

MANDATORY CHILD ABUSE REPORTING

OREGON WOMEN LAWYERS
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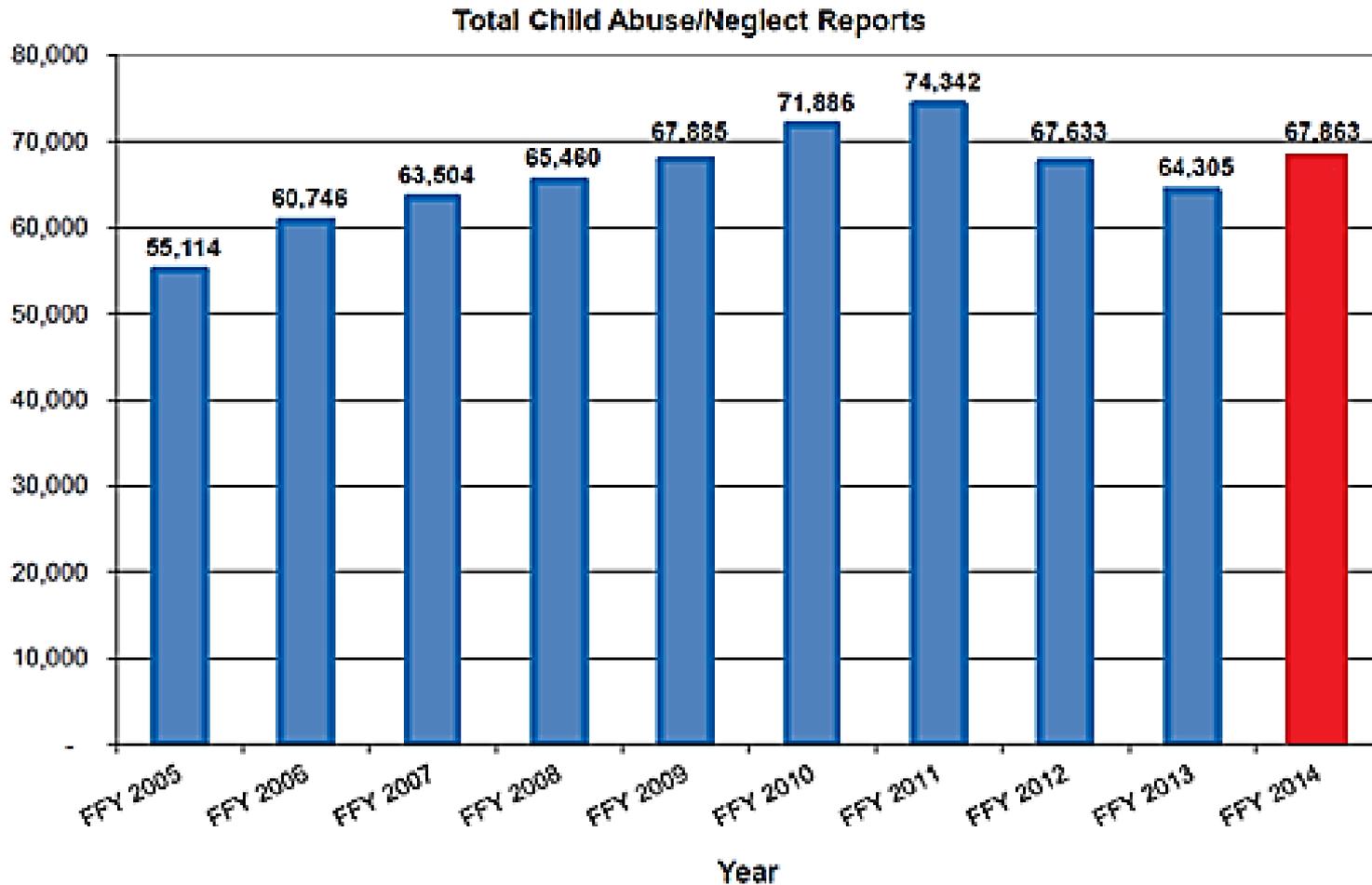
Background & Overview

- ▣ 2014 Child Welfare Data Book- Published June 2015

- ▣ Mandatory Child Abuse Reporting Statutes
 - Federal Legislation- CAPTA
 - State Legislation
 - Definitions
 - Duty to Report
 - Exceptions
 - Notice to Person Making Report
 - Failure to Report

- ▣ Links and resources

2005-2014- Total Child Abuse/Neglect Reports

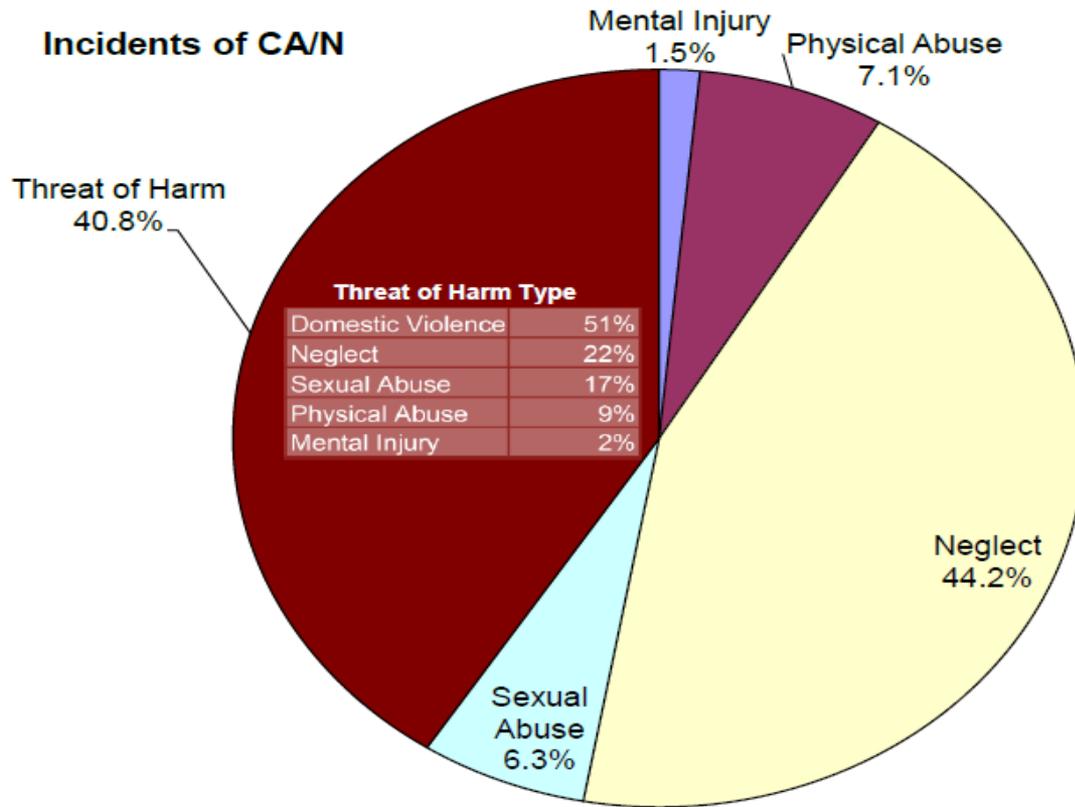


2014 Child Abuse & Neglect Reports*

- ▣ 46.4% -- Victims < 6 years of age
- ▣ Most common Family Stressors
 - 46.1% -- Substance abuse
 - 31.3% -- Domestic violence
 - 27.1% -- Parental involvement with LEA
 - 19.7% -- Family financial distress

*2014 Child Welfare Data Book, Oregon DHS, June 2015

Types of Abuse or Neglect



2009-2014-Child Fatalities in Oregon

FFY 2014 Child Fatalities Due to Child Abuse/Neglect

Period	Abuse	Neglect	Abuse & Neglect	Total
FFY 2014	5	7	1	13
FFY 2013	4	5	1	10
FFY 2012	8	6	3	17
FFY 2011	15	4	0	19
FFY 2010	7	12	3	22
FFY 2009	8	3	2	13

Child Fatalities - 2014

- ▣ 13 children died from causes related to familial or caregiver abuse or neglect.
- ▣ 5 children died as the result of abuse.
- ▣ 7 children died as the result of neglect.
- ▣ 12 child fatalities had at least one parent as a perpetrator:
 - Mother, alone = 2 fatalities
 - Father, alone = 5 fatalities
- ▣ 11 victims were ≤ 5 years of age.

Federal Law - Child Abuse Prevention & Treatment Act

- ▣ 42 USC 5101 *et seq*
- ▣ States must have:
 - Procedures for reporting known or suspected instances of child abuse or neglect.
 - Provisions for immunity of persons who report known or suspected child abuse or neglect.
 - Methods to preserve confidentiality of child abuse & neglect records.
- ▣ Purposes:
 - Early detection of abuse;
 - Intervention to protect abused children; and
 - Prevention of further abuse.

State Law – Reporting of Child Abuse

ORS 419B.007:

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.

Types of Abuse - 419B.005(1)(a)

- ▣ Assault
- ▣ Mental injury
- ▣ Rape, sodomy, unlawful penetration & incest
- ▣ Sexual abuse
- ▣ Sexual exploitation/commercial sex. solicitation
- ▣ Negligent treatment or maltreatment
- ▣ Threatened harm
- ▣ Buying or selling a child
- ▣ Allowing child to enter or remain where meth being manufactured
- ▣ Unlawful exposure to controlled substance that subjects child to substantial risk of harm

Abuse- Assault

- ▣ ORS 419B.005(1)(a)(A)
 - Assault.
 - Any physical injury that has been caused by other than accidental means.
 - Includes any injury that appears to be at variance with the explanation given of the injury.

Abuse- Mental Injury

- ▣ ORS 419B.005(1)(a)(B)
 - Mental injury.
 - Includes 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.

- ▣ Examples:
 - Spurning
 - Terrorizing
 - Isolating
 - Exploiting
 - Corrupting

Abuse- Sexual Abuse

- ▣ ORS 419B.005(1)(a)(C) & (D)
 - Rape
 - Sodomy
 - Unlawful sexual penetration
 - Incest.
 - Sexual abuse

▣ As defined in ORS Ch. 163

Abuse- Sexual Exploitation

- ▣ ORS 419B.005(1)(a)(E) -
 - Sexual exploitation. Includes but not limited to:
 - ▣ Contributing to the sexual delinquency of a minor;
 - ▣ Allowing, employing, authorizing, permitting, inducing or encouraging a child to engage in 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 described/ defined in 167.002, 163.665 and 163.670.
 - ▣ Sexual abuse involving a child or rape of a child;
 - ▣ Allowing, permitting, encouraging or hiring a child to engage in prostitution.
 - ▣ Does not include conduct that is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes;

Abuse- Negligent Treatment

- ▣ ORS 419B.005(1)(a)(F) & (G) -
 - Negligent treatment or maltreatment of a child.
 - Includes, but is not limited to failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.
 - Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

“Abuse- Selling of Child, Meth, Drug Exposure

- ▣ ORS 419B.005(1)(a)(H), (I) & (J) -
 - Buying or selling a person under 18 years of age as described in ORS 163.537.
 - Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.
 - 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.

Reasonable Discipline

- ▣ “Abuse” does not include reasonable discipline unless the discipline results in one of the conditions defined as “abuse.” ORS 419B.005(1)(b).

“Child” Defined

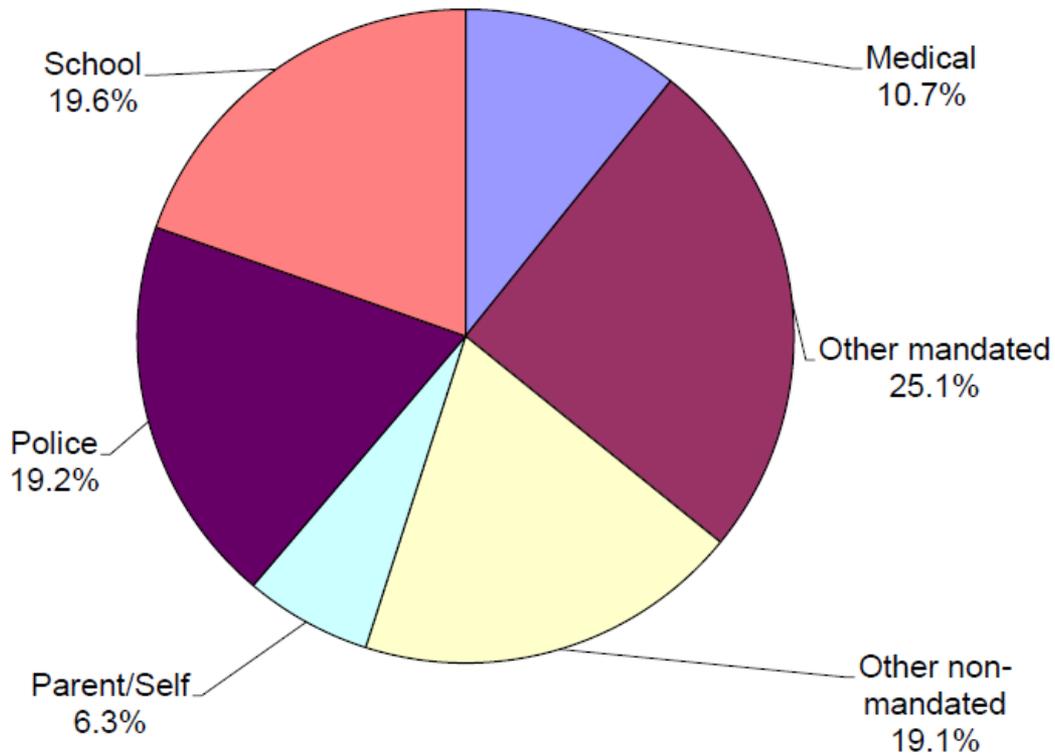
- ▣ “Unmarried person who is under 18 years of age.” ORS 419B.005(2).

“Public or private official” Defined

- ▣ ORS 419B.005(5). Includes:
 - Physician
 - Dentist
 - School employee/higher education institute
 - DHS and OYA employees
 - Peace officer
 - Psychologist
 - Member of the clergy
 - Member of Legislative Assembly
 - Attorney

Reporters of Child Abuse/Neglect

Source of Child Abuse/Neglect Reports



Duty to Report Abuse or Neglect

▣ 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. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except . . .

Exception to Reporting Duty- Privileged communication

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). ORS 419B.010(1).

Exception to Reporting Duty- Attorney-Client privilege

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. ORS 419B.010(1).

Exception to Reporting Duty- Information is already known

Report not required if 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. ORS 419B.010(2).

Elements of Duty

Public or private official

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Reasonable cause to believe.

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Contact:

- With child who has suffered abuse; or
- Contact with person who has abused a child

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DUTY TO REPORT

Reasonable Cause to Believe

- ▣ Not defined in statute.
- ▣ Same term used elsewhere in child abuse reporting statutes, in other statutes and in rules.
- ▣ Some say RCB = probable cause.
- ▣ Legislature used RCB instead of PC- indicates intent to mean something different.
- ▣ Reasonable basis for a rational person to believe a person abused or neglected a child or that a child has been abused or neglected.

Contact

- ▣ With child who has suffered abuse.
- ▣ With person who has abused a child.
 - Abuse may have occurred at any time – past or present.
 - No time or age limit for person who has abused a child.
 - Duty does not arise if contact is with an adult who was abused as child.
 - Can construe contact broadly – email, letter or phone contact.
 - Contact does not need to be related to abuse or neglect.
 - Consider purpose or goal – prevent abuse – so reporting old abuse by person who may have continuing contact with children fulfills that goal.

Report or Cause a Report

- ▣ Duty is personal to the official.
- ▣ Duty is not discharged by reporting to a supervisor.
- ▣ Red flag if official must get permission to report.

Making a Report

- ▣ ORS 419B.015
- ▣ Whether mandated or voluntary, must 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 in the county where the person making the report is located at the time of the contact. (*Emphasis added*)
- ▣ State-wide Abuse reporting line: 1-855-503-SAFE (7233)

Contents of Report

- ▣ ORS 419B.015 - Reports must contain, if known:
 - Names and addresses of the child and the parents of the child or other persons responsible for care of the child;
 - Child's age;
 - Nature and extent of the abuse, including any evidence of previous abuse;
 - 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.



Reports of Abuse/Neglect Involving Children in Substitute Care

- ▣ ORS 419B.015(3)(a)
- ▣ Within 3 business days of receiving a report DHS must give notice that report received to:
 - Child's attorney;
 - Parents and their attorneys; and
 - Court Appointed Special Advocate
- ▣ Reporter information may not be disclosed
- ▣ Exceptions

Notice to Person Making Report

- ▣ ORS 419B.020(8)
- ▣ If DHS completes an investigation and the person making the report provided contact information, DHS must notify the person whether:
 - Contact was made with the child;
 - Department determined child abuse occurred; and
 - Services will be provided.

Failure to Report

- ▣ ORS 419B.010(5).
- ▣ A person who violates ORS 419B.010(1) commits a Class A violation. Prosecution must be commenced within 18 months after commission of the offense.

Intentional False Report

- ▣ ORS 419B.016.
- ▣ 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:
 - 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
 - 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.
- ▣ Class A Violation.

Immunity

- ▣ ORS 419B.025
- ▣ Anyone participating in **good faith** in the making of a report of child abuse and who has **reasonable grounds** for making the report has 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. (*Emphasis added*)

Confidentiality of Reports

- ▣ ORS 419B.035(1)
- ▣ Notwithstanding the public records law reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and are not accessible for public inspection.
- ▣ Mandatory disclosure – ORS 419B.035(1).
- ▣ Discretionary disclosure – ORS 419B.035(3).
- ▣ Other disclosures.
- ▣ Confidentiality of reporter name, address and identifying information. ORS 419B.035(3)

Resources:

- ▣ <http://www.oregon.gov/DHS/children/Pages/abuse/cps/report.aspx> - Questions and answers about reporting abuse and neglect.
- ▣ https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2014ors419B.html - Chapter 419B- mandatory child abuse reporting laws.
- ▣ <http://www.oregon.gov/dhs/abuse/pages/publications/children/index.aspx> - Child abuse and neglect data and publications.