Mandatory Child Abuse Reporting 2017

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Who I am…

Overview

- Your obligation
  - Purpose
  - Defined
  - Exceptions
- What happens when you make a report?
  - System response
- Resistance to reporting
- Discussion

**Disclaimer

Child safety is EVERYONE'S responsibility.

- I believe in a culture of reporting, generally;
- Reporting is NOT punitive;
- Just because you don't NEED to, it doesn't mean you shouldn't.

As a child abuse prosecutor, I believe that I should aggressively encourage YOU to report.

Legislative Intent

The Prevention of Child Abuse:

- "… to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection of the child . . . ." ORS 419B.007

Other

- Elder Abuse. ORS 124.060
- Developmental Disabilities or Mental Illness Abuse. ORS 430.765
- Resident of a Long-term Care Facility Abuse. (legal counsel/guardian/family) ORS 441.640

Mandatory reporting for domestic violence in CA, KY, RI, CO

Intent

- Encourages voluntary reporting. ORS 419B.007

- Provides civil immunity for making a report in good faith. ORS 419B.025

What is the Duty?

"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."

- ORS 419B.010(1)

What is the Duty?

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Defined (or not…)

"reasonable cause to believe"

- Not defined
- Generally = "reasonable suspicion." *A.F. v. DHS*, 251 Or App 575, 590 (2012)
  - Reasonable belief
  - Given all circumstances
  - Based upon specific and articulable facts
  - Injury may be result of abuse.
- Immunity kicks in with "reasonable grounds" and good faith participation. ORS 419B.025

Defined

“child”

- Means “an unmarried person who is under 18 years of age.” ORS 419B.005(2)

Defined (or not…)

"comes in contact"

- Not defined
- 24/7 responsibility (amended in 1991)
  - *Careful!* General Counsel's Office notes that telephonic or written (email) will likely suffice.
  - *Careful!* "Reasonable cause to believe" need not arise from the contact.

**I encourage you to broadly interpret this requirement. Nevertheless, the AG limits to direct (not personal) contact

Defined

"abuse"

- ORS 419B.005(1)(a)
  - Sexual Abuse
  - Negligent/ Maltreatment of a child
  - Threatened Harm

NEGLECT:
Failure to provide adequate food, clothing
or shelter likely to endanger health or welfare of the
child

SOCKS

Defined

"abuse"

- ORS 419B.005(1)(a)
  - Sexual Abuse
  - Negligent/ Maltreatment of a child
  - Threatened Harm
  - Observable or Sustained Mental Injury
  - Physical Injury
    - Includes *any injury appears at variance from explanation;*
    - Exception: "reasonable discipline." ORS 419B.005(b)

How do criminal experts examine physical injury??

Parenting is Hard

UNREASONABLE PHYSICAL Discipline

"Back in my day……"

What we look for to determine "unreasonable:"

- Did the discipline leave a mark?
- Object used?
- Does the punishment fit the crime?
- Age of child?
- Parent calm/cool/calculated or frustrated and overwhelmed?
- History of unreasonable discipline?

If you're unsure…..

- Make the call**

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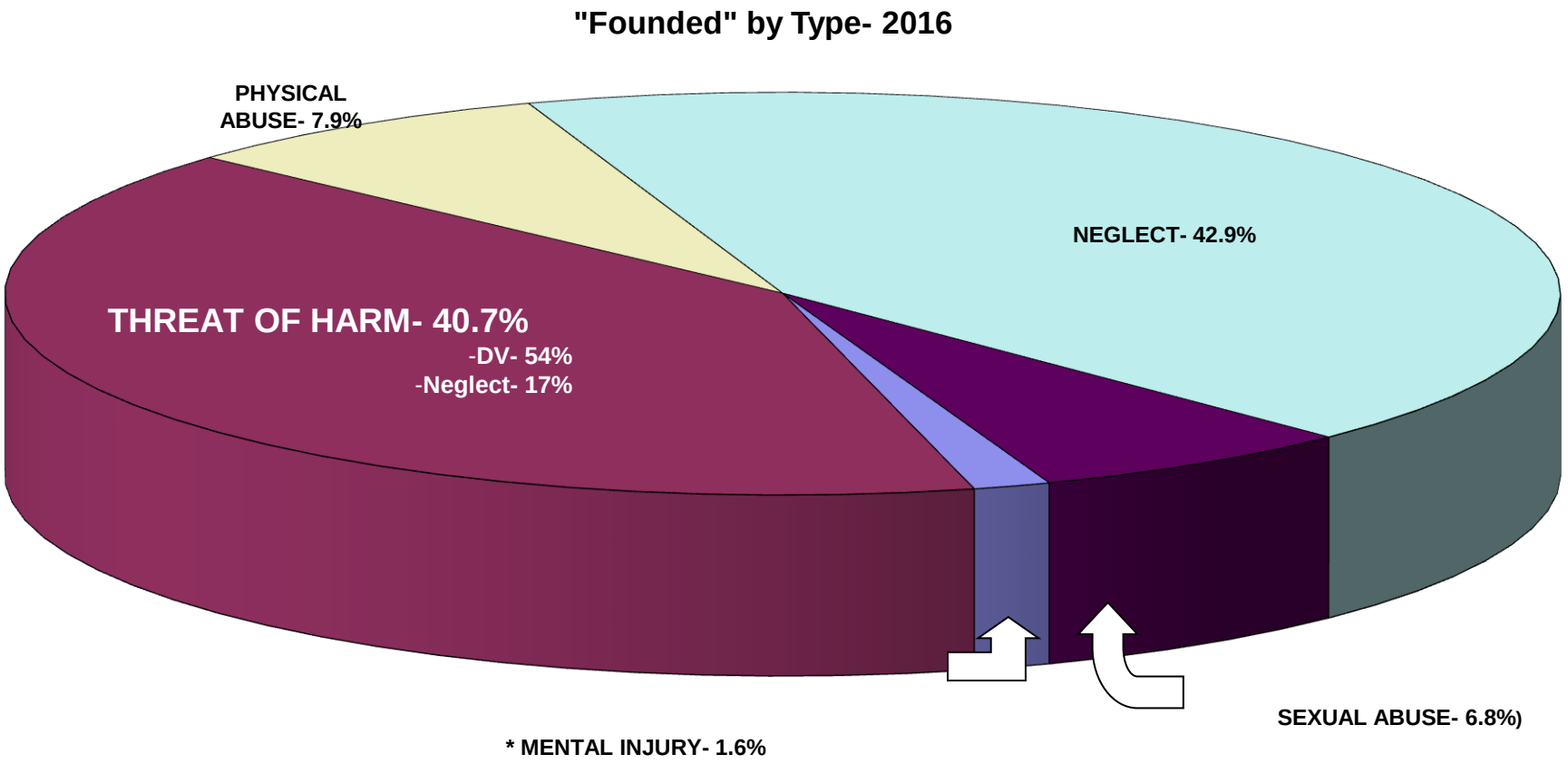
“Abuse”



*Or. DHS, Child Welfare Data Book, April 2017

Defined

"immediately report or cause a report to be made"

- "Immediately" = Immediate
  - *Careful!* Obligation is personal to the you. ORS 419B.010(3)
- Knowing failure to make a report = A violation. ORS 419B.010(5)
- Knowingly making false report = A violation. ORS 419B.016
  - *Careful!* Must be made "out"(up isn't enough.) ORS 419B.015(4). HB4016 (2012) the duty to report exists "regardless of whether the entity or organization that employs . . .the official . . . has its own procedures or policies for reporting abuse internally."

Exceptions to Reporting:

1. Some privileged communications, including lawyer-client privilege. ORS 419B.010(1)
2. Information communicated to the lawyer, "in the course of representing a client, if the disclosure would be detrimental to the client." ORS 419B.010(1)
3. Information arising out of a report if official reasonably believes information is already known by law enforcement or DHS. ORS 419B.010(2)

Exception 1: Privileged Communications

- Lists 13 privileges total.
  - Lawyer-Client? Clear
  - What if: No attorney client privilege, but may be covered by another privilege?
    - Less clear

Exception 2: Information Detrimental to the Client

- Standard:

  "in the course of representing a client…."

  (plus)

  "if the disclosure would be detrimental (not merely embarrassing) to the client." ORS 419B.010(1)

- *Careful!* Slightly more narrow than ethical obligation to protect confidential client information in RPC 1.6.

Exception 3: “Double Dip”

- Information arising out of a report if official reasonably believes information is already known by law enforcement or DHS.

Hypothetical

You represented client A, a personal friend. At a family picnic at your house, A tells your mutual friend what A's been telling A's psychologist because A's been so stressed he has been hurting his son.

Later, your friend asks you "How could you have represented that guy?" and tells you what A told his psychologist…..

1. What do you think the average lawyer would do?
2. What would YOU do?
3. What would I recommend you do?

Is it Working?

- In 2016, 77.4% of child abuse reports were made by mandatory reporters. DHS, Child Welfare Data Book, April 2016
  - Schools-20.0%
  - Police- 16.6%
  - Medical- 10.4%
  - Other Mandatory- 30.4%
- Non- Mandatory:
  - Parent/Self- 6.1%
  - Other- 16.5%

Is it Working?

Oct 2015 - Sept 2016:

- 76,668 reports of abuse and neglect received
- 38,086 investigated (49%)
- 7,677 founded, involving 11,843 victims (20%)
  - (46% under 6)

*2016 , Oregon Child Welfare Data set,. https://rom.socwel.ku.edu/Oregon_Public/MyHome.aspx

Opened Assessments by County

COUNTY (2016 pop. under 18)	Founded	Unfounded	UTD	UTL	Total	per 100 children
Clackamas 88,343	394	840	253	36	2,295	.067
Jackson 44,332	554	844	170	29	2,254	1.97
Lane 68,799	726	1,095	269	68	3,921	1.59
Marion 83,148	832	1,752	350	67	3,193	.99
Multnomah 154,609	1,421	3,866	1,034	210	6,868	1.35
Washington 137,564	577	979	328	92	3,502	.69

Is it Working?

- Annual increase in total reports every year since 2002
- Not well enough……

CHILD DEATHS DUE TO ABUSE AND NEGLECT

2016- 19

2015- 27

2014- 13

2013- 10

2012- 17

2011- 19

2010- 22

2009- 13

2008- 14

2007- 12

What Happens?

DHS

Two response times assigned

Within 24 hours OR Within 5 days

LE

(Internal protocols dictate response)

DHS or Law Enforcement must "immediately" cross report and coordinate the investigation. ORS 419B.020

Other Considerations

- You have no duty to investigate.
- The report will set in motion an appropriate investigation to determine whether a child has been abused.
- Experience shows that professionals do a great job of recognizing child abuse.**

Other Considerations

- ORS 419B.016 (2012)
  - Class A violation to *knowingly* make false report of child abuse to a public or private official, DHS, or law enforcement agency *with the intent to influence* custody, parenting time, visitation or child support decision. HB 2183 (2011)

How Do You Report?

- Report to local DHS or law enforcement
  - Cross report. ORS 419B.015(b)
- Include (if known): ORS 419B.015(1)(a)
  - Names/addresses of the child and parents
  - Child's age
  - Nature of the abuse (and any previous abuse)
  - Explanation given for the abuse
  - Any other helpful information
- Do I need to disclose who I am?? ORS 419B.035

Hurdles to Reporting

Moving Towards Action…

"Do I have enough information?"

Hurdles to Reporting

Hurdles to Reporting-
Foster Care?

Oct 2015 - Sept 2016:

- In 2016, 70% of founded victims remained in their home.
- 11,191 Oregon children spent at least 1 day in foster care
- 60% of the children placed in family foster care were with family members or in their own homes (trial visit)
- Goal is to keep out of foster care:
  - Agency mandate is reunification;
  - In-home preference, relative placement, siblings together;
  - policy response (DR, Safety plans, etc.)

Hurdles to Reporting

Moving Towards Action…

"What happens if I'm wrong?"

Hurdles to Reporting

Moving Towards Action…

"What happens if I'm ~~wrong~~ right, but do nothing?"

What to Do in “Close Cases?”

- ** When in doubt = report
- Standard = “having reasonable cause to believe”
  - Reasonable Discipline- let professionals decide!
- ** If you are struggling with the decision, you have reasonable cause

How to Report

- Centralized Screening in 2018

How to Report

Daytime Hours

Call the Child Abuse Hotline

Numbers vary by location:

Clackamas Co: 971-673-7112

Lane County: 541-349-4444

Marion County: 503-378-6704

Multnomah Co (24/7): 503-731-3100

Washington Co: 503-681-6917

http://www.oregon.gov/dhs/children/child-abuse/Pages/Reporting-Numbers.aspx

After Hours

Call 911 or use confidential backlines

Adult Protective Services : (503) 304-3400

Questions?

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Thank you!