



See Anything, Say Something?

The pros and cons of ‘mandated reporting.’

Naomi Schaefer Riley

September 25, 2018

In Catholic parishes around the world, at elite private schools such as Phillips Exeter Academy and St. George’s School, and in institutions such as the U.S. Olympic Committee, people who knew about longstanding sexual abuse of children and teenagers ignored it or covered it up. A rash of “good people” did nothing, and evil prevailed.

One way to try to prevent this from happening in the future is to legally require that employees of any child-serving organization report their suspicions about abuse to authorities. Most states already mandate that people in certain professions—doctors, members of law enforcement, public school teachers, and social workers, for instance—report suspected abuse or neglect. But everyone else, while encouraged to tell the authorities if they believe a child is being harmed, is not required on pain of punishment to do so.

But these recent cases suggest we can no longer rely on people’s consciences to protect children. Marci Hamilton, chief executive of CHILD USA and one of the attorneys leading the charge on behalf of sex abuse survivors in the Catholic church and elsewhere, tells me every organization that deals with young people should adopt two rules. The first, she says, is that “if anyone has suspicions it is their obligation not just to tell their superiors but to call the authorities.” The second: Protect these whistleblowers from recrimination.

Hamilton’s reasoning is that coverups would be far less likely if the law required clergy, private school employees, and sports officials to serve as mandated reporters. Would we still be unearthing decades-old horror stories about bad priests, teachers, and coaches if such laws had been in place in the past?

And yet the law is a blunt instrument. Our desire for a fail-safe mechanism to prevent abuse and coverups will be incompatible with a host of other goods. When we devise new laws or expand old ones, we can expect a clash of values as well as unintended consequences.

There are valid reasons some groups are exempt from reporting their suspicions about abuse and neglect. Requiring clergy to act as mandated reporters, for example, might discourage victims

from seeking counseling, or violate the sacredness and privacy of confession. And more legal requirements for mandated reporting means putting more people into potential legal jeopardy, both those accused of abuse and those who fail to report their suspicions. Penalties vary by state but in Massachusetts, failure to report by a mandated reporter can result in a fine of up to \$5,000 and imprisonment of up to two and a half years.

As Walter Olson of the Cato Institute notes, increasing the number of mandated reporters could “incentivize” people “to resolve uncertain, gray areas in favor of reporting.” It will multiply “investigations based on hunches or ambiguous evidence which can harm the innocent, traumatize families, result in CPS [child protective services] raids, and stimulate false allegations,” he says.

The concern isn’t unfounded. Just last month, parents across the country were outraged by news that a Chicago-area mother was reported to police and investigated by the state for letting her 8-year-old walk a dog around the block by herself. Lenore Skenazy, founder of the “free-range” parenting movement, who happens to have grown up in the same well-to-do suburb, wrote, “This was all because of the ridiculous assumption that one must leave no stone unturned when it comes to children’s safety.”

Skenazy and the free-rangers are not wrong to see hysteria and nosiness behind some abuse and neglect reports. After all, crime rates in most of the country are lower than they have been in decades, and the likelihood that a child would be in danger walking a dog around a suburban block is minuscule. According to the University of New Hampshire Crimes Against Children Research Center, physical assaults against children ages 2 to 17 was down 33 percent between 2003 and 2011, and rape (attempted or completed) of children was down 43 percent in the same time period.

Of course, these statistics are not incompatible with the kind of longterm, secret sexual abuse that has gone on in many religious and educational institutions. And increasing the number of mandated reporters will certainly result in unwarranted charges that upend the worlds and violate the rights of some adults. Whenever any teacher or pastor sees an odd picture drawn by a first-grader or overhears an inappropriate-sounding snippet of conversation between 12-year-olds, he or she will feel obligated to call the police or child protective services or both.

One need only recall the McMartin preschool cases of the 1980s in Los Angeles, or the similar Amirault cases in Massachusetts—false and fantastic accusations of sexual abuse that resulted in unjust prison sentences—to realize just how serious the consequences of a wrongheaded report might be.

But a few states are moving in that direction. In the wake of the abuse scandal at Pennsylvania State University, the state expanded mandated reporter categories to include clergy as well as a long list of others (such as librarians) who regularly come into contact with children.

When the pope himself has been credibly accused of protecting sexual abusers, it’s clear that society could be doing more to prod institutions into greater transparency and accountability regarding transgressions. The price is indeed high, but after a seemingly endless stream of scandals from our most trusted institutions it is one that devastated families across the country are probably willing to pay.