

## **The Long and Difficult Road to Protecting Children from Sexual Abuse:**

A Tale of Three States, and How They Revised Their Statutes

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Over the last decade, concern about childhood sexual abuse has grown.

Megan's Laws -- which put convicted sex offenders on public registers, so that parents can know if a neighbor has a record -- have become popular. Child abuse reporting statutes that mandate that certain professionals contact the state with knowledge of child abuse have also been passed.

And of course - in the most high-profile development - suits against clergy and religious institutions for childhood sexual abuse have been filed, and their filing has sent shock waves through the Catholic Church and (as I will discuss below) other religious institutions.

Even the press - which was unforgivably lax in covering this issue -- is starting to cover children's issues as though they are an important part of public policy.

What are the reasons for this trend? One is that experience has shown that pedophiles are incurable. It is a sexual predisposition, not a treatable psychological condition.

Another is that society has come to recognize that children have a great deal of trouble telling others about their victimization, and that, later in life, they suffer serious ill-effects from abuse. The victim pays for life, and society pays in lost capacities and contributions.

It is crucial that the United States find ways to protect children from these predators, and to assist those whom its legal system has let down over the years.

Three states -- Florida, Ohio, and California -- are currently undergoing transformations in their statutory approaches to childhood sexual abuse. In this column, I will examine exactly what is happening on the ground in each of those states.

Unfortunately, my conclusion is that when religious entities enter the legislative mix, all too often the result is bad for childhood sex abuse victims -- past, present, and future.

Florida: A Smart Law That Includes An Absurd Distinction

In March, nine-year-old Jessica Lunsford was murdered in Florida by a registered sex offender. In April, thirteen-year-old Sarah Lunde also was murdered in Florida by a registered sex offender.

These terrible crimes spurred the Florida legislature to take fast action. By May, the Jessica Lunsford Act was enacted into law. It states that for certain sex crimes committed against children under twelve, the perpetrator must serve a sentence of twenty-five-years-to-life, and, if freed, must wear a GPS tracking anklet for the rest of his life.

The speed of the enactment is a testimony to the fact that sexual predators of children do not have a powerful lobbying voice. There was no one to voice any meaningful opposition, making the law easy to pass in a moment of shared outrage.

The law itself is admirable, but its distinction between children under and over twelve is absurd. Under the law, if the victim is over twelve, the abuser's sentence would be shorter, and he would only have to wear the anklet during probation.

What could possibly be the rationale for this distinction? Was Sarah Lunde's murder less heinous than Jessica Lunsford's murder? Of course not. It is a mystery why the Florida legislators thought adolescents suffer any less than children when sexually abused by adults.

The Florida experience underlines a sad truth: Sometimes it takes public outrage to shock legislators out of their usual inclination to jawbone and delay, but even then legislatures are still woefully uneducated on the actual impact of sexual abuse on adolescents, as well as young children.

But at least, here, some legislation aiding children was quickly passed, and is properly harsh - at least for victims under twelve.

California: Religious Entities Successfully Slow and Block Reform

The situation is very different, however, when religious entities are implicated in childhood sexual abuse - for then, a powerful constituency does exercise its muscle to slow or stop legislative action.

Because of its size and its former public stature, the Catholic Church has been the focus of attention, when it comes to childhood sexual abuse, since the Boston Globe's breaking of the story in 2002. But the Catholic Church is hardly alone on this score. The Jehovah's Witnesses and the Church of Jesus Christ of Latter-Day Saints have had their share of lawsuits.

Meanwhile, victims of the Family -- a religious group that was founded in the 1960s on a belief in free-wheeling sex for all, children included -- are now coming of age with all the torment childhood sexual abuse inflicts. Only recently, the designated "messiah" of the group shot his former "nanny" and then killed himself.

In addition, the nephew of a leader of the Fundamentalist Latter-Day Saints has alleged that he was repeatedly sodomized by his uncles.

Abuse within religious institutions knows no geographical boundaries. Ireland, Austria, and Australia have been rocked by revelations of sexual abuse by Catholic priests and nuns, and Chile is home to a religious commune where the leader regularly and repeatedly sodomized the young boys of the group.

Like murder and robbery, childhood sexual abuse by trusted clergy is apparently an integral part of the human condition. In light of the evidence, no civilized society can fail to take every effort possible to protect children when they are at their most vulnerable - in the presence of an adult they have been taught to revere and trust.

As I have discussed in a previous column, the statutes of limitations for childhood sexual abuse, in most states, are scandalously short - especially in light of the reality that children generally are not in a position to come forward while they are still children; often, it takes decades before they can begin to understand and then come to terms with the abuse.

California is the nation's leader in trying to do something for children who grew up, were ready to seek justice, but found that the statute of limitations was an insuperable barrier. First, California tried to make the criminal statute of limitations for childhood sexual abuse retroactive -- but the Supreme Court, in *Stogner v. California*, found that this violated the Constitution's Ex Post Facto Clause.

California also enacted a law providing for a civil cause of action, Sec. 340.1. The law lifted, for one calendar year, the statute of limitations on childhood sexual abuse for lawsuits against institutions that knowingly permitted their employees to work with children. The law applies to all childhood sexual abuse victims, whether familial or religious, and many did come forward. The

California Catholic Archdioceses have claimed the law is unconstitutional on due process and First Amendment grounds, but courts have rightly held that it is not.

They also have tried to argue that it is unconstitutional on the theory that they were "targeted" by the legislation, even though the legislation is neutral and generally applicable. (When will the Church quit saying it is all about the Church??) That's like saying a state can't outlaw religiously motivated medical neglect just because it only knows about the death of children in one sect. The evil California sought to redress was the evil of child abuse by trusted adults, and the outrage and quick enactment were well justified on public policy grounds.

One might think that, both financially and public relations-wise, the Church might welcome 340.1. The law's effect was to flush out a finite number of past victims - with whom the Church could settle. Then, the Church could amend its ways, as it claims to have already done, and move on into its pedophile-free future.

The California Archdioceses' scorched earth litigation strategy has only underscored that what matters most here is money and keeping their secrets. They have not objected to settling with victims as a per se matter; what they are fighting in 340.1 is having to settle with victims who have legal leverage to obtain fair compensation for the injuries done to them.

#### Ohio: An Uphill Battle Against Religious Institutions' Lobbyists

In Ohio, meanwhile, victims are fighting an uphill battle to follow California's example against a legion of religious lobbyists.

In March, after a deeply moving floor debate, the Ohio Senate passed SB17. The law would extend the statute of limitations for all current and future childhood sexual abuse, and - like California's law - would open a one-year window during which the statute of limitations does not apply. The law also would mandate that clergy - like others who come into contact with children in their jobs - must report childhood sexual abuse.

In a remarkable moment for clergy abuse victims, who have been invisible to the legal system for so long, those victims who were in the chambers received a standing ovation from the Senators. Then one Senator after another said what must be said: Churches must be held accountable when the issue is childhood sexual abuse.

Now the bill is mired in the Ohio House, because the Ohio Catholic Conference and the Ohio Bishops have called out the heavy artillery in an attempt to kill the window provision. The Bishops have importuned the most "influential" members of each parish to write or pressure personally their members in the Ohio House. And flyers have been distributed throughout the parishes, arguing that the law is unconstitutional and supposedly bad public policy.

As a result, though the constitutional argument here is weak - just as it is in the California context -- various members of the House have suddenly become deeply devoted to constitutional principles. Of course, they are using these "principles" as a cover, to do what the Church has insisted must be done.

Parallel to the Bishops' lobbying against the changes to the statute of limitations, there is the evangelical Christian churches' lobbying against the mandatory reporting provision.

This provision ought to be a no-brainer. Professionals such as doctors, teachers, and psychologists, must report known child abuse. Like them, clergy are in a good position to observe signs of abuse, or hear about it.

The evangelicals' argument, however, is that if a pastor must report known child abuse, then members won't confide in him. In other words, let the children suffer so the pedophile can speak to his pastor worry-free.

If we knew a lot less about childhood sexual abuse than we do now, this concern might carry some weight. But the truth is that religious groups have been horrendous at addressing child abuse when they learn about it. The balance between making sure ministers hear everything their members want to say and rescuing the children enduring child abuse is a no-brainer. The Catholic Church's infamous see-no-evil transfer-the-pedophile-elsewhere police is perhaps the most blatant example, but it is far from the only example, as new victims emerge on a regular basis.

There was a time when each religious institution stood for its individual beliefs in the public square, and fought what it believed was morally wrong - even if the moral wrong came from another religious institution. It seems that time is gone. One waits in vain for the religious institution that will stand up to either the Catholics or the evangelicals in these battles over much-needed changes to childhood sexual abuse laws. Their silence is deafening.

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