

Mandatory Child Abuse Reporting

Presented by:
Honorable Beth Bagley

Goals of this presentation

1. What are the reporting requirements?
2. How do I identify and recognize abuse?
3. Who needs to report it?
4. When does it need to be reported?
5. How, and to whom do I report abuse?
6. *What are the ethical considerations for lawyers for reporting vs. not reporting?

What is Mandatory Child Abuse Reporting?

- ORS 419B.010(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

Policy and Purpose: ORS 419B.007

- It is necessary and in the public interest to require mandatory reports and investigations of abuse in order to protect children.
- Mandatory reporting accounts for approx. 75% of abuse/neglect reports received.
- *Voluntary* reporting is encouraged.

Other Mandatory Reporting Obligations

- Abuse of adults with mental illness or developmental disabilities.
 - ORS 430.765(1)
- Reports pursuant to the Elderly and Disabled Person Prevention Act
 - if the lawyer is also a public or private official who comes into contact with elderly persons in the performance of the official's duties.
 - ORS 124.050 et. seq.

Who must report child abuse?

- ORS 419B.005(4):“Public or private official”
 - Physician, intern, resident, dentist, LPN, RN, naturopathic physician, optometrist, chiropractor
 - School employee
 - DHS, CCF, HD/MH, A & D, lic. child care, etc.
 - Peace officer, firefighter, EMT
 - Clergy
 - LCSW, LPC, LMT/LFT, psychologist

Who must report (continued)

- CASA
- Registered/cert. child care provider
- Cert. foster care provider or employee
- **Attorneys!**

ORS 419B.005(2): “Child” defined

- “Child”: unmarried person under the age of 18 years of age.

ORS 419B.005(1)(a): What is “abuse”?

- Physical Abuse
- Neglect, maltreatment
- Mental Injury
- Sexual Abuse and Exploitation
- Threat of Harm
- Other forms of abuse

Physical Abuse

1. Any physical injury to a child caused by another, and includes any injury NOT consistent with the explanation given.
2. Does not include reasonable discipline.
3. Does not include true accident.

ORS 419B.005(1)(a)(A), 419B.005(1)(b)





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Neglect

- Neglect is negligent treatment or maltreatment of child which causes actual harm or substantial risk of harm to a child's health, welfare and safety.

ORS 419B.005(1)(a)(F)

Neglect

- Neglect can be one of the hardest types of abuse to identify and it is difficult to rectify.
 - Failure to provide adequate food, clothing, shelter or medical care
 - Likely to endanger health or welfare of the child
 - Non-exclusive list

ORS 419B.005(1)(a)(F)

Neglect

■ Possible Physical/observable Indicators:

- Consistent hunger; poor hygiene; inappropriate dress;
- Consistent lack of supervision;
- Unattended physical/emotional problems, injuries, or medical needs.

Neglect

■ Possible Behavioral Indicators:

- Begging; stealing food;
- Extended stays at school;
- Constant fatigue; listlessness, falling asleep in class;
- Alcohol or drug abuse;
- Delinquency;
- No caretaker; isolated.

Mental Injury and Emotional Maltreatment

- Mental injury is observable and substantial impairment of a child's mental or psychological ability to function (i.e. to think, reason), caused by cruelty to the child, with due regard to the culture of the child.

ORS 419B.005(1)(a)(B)

Mental Injury and Emotional Maltreatment

- Mental Injury has a harmful effect on a child which CAN BE OBSERVED.
- Very difficult to identify because the observable impairment of the child must be linked directly to the maltreatment by caregiver.
 - Likely requires a professional diagnosis to confirm, although a diagnosis is not required for “reasonable cause.”

Mental Injury/Emotional Maltreatment: Caregiver Behaviors

- Caregiver behaviors usually take one or more forms:
 - REJECTION
 - TERRORIZING
 - IGNORING
 - ISOLATION
 - CORRUPTION

Mental Injury/Emotional Maltreatment: Caregiver Acts

■ Acts that may result in mental injury:

- Habitual ridicule
- Scapegoating (blaming)
- Deprivation of basic needs
- Exposure to violence, sexual exploitation
- Threats to health or safety
- Torture
- Confinement

Mental Injury/Emotional Maltreatment: Possible Indicators

- Failure to grow, thrive;
- Speech, sleep, behavioral disorders;
- Developmental, cognitive and social delays.

Mental Injury, Emotional Maltreatment: Possible Behavior

- Behavior extremes: aggression/violence to self or others or withdraw;
- Habit disorders (sucking, biting, rocking);
- Incontinence;
- Attempted suicide;
- Conduct disorders (antisocial, runaway, fire setting, destructive);
- Emotional neediness.

ORS 419b.005(1)(a)(C)-(E): Sexual Abuse Defined

- Child sexual abuse occurs when a person uses or attempts to use a child for their own sexual gratification.
- This includes (as defined in ORS Ch. 163):
 - Incest Rape, Sodomy
 - Unlawful Sexual Penetration
 - Sexual Abuse/Fondling
 - Compelling/Inducing Voyeurism, Prostitution

Sexual Abuse: Possible Observable Indicators

- Physical injury, impairment
- Withdrawal, fantasy or infantile behavior;
- Poor peer relations;
- Delinquent or runaway;
- Disclosures of abuse;
- Fear of a person or an intense dislike at being left with someone, or at some place;
- Unusual interest in, or knowledge of, sexual matters; expressing affection in ways inappropriate for a child of that age.

ORS: 419B.005(G): Threat of Harm Defined

- Subjecting a child to substantial risk of harm to the child's health or welfare.
- Long-term effects to child can include:
 - significant injury or impairment to a child's physical, sexual, psychological or mental development and/or functioning.

Threat of Harm: Possible Indicators and Red Flags

- A child living or cared for by a person who has been convicted of child abuse or neglect of any child in the past.
- A child born to or coming to live with any person who has a child currently out of their home as a result of child abuse or neglect.

Threat of Harm: Possible Indicators and Red Flags

- A newborn whose primary caregiver appears to lack the skills necessary to provide adequate care even though the child has not suffered harm.
- Caregiver behavior which is out of control and threatening to a child's safety; e.g. DUII with children in the car or a caregiver who is not taking prescribed medication.
- Drug or alcohol abuse by caregiver or a mental, emotional or physical disability of the caregiver.

Threat of Harm and Domestic Violence

- Domestic violence is a pattern of assault and/or coercive behaviors including physical, sexual and emotional abuse, as well as economic coercion, that adults use against their intimate partners to gain power and control in a relationship.
- DV almost always increases in intensity, severity and/or frequency.

Threat of Harm and Domestic Violence

- Children who are exposed to domestic violence can be at risk for physical abuse, sexual abuse, neglect, mental injury, and other conditions likely to result in substantial harm.
- Duration, frequency, intensity of DV, and child's age are all important factors to consider.

ORS 419B.005(H), (I), (J): **Other forms of abuse**

- Buying/selling a minor
- Permitting minor to enter/remain in or upon premises where methamphetamine is manufactured
- Unlawful exposure to controlled substance that subjects a child to a substantial risk of harm to the child's health or safety

Lawyer-Client Privilege

- ORS 40.225 (OEC 503)(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....”

ORS 419B.010: Abuse Reporting Exceptions

- (1)...psychiatrist, psychologist, member of the clergy or **attorney** shall not be required to report such information if the information is privileged under ORS 40.225 to 40.295
- OEC 503: Lawyer-Client Privilege and Confidential Communications

Privileges

■ ORS 40.225 (OEC 503) Lawyer-Client

– (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.

Privilege does not apply:

- (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; (**future crimes**)*

- (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;

Privilege does not apply:

- (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;
- (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.

Other Exceptions: 419B.010(1)

- (1)...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 the client, *if the disclosure would be detrimental to the client.*
- This is in addition to the exception to the 419B.010 reporting requirement for lawyer-client privileged communications.

Exceptions: 419B.010(2)

- (2) ...a report need not be made under this section if the public or private official acquires information relating to child abuse by reason 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.

Exception Summarized

1. Confidential lawyer-client communications
2. Information detrimental to current client
3. Reasonable belief that a report has already been made to DHS or LEA.

Penalty for Failure to Report

- A person who violates ORS 419B.010(1) commits a “Class A” violation. Prosecution can be commenced at any time within 18 months after commission of the offense.
- Maximum fine is \$2000 per ORS 153.018(2)(a).
- Or you could be sued

Legal and Ethical Implications of reporting or failing to report

- May give rise to a private cause of action See Shin v. Sunriver Preparatory School, 199 Or. App. 352 (2005). i.e. you can be sued.
- Ethical/professional responsibility violation?
*Maybe, maybe not.
- PLF has settled claims for failing to report when lawyer learned of abuse in context of rendering professional legal services (i.e., it was a “Covered Activity”)

Ethical/Professional Responsibility Violation?

- If information is reported, may violate RPC 1.6 (Confidentiality of Information) unless exceptions to RPC 1.6 (former DR 4-101) apply.

Exceptions to Rule 1.6 (Former DR 4-101)

- *Prevent future crime of client*
- *Prevent reasonably certain death or substantial bodily harm*
- To secure legal advice about lawyer's compliance with RPC
- Establish claim/defense for lawyer
- *To comply with other law or court order*
- To provide information for sale of law practice
- To comply with terms of a diversion

Mandatory Report v. Ethical Duty

ORS 419B.010 et. seq.

- Shall report to LEA or DHS if lawyer has “reasonable cause” to believe “abuse” of a child and lawyer has come into contact with the child or the abuser.
- Unless an exception applies (i.e. privilege)

RPC 1.6(A),(B)

- May not disclose if report based on privileged attorney-client communication, or other information gained during representation if disclosure is detrimental or embarrassing to client.
- Unless client consents, intends to commit crime, other exception applies.

Mandatory Report v. Ethical Duty

- In sum: a lawyer can only disclose that which is required by law to be reported/disclosed when the information relates to representation of a client.

Summary of 419B.010

- Reasonable cause to believe a child has been abused or person has committed abuse
 - EXCEPT:
 - Privileged communications
 - Communications made to attorneys during the course of representation that are detrimental to client if revealed
 - OR:
 - Reasonable belief that information is already known by LE or DHS

How to Report

- Call local law enforcement; or
- Call local DHS office.

Report form and content

- Oral report to DHS, LEA (can be anonymous)
- If known:
 - Names, addresses of child, parents/guardians
 - (other person responsible for care)
 - Age of child
 - Nature and extent of abuse, explanation given
 - Previous abuse
 - Other info. helpful to identifying cause of abuse and perpetrator of abuse

What happens after the report?

- LEA or DHS must immediately investigate
- Child Care Division notified, if applicable
- Protective social services will be offered if reasonable cause to believe abuse
- Child may be taken into protective custody, and notification to parents/guardians
- Court may authorize an examination for sexual assault
- If reasonable suspicion of abuse/injury → photos and medical evaluation w/in 48 hrs.
- Notice of action/findings to abuse reporter

Good Faith Reports and Immunity: ORS 419B.025

- If the report was made in good faith and based upon reasonable cause, the child abuse reporter has civil and criminal immunity from any liability that might otherwise be incurred or imposed.
- Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from the report.

Bad Faith Reports . . .

- 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.
- There is NO civil and criminal immunity.