethics, 2014). Included among those laws and regulations are mandated reporting practices. This examination outlines the most significant changes in the Child Protective Services Law (CPSL) that relate to defining child abuse with a specific focus on how those changes affect professional counselors as mandated reporters across the Commonwealth of Pennsylvania.

Keywords: child abuse, mandated reporting, physical abuse, sexual abuse and exploitation, serious mental injury, neglect

No child is immune from abuse. In fact, children can become victims of abuse in a variety of settings, including both the school and the community. Child abuse cuts across all geographic locations and impacts all socioeconomic levels irrespective of race, culture, or religion. Recognizing the prevalence of child abuse, lawmakers in all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico have created child abuse laws in an effort to both define child abuse and the individuals who are mandated reporters in suspected cases of child abuse. The purpose of this examination is to provide an overview of how child abuse is defined nationally while offering an extensive elaboration on selected child abuse laws found in the Pennsylvania Child Protective Services Act, also known as the Child Protective Services Law (CPSL).

The CPSL may be unknown or unfamiliar to the professional counselor, particularly due to recent changes in the law. It is important to note that this writing is not intended to be a comprehensive review of the CPSL, but merely an introduction for some and a refresher for others. Specifically, this analysis will begin with a statistical overview of child abuse both nationally and at the state level. In addition, explanations of the most recent amendments to the CPSL that went in to effect as of December 31, 2014 will be discussed with a specific focus on the transition to new child abuse definitions which provide a clearer and stricter set of rules for defining child abuse in

Pennsylvania. Examples will be integrated throughout the text to assist in understanding the new amendments and how they pertain to the helping professions. Finally, implications for professional counselors as mandated reporters across Pennsylvania will be discussed.

Child Abuse Statistics

At the federal level, based on a 2014 collection and analysis of data through National Child Abuse and Neglect Data System (NCANDS), an estimated 3.6 million child abuse allegations were made in the United States (including the District of Columbia and the Commonwealth of Puerto Rico) involving approximately 6.6 million children (U.S. Department of Health and Human Services, 2016). It is important to note that 17.7% of the child abuse referrals came from educational personnel, 5.6% came from mental health personnel, and 11% came from social services personnel. Of the 6.6 million children referred to child protective services nationally, 3.2 million children received either an investigation or alternative response (e.g., family was provided with social services).

NCANDS data for 2014 (as cited in U.S. Department of Health and Human Services, 2016) indicate that approximately 702,000 children, or 19.2% nationwide, received substantiated dispositions and

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were found to be victims of abuse based on the child abuse laws of the state in which the child resided. Additionally, 2.5 million children investigated were either determined not victims of abuse or received unsubstantiated dispositions based on a lack of sufficient evidence according to the laws of the state in which the child resided. Child abuse victims consisted of both boys (48.9%) and girls (50.7%) and the majority included the following three races or ethnicities: White (44.0%), Hispanic (22.7%), and African-American (21.4%). In most cases, the individual who committed child abuse included a parent (91.6%) in comparison to a non-parent (12.6%). Based on this nationwide data, the younger the child, the more vulnerable he or she was to fall victim to abuse (e.g. 24.7% of victims were younger than 3 years). A gradual decline in child abuse can be seen from birth to age 18.

At the state level, research based on a collection and analysis of data through the Pennsylvania Department of Human Services (2015), indicated that an estimated total of 29,273 reports for suspected child abuse were received in 2014, with 3,340 or 11.4% of suspected cases found to be substantiated. This increase in child abuse reports rose in 48 of Pennsylvania's 67 counties, which resulted in the highest number of child abuse reports received on a statewide level in any given year on record (Pennsylvania Department of Human Services, 2015). School personnel acting as mandated reporters accounted for the highest number of child abuse reports; although, the highest number of substantiated reports originated from mandated reporters in social service agencies. In general, mandated reporters (e.g., professional counselors, psychologists, and social workers) accounted for 76% (22,253) of all reports of suspected child abuse and 79% (2,621) of all substantiated dispositions (Pennsylvania Department of Human Services, 2015).

In the Commonwealth of Pennsylvania, according to the Pennsylvania Department of Human Services (2015), child abuse reports found to be substantiated under Pennsylvania law included 65% (2,186) girls while 35% (1,154) involved boys. Abused children in Pennsylvania ranged in age from birth to 18 and were comprised of the following percentages according to age: <1 (6%), 1-4 (16%), 5-9 (25%), 10-14 (31%), 15-17 (20%), and 17 (1%). In 2014, 61% (2,314) of children abused in Pennsylvania were abused by a parent; 16% (586) were abused by a non-parental relative; and 23% (874) were abused by individuals to which they were not related. Overall, male perpetrators of child abuse (72%) were much greater than the number of female perpetrators of child abuse (28%). The ages of abusive fathers fell within the range of 30-39; while abusive mothers were within the range of 20-39. When children were abused by a relative other than

a parent, that relative was typically between 10-19 years old.

On a federal level, NCANDS (as cited in U.S. Department of Health and Human Services, 2016) categorizes data received from the states into one of four injury types: neglect, physical, sexual, and other. Nationally, 75% of abused children were categorized as victims of neglect, 17% were victims of physical abuse, 8.3% were victims of sexual abuse, and 6.8% of victims were coded as some other type of abuse (U.S. Department of Health and Human Services, 2016). Over 14% of child abuse victims were included in more than one category.

In the Commonwealth of Pennsylvania, child abuse falls into one of the following four categories: physical abuse, serious mental injury, sexual abuse or exploitation, and neglect (23 § 6303). Statewide, 29% of abused children were victims of physical abuse; serious mental injuries accounted for less than 1% of abused children; 60% of victims were sexually abused; and 6% of abused children were neglected (Pennsylvania Department of Human Services, 2015). While these four categories have historically been present in the CPSL, recent amendments to the CPSL have, in many ways, clarified the definitions of child abuse as outlined by the statutes. The law now provides more specific definitions for mandated reporters to use when determining whether or not an individual's behavior constitutes child abuse. So what exactly is "child abuse" and how is it defined by the Pennsylvania Legislature?

Defining Child Abuse

The federal Child Abuse Prevention and Treatment Act (CAPTA), provides guidance to States by identifying a minimum set of acts or behaviors that define child abuse and neglect. CAPTA defines the term child abuse and neglect as, at a minimum, "any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm" (CAPTA Reauthorization Act, 2010, §3). In Pennsylvania, the guidance given on the federal level can be seen in the CPSL, however, the newest amendments to the CPSL enact a much higher standard in Pennsylvania and a more comprehensive way of defining child abuse. Specifically, in Pennsylvania, under the CPSL, child abuse is defined as occurring when an individual intentionally, knowingly, or recklessly causes injury (i.e., physical, mental, sexual, or neglect injuries) through a recent act or failure to act as stated under 23 PA § 6303. Child abuse can also occur in certain circumstances when an individual

unreasonably restrains or confines a child (depending on the method, location, or duration of the restraint or confinement) or causes a child to be in the presence of an operating methamphetamine laboratory. Additionally, child abuse can occur if an individual interferes with the breathing of a child or otherwise strikes or slaps a child under one year old. For an comprehensive definition of child abuse in Pennsylvania, see § 6303(b)(1)(1-8) of the CPSL.

It is important to note the culpability in the law requires the person accused of abusing a child to have acted “intentionally, knowingly, or recklessly when causing the injury or harm to the child or creating a risk of injury or harm to the child” (23 PA § 6303). In simple terms, it is understood that children will suffer accidental injuries or inadvertently be put in unplanned situations that may have caused injuries. In those unintended cases, Pennsylvania law will not consider an injured child to have been the victim of abuse.

Physical Abuse

The CPSL defines physical child abuse as “causing bodily injury to a child through any recent act or failure to act” (23 PA § 6303) or “creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act (23 PA § 6303). It is important to note that the law describes “recent act” as having occurred within two years of when the child abuse took place. Under the definition of physical child abuse, for example, a 15-year-old child could disclose to a counselor that he was beaten by his father so badly when he was 9-years-old that he suffered a broken arm. Because this abuse occurred outside the statute of limitations of 2 years, it is not mandated that it be reported. A secondary example may be a seven-year-old child who reveals information to her counselor about a methamphetamine laboratory in the basement of her home. This disclosure creates a “reasonable likelihood” that this child may incur bodily injury due to explosive drugs being made in the home and should be reported.

With physical abuse, it should be noted that the previous law, prior to the most recent amendments, stated that the child would have had to suffer “serious bodily injury.” Serious bodily injury is “that which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ” (23 PA § 6303). The new CPSL law removes the word “serious”, and uses the terms “bodily injury” as more general and inclusive terminology. Therefore, the broader and more inclusive term bodily injury requires the child to experience an “impairment of physical condition or substantial pain” (23 PA § 6303) without further description referring to the degree of injury. In

other words, the child only needs to experience an impairment of physical condition regardless of how significant or non-significant that impairment may be. Moreover, the child only needs to experience “substantial pain” as opposed to “severe pain” as stated in the past.

With lowering the standard to bodily injury as opposed to a much greater offense of serious bodily injury, cases of suspected child abuse became easier to identify. Substantial pain is possibly easier to personally identify with than serious bodily injury might be. This means that the ability of the mandated reporter to understand an impairment of physical condition, or a child experiencing substantial pain, allows for a much clearer distinction when considering the decision making process. It would also allow for a greater degree of reporting.

Serious Mental Injury

The CPSL states that child abuse also is “causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act” (23 PA § 6303). Prior to the new amendments, the mandated reporter was only required to report when an individual was the direct cause of serious mental injury. The expansion of this definition now includes individuals who substantially contribute to serious mental injury. Additionally, further expansion of this definition expands beyond an act or failure to act but now further includes a series of such acts or failures to act.

The law defines serious mental injury as “a psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment” (23 PA § 6303). In children, these psychological conditions include chronic and severe anxiety, agitation, depression, social withdrawal, psychosis, or a fear that the child’s life or safety is threatened (23 PA § 6303). Additionally, serious mental injury can occur when a child’s ability to accomplish age-appropriate developmental and social tasks is impaired.

Sexual Abuse or Exploitation

Sexual abuse in Pennsylvania is defined as “causing sexual abuse or exploitation of a child through any act or failure to act” (23 PA § 6303) or “creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act” (23 PA § 6303). Sexual abuse includes the employment, use, inducement, persuasion, coercion, or enticement of a child to engage in sexual conduct or to assist another in perpetrating these acts (23 PA § 6303). The law includes a number of examples of such conduct which

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can be found in 23 PA § 6303 under defining “sexual abuse or exploitation.”

Sexual abuse law in Pennsylvania underwent very little change in the CPSL because sexual crimes against minors have long been clearly defined under the Pennsylvania Crimes Code, 18 PA § 3121-§3127 (relating to sexual offenses); § 4302 (relating to incest); § 5902 (relating to prostitution); § 6312 (relating to sexual abuse of children – child pornography); § 6318 (relating to unlawful contact with a minor); and § 6320 (relating to exploitation). An in-depth legal review of sexual offenses and other sexually related crimes can be found in the Pennsylvania Crimes Code, 18 PA § 31 (2016).

While the laws surrounding sexual abuse are well defined, confusion often exists for those mandated to report abuse that is related to sexual activities between children. The CPSL states that the law, “does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within four years of the child's age” (23 PA § 6303). In other words, sexual activity between two children who are 14 years of age or older is not considered sexual abuse, provided it is (a) consensual, and (b) occurs between two individuals who are at least 14 years old and whose ages are no more than four years apart.

What was once commonly known as statutory rape (18 PA § 3122) in Pennsylvania was repealed in 1995 and replaced with statutory sexual assault (18 PA § 3122.1). Statutory sexual assault occurs when an individual engages in sexual intercourse with a child under the age of 16, the individual and child are not married to one another, and the ages of the individuals are more than 4 years apart (18 PA § 3122.1). In other words, statutory sexual assault only comes in to consideration when a child is either 13, 14, or 15 years of age and the other individual is more than 4 years older than the child. For example, a 14-year-old (freshman in high school) could legally engage in consensual sexual intercourse with an 18-year-old (senior in high school) but not with a 21-year-old (senior in college).

If a person engaged in sexual intercourse with a child under the age of 13, it can be considered rape, even if the child agreed to consent (18 PA § 3121). Usually when one thinks of rape, the thought of forcible compulsion (18 PA § 3121) or the threat of forcible compulsion (18 PA § 3121) comes to mind. However, this is not always necessary for a rape to occur. Mandated reporters must know that there are other forms of rape to which children (under the age of 13), or even adults for that matter, cannot consent. It is considered rape when the complainant is unconscious or unaware that the sexual intercourse is occurring (18

PA § 3121) or that the complainant's judgment is substantially impaired by some sort of drug or intoxicant (18 PA § 3121). It also can be considered rape in Pennsylvania if an individual engages in sexual intercourse with a child who suffers from a mental disability, which would render that child incapable of consent (18 PA § 3121).

Neglect

The law defines serious physical neglect as an act “committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury, or impairs a child's health, or development or functioning” (23 PA § 6303). More specifically, neglect occurs when a person causes bodily injury to a child or impairs a child's health or functioning due to failure to supervise a child egregiously, repeatedly, or for a prolonged period of time, while considering the child's age and development (23 PA § 6303). Neglect is no longer something that has to be repeated or for a prolonged period of time. An egregious act of neglect, under the amended CPSL, need only take place once. Additionally, the failure to provide a child with essential clothing, shelter, food, or medical care also meets the legal standard for neglect. An important aspect to be considered is that different standards exist in terms of what is deemed to be acceptable, or even tolerable, in society. Standards of hygiene and living, for example, vary considerably from household to household and across ethnic, racial, and religious groups. Counselors, as mandated reporters, need to be mindful of this and pay close attention to cultural factors as they consider cases of neglect.

Upon closer examination of this law, neglect is the only category of abuse that requires the act of neglect to be committed by a perpetrator as specifically defined in the CPSL (23 PA § 6303). In other words, a stranger with no relationship or responsibility to a child could not be considered a perpetrator of neglect to that child. In the CPSL, the term perpetrator is defined by an expansive list of family members or others with various relationships to the abused child. Also included are those individuals outside of the home who are considered responsible for the child's welfare (23 PA § 6303). Another consideration is that children 14-18-years of age can be considered perpetrators and be held accountable for committing acts of child abuse (23 PA § 6303). However, it must also be noted that children can only be held accountable for actually committing the act of child abuse and not for failing to report it. An inclusive list of individuals who can be considered perpetrators can be found in 23 PA § 6303 under the definition of “perpetrator.”

Implications for Professional Counselors as Mandated Reporters

“Professional counselors in Pennsylvania have long been considered mandated reporters, and as such, have a legal and ethical responsibility to report instances of child abuse to the proper authorities” (Behun, Owens, & Cerrito, 2015 p. 79). Counselors following the ACA Code of Ethics (2014) are further aware of their ethical responsibility to be knowledgeable of and in compliance with local laws and regulations (Section C.1.). It is equally important for professional counselors to be familiar with the legality of child maltreatment in addition to understanding their mandated reporting responsibilities when it comes to suspected child abuse. For a detailed description of the mandated reporting responsibilities of professional counselors in Pennsylvania, including reporting procedures and required training, please see “The amended Child Protective Services Law: New Requirements for Professional Counselors as Mandated Reporters in Pennsylvania” (Behun, et al., 2015).

For professional counselors working in the Commonwealth of Pennsylvania, it is of utmost importance to understand that they are only reporters of suspected child abuse and not investigators. Professional counselors, acting in the capacity as mandated reporters, are not the individuals to determine whether or not child abuse has actually occurred. In simple terms, “the mandated reporter is only responsible for having reasonable cause for suspicion that child abuse has occurred and, in turn, reporting information to the proper authorities” (Behun et al., 2015, p. 81) who will in turn follow up with an investigation. As a mandated reporter in Pennsylvania, professional counselors do not need conclusive evidence or physical proof that abuse has occurred as long as there is reason to suspect child abuse may have occurred (Behun, et al., 2015).

Mandated reporters who willfully fail to make a report under the CPSL can face penalties under Pennsylvania law (23 PA § 6319). The penalty is increased for multiple offenses. Mandated reporters also need not worry about making an allegation that is later found to be unsubstantiated if the report of suspected child abuse was made in good faith (23 PA § 6318). Professional counselors, acting in the capacity as mandated reporters and making a report in of suspected child abuse in good faith, are immune from civil and criminal liability if the report receives an unsubstantiated disposition.

Conclusion

It is clear that the recent changes made in the

definition of child abuse, according to the newly amended CPSL, have attempted to provide clarity and uniformity with respect to what constitutes child abuse in the Commonwealth of Pennsylvania. It is important to recognize, however, that even with such changes, there still remains an implicit risk for human interpretation and error in judgment, even for the most skilled counselors and human service professionals. Counselors can readily recognize the legal and ethical obligation they have as mandated reporters, but they must also be familiar with the recent changes in the CPSL and how that impacts their work with children, adolescents, and young adults. Additionally, it is important that counselors understand that they need not have concrete evidence in order to make a report of child abuse. They only need to suspect that child abuse has occurred. It is with this fundamental understanding that counselors and human service professionals can better protect clients from the harm that results from child abuse.

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