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See No Evil, Speak No Evil: Georgia Supreme Court Narrows Requirements for Mandatory Reporters in *May v. State*

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CASENOTE

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I. INTRODUCTION

Georgia's mandatory reporting statute[1] requires twenty-six professionals, including teachers, to report any suspected child abuse to proper authorities. Even though the statute seemingly requires these professionals to report *all* child abuse, even if they have no professional relationship with the child, no Georgia appellate court had ever addressed the question of whether there must be a professional relationship established for a duty to report abuse to develop. In *May v. State*,[2] a 2014 opinion, the Georgia Supreme Court clarified that although it is unclear from the lack of case law how trial courts have interpreted the statute, the correct interpretation only requires professionals to report child abuse of children to whom they "attend" in direct connection with their employment as listed in the mandatory reporting statute.

II. FACTUAL BACKGROUND

In 2010, Robert Morrow initiated an inappropriate and illegal sexual relationship with a sixteen-year-old student at River Ridge High School. The student, P.D.M., met Morrow in the ninth grade when he taught as a paraprofessional in her class. The following year, during the student's tenth grade year, Morrow began making sexual advances towards her. Over the student's Christmas break, Morrow and P.D.M. met in parking lots and cul-de-sacs at least three separate times to engage in sexual conduct. Morrow initiated the first encounter by text messaging P.M.D.,

1. O.C.G.A. § 19-7-5 (2010 & 2014 Supp.).
2. 295 Ga. 388, 761 S.E.2d 38 (2014).

picking her up from a party, and driving her to a Publix parking lot where they engaged in sexual conduct. One week later, the second incident occurred when the two met at a fitness facility parking lot and P.D.M. rubbed Morrow's penis. While the relationship was mostly sexual, at one point, Morrow took P.D.M. shopping for clothes at Perimeter Mall. However, afterwards Morrow drove them to a neighborhood cul-de-sac where their sexual relationship escalated to vaginal intercourse.[3]

Each of the sexual encounters between Morrow and P.D.M. occurred during the school's Christmas break, after which P.D.M. transferred to a high school in another school district, Roswell High School.[4] It is unclear whether P.D.M. was still considered a student at River Ridge during the Christmas break or if she had effectively transferred out of the school at the end of classes in December 2010.[5] Regardless, in January 2011, after the student began attending Roswell High, P.D.M. attended a basketball game at River Ridge where she saw an old teacher, Kristin May, and told her about her sexual relationship with Morrow the previous school term. The next contact between May and P.D.M. occurred in May 2011, when May emailed P.D.M. asking if she and Morrow had continued their sexual relationship. At no point did May report the relationship to school administrators or authorities.[6]

For unknown reasons, P.D.M. reported her relationship with Morrow to the Woodstock Police Department on July 26, 2011, seven months after the relationship began. Morrow later admitted having a sexual relationship with P.D.M. and police subsequently arrested him, resulting in an indictment in Cherokee County. May admitted to authorities that P.D.M. confided in her about the sexual relationship with Morrow in January 2011, and that she promised both P.D.M. and Morrow that she would not tell anyone about the sexual relationship between the two.[7] On August 10, 2011, Cherokee County authorities issued an arrest warrant against May for "Failure to Report under O.C.G.A. § 19-7-5."[8] May filed pleas in bar and a demurrer, both of which were denied by the Superior Court in March 2013. May's application for interlocutory

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3. Brief for Appellee, May v. State, 295 Ga. 388 (2014), 2013 WL 6696649, at *4-5.

4. *Id.* at *5.

5. Maureen Downey, *Was former teacher mandated to report student-coach sexual relationship?*, ATLANTA J.-CONST. (Sept. 1, 2014), http://www.ajc.com/weblogs/get-schooled/2014/feb/03/does-states-mandatory-child-abuse-reporting-law-di/.

6. Brief for Appellee, *supra* note 3, at *5-6. Both the state and local newspapers suggest that May was motivated to keep Morrow's relations with P.D.M. secret because she herself was having an extramarital affair with Morrow. *Id.* at *6.

7. *Id.* at *4, 7.

8. *Id.* at *3.

review in the Georgia Court of Appeals was denied, and she subsequently filed a petition for writ of certiorari. The Georgia Supreme Court unanimously granted certiorari on October 7, 2013 and specifically requested arguments regarding whether teachers are mandatory reporters "in all circumstances."[9]

In its unanimous decision, the supreme court answered the question by interpreting the statute's reporting requirements narrowly: school teachers are only mandatory reporters to the extent they attend to the alleged child abuse victim in connection with their employment by which they are identified in the statute as a mandatory reporter.[10]

III. LEGAL BACKGROUND

A. *Before 1965: Why Mandatory Reporting Statutes Were Created*

Prior to the enactment of its mandatory reporter statute, Georgia did not legally require any citizen to report child abuse, and common law did not place a duty to report child abuse on any person not currently obligated to watch over children.[11] The common law did, however, require those persons accepting the responsibility of attending to, caring for, or supervising a child to reasonably provide for the child's safety.[12] This mixture of duties was common among the states but was not codified as law in the United States until the mid-1960s.[13]

In 1962, a doctor published a revolutionary article entitled *The Battered Child Syndrome*,[14] which recognized the existence of "child abuse" as a medical condition for the first time in U.S. history.[15] At the same time, the Children's Bureau of the Department of Health, Education, and Welfare developed and published a model statute for state legislatures that suggested making it a requirement for all doctors and health care employees to report any suspicion of child abuse and stressed the need for subjecting those physicians who neglected to report any suspicious abuse subject to criminal liability.[16] These simultaneous

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9. *Id.* at *3, 7-8.

10. *May*, 295 Ga. at 391, 398, 761 S.E.2d at 41, 45.

11. Macon, Dublin & Savannah R.R. Co. v. Jordan, 34 Ga. App. 350, 353, 129 S.E. 443, 444 (1925).

12. *See* Doe v. Andujar, 297 Ga. App. 696, 697-98, 678 S.E.2d 163, 165 (2009); *see also* Persinger v. Step by Step Infant Dev. Ctr., 253 Ga. App. 768, 769, 560 S.E.2d 333, 335-36 (2002).

13. *See, e.g.*, Ga. H.B. 44, Reg. Sess., 1965 Ga. Laws 588.

14. C. Henry Kempe et al., *The Battered-Child Syndrome,* 181 JAMA 17 (1962).

15. *Id.* at 17.

16. Caroline T. Trost, *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments,* 51 VAND. L. REV. 183, 192 (1998); *see also* Margaret H. Meriwether, *Child*

publications sparked immense public interest in the welfare and protection of children, specifically the states' duties to provide for such interests.[17] As a result, state governments quickly began enacting mandatory reporting laws.[18] By 1967, every state enacted some form of mandatory reporting statute.[19]

B. Georgia's Version: From Ga. Code Ann. § 74-111 to O.C.G.A. § 19-7-5

After this growing demand for increased protection for children, the Georgia General Assembly enacted Georgia's first mandatory reporting statute in 1965.[20] The statute was very similar to other states' new mandatory reporting statutes because it only identified categories of professionals to be mandatory reporters that were related to the health care profession.[21] Specifically, Georgia's statute required physicians, doctors of medicine, licensed osteopathic physicians, intern residents, public health nurses, and public welfare workers to report child abuse.[22] The law required these professionals to report suspected abuse of children under the age of twelve to police authorities or any child

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Abuse Reporting Laws: Time for a Change, 20 FAM. L.Q. 141, 142 (1986).

17. *See* Meriwether, *supra* note 16, at 142.

18. Trost, *supra* note 16, at 192.

19. Meriwether, *supra* note 16, at 142.

20. Ga. H.B. 44, Reg. Sess., 1965 Ga. Laws 588 (codified as amended at O.C.G.A. § 19-7-5).

21. *Id.* at 588-89.

22. *Id.* at 588. The exact text of the original provision read as follows:

> (a) Reports by Physicians, other treating personnel, and Institutions. Any physician, including any doctor of medicine licensed to practice under Chapter 84-9 of the Code of Georgia of 1933, as amended, licensed osteopathic physician, intern, resident, public health nurse or welfare worker having cause to believe that a child under the age of twelve brought to him or coming before him for examination, care or treatment has had physical injury or injuries inflicted upon him other than by accidental means by a parent or caretaker, shall report or cause reports to be made in accordance with the provisions of this Section; provided, however, that when the attendance of a physician with respect to a child is pursuant to the performance of services as a member of the staff of a hospital or similar institution he shall notify the person in charge of the institution or his designated delegate who shall report or cause reports to be made in accordance with the provisions of this section; and provided, further, that when an apparently abused child has been seen by a public health nurse or welfare worker, then said public health nurse or welfare worker shall report his or her observation to the county health officer or, if none, to any licensed physician who shall, after examination and if he concurs that the injuries were inflicted by other than accidental means, report or cause reports to be made in accordance with the provisions of this section.

Id.

welfare agency.[23] Civil and criminal immunity were granted to those mandatory reporters that reported suspected child abuse under this statute "in good faith."[24] The statute's purpose remains generally untouched since its enactment in 1965: to ensure the protection of children by the state and its agencies after the abuse is brought to their attention.[25] The statute was, and still is, to be "liberally construed" in order to conform to the statute's broad purpose.[26]

Since its enactment in 1965, the legislature has substantially revised the mandatory reporter statute over sixteen times in order to expand the categories of reporters, change the type of immunity granted to those reporters, change the process for making such reports, and add a permissive reporter category.[27] The statute was first amended three years after its enactment by adding dentists and podiatrists to the list of professionals.[28] Up to this point, the legislature only included professionals in the list that were members of the health care profession.[29] In 1973, the legislature expanded the statute to include, for the first time, professionals who were not in the health industry, including school system employees, and county and city employees.[30] Further, the statute now required that any other professional that is "charged with the responsibility for the health, welfare or education of a child"

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23. *Id.* at 589.

24. *Id.*

25. *Compare id.* at 589-90 *with* O.C.G.A. § 19-7-5.

26. Ga. H.B. 588, Reg. Sess., 1965 Ga. Laws 590.

27. *See* Ga. H.B. 588, Reg. Sess., 1965 Ga. Laws 588; Ga. S.B. 210, Reg. Sess., 1968 Ga. Laws 1196; Ga. H.B. 375, Reg. Sess., 1973 Ga. Laws 309; Ga. S.B. 176, Reg. Sess., 1974 Ga. Laws 438; Ga. H.B. 48, Reg. Sess., 1977 Ga. Laws 242; Ga. S.B. 616, Reg. Sess., 1978 Ga. Laws 2059; Ga. H.B. 1676, Reg. Sess., 1980 Ga. Laws 921; Ga. H.B. 143, Reg. Sess., 1981 Ga. Laws 1034; Ga. H.B. 1355, Reg. Sess., 1988 Ga. Laws 1624; Ga. H.B. 1316, Reg. Sess., 1990 Ga. Laws 1761; Ga. S.B. 1, Reg. Sess., 1993 Ga. Laws 1695; Ga. H.B. 1208, Reg. Sess., 1994 Ga. Laws 97; Ga. H.B. 261, Reg. Sess., 1999 Ga. Laws 81; Ga. S.B. 442, Reg. Sess., 2006 Ga. Laws 485; Ga. S.B. 69, Reg. Sess., 2009 Ga. Laws 733; Ga. H.B. 1176, Reg. Sess., 2012 Ga. Laws 899; Ga. H.B. 79, Reg. Sess., 2013 Ga. Laws 141; Ga. H.B. 242, Reg. Sess., 2013 Ga. Laws 294; Ga. H.B. 78, Reg. Sess., 2013 Ga. Laws 524.

28. Ga. S.B. 210, Reg. Sess., 1968 Ga. Laws 1196-97 (codified as amended at O.C.G.A. § 19-7-5). Even though the list of reporters are "mandatory" under the statutory language, interestingly, the purpose of the senate bill explains that the statute is amended "to include dentists and podiatrists among those parties permitted to report cases of cruel treatment of children with immunity from civil or criminal liability." *Id.* at 1196. This interpretation is consistent with the statutory language because, at that time, the mandatory reporters were given full civil and criminal immunity for good faith efforts to conform to the statutory requirements. *See id.*

29. *See id.*

30. Ga. H.B. 375, Reg. Sess., 1973 Ga. Laws 309.

must also report child abuse.[31] The age range of children covered under the statute was changed from twelve-years-old to eighteen-years-old.[32] This expansion was implemented based on the rationale that these particular professionals are most likely to be in regular contact with at-risk children and will be more likely to notice the more subtle changes that occur in children who are being abused.[33]

The 1970s brought a new wave of statutory reform in Georgia. These changes were specifically influenced by Congress's creation of the federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA).[34] This federal statute guided the state legislatures to promote "three national goals for child protection:" (1) safety of children, (2) permanency of those children in stable homes, and (3) child and family well-being.[35] In relevant part, CAPTA explained that federal funding would be granted to state child welfare agencies only if the states would, among other requirements, include a provision for criminal and civil immunity in their mandatory reporting statutes and also explain the statute's purpose in the overall child welfare scheme.[36]

In 1974, the legislature completely revised and re-categorized Georgia's mandatory reporting statute to specifically include school teachers, school administrators, child-care personnel, and law enforcement to the list of mandatory reporters of child abuse.[37] Because the list of mandatory reporters was expanded so broadly, the statutory phrase requiring children to be brought to the professionals for "examination, care or treatment" was removed entirely.[38] However, the statutory scheme remained the same—the professional attendance of the child must be present before the professional's responsibility to report

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31. *Id.* at 310. This new category was a start in the direction of encompassing a larger variety of reporter professions, but it was not clear whether it included all teachers in public elementary, middle, and high schools, or just the paid administrators and faculty of those schools.

32. *Id.*

33. Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society's Response*, 36 OHIO N.U. L. REV. 819, 851-52 (2010).

34. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101-5106 (1994)); Trost, *supra* note 16, at 192-93.

35. Cynthia Crosson-Tower, *The Role of Educators in Preventing and Responding to Child Abuse and Neglect*, HHS, 7 (2003), www.childwelfare.gov/pubPDFs/educator.pdf.

36. Trost, *supra* note 16, at 192-94; *see also* 42 U.S.C. §§ 5101-5106.

37. Ga. S.B. 176, Reg. Sess., 1974 Ga. Laws 439 (codified as amended O.C.G.A. § 19-7-5).

38. Ga. H.B. 588, Reg. Sess., 1965 Ga. Laws 588 (codified as amended O.C.G.A. § 19-7-5).

suspected child abuse was triggered.[39] Likewise, the method for making these reports did not change, which suggests that the legislature did not intend on changing the reporting requirement to report *any* child abuse, even if the alleged victim did not come to him in the context of his profession.[40] Rather, the language continued to require that when the child came before the professional as a direct result of their occupation in a hospital or school, the professional is required to report the abuse to his supervisor or a designated go-to delegate within their staff.[41]

Even before teachers were mandated by the statute to report child abuse, statistics show that almost thirty percent of the professionals that reported child abuse to Child Protective Services (CPS) and other authorities were teachers.[42] This easily demonstrates why the legislatures chose to add these professionals to the mandatory reporter list in 1990—they were already reporting child abuse anyways.[43] The statistics show the vital role educators play in children's lives because they were already involved in responding to the national child abuse emergency.[44] Educators play an important role in reporting child abuse because young children and adolescents spend a large part of their lives in school with their teachers, giving these educators much greater contact with the children than any of the other mandated professionals.[45] As a result, teachers have very close contact with the children who are at risk of being abused and have the ability to recognize changing behaviors, moods, and physical appearances of those children in a way that other professionals do not.[46]

Some states grant civil and criminal immunity for all mandatory reporters, while others do not grant any immunity at all. In 1977, the Georgia legislature repealed the criminal immunity once granted to mandatory reporters in previous versions and declared that willful failure to report child abuse is a misdemeanor under Georgia law.[47]

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39. Ga. S.B. 176, Reg. Sess., 1974 Ga. Laws. 439 (codified as amended O.C.G.A. § 19-7-5).

40. *See id.*

41. *Id.* The court in *May* placed great emphasis on the inclusion of this language in the statute: the duty was created to be limited to children seen within the person's professional capacity. 295 Ga. at 398, 761 S.E.2d at 45.

42. Crosson-Tower, *supra* note 35, at 9.

43. *Id.*

44. *Id.*

45. *Id.* at 8-9.

46. *Id.* at 9, 10.

47. Ga. H.B. 48, Reg. Sess., 1977 Ga. Laws 242 (codified as amended at O.C.G.A. § 19-7-5).

The state wanted to maximize the number of child abuse reports made to combat the continuing national child-welfare scheme, so it created a new category of reporters.[48] Now, any citizen regardless of their profession can report suspected child abuse to any delegated personnel provided in the statute.[49]

Notwithstanding the valiant efforts of the legislature to combat child abuse, it is difficult to pinpoint the effectiveness of the imposition of criminal liability because the number of arrests under the statute are not reported—most crime-reporting statistics only indicate the number of major felony arrests and convictions each year.[50] Further, although civil immunity is still granted to mandatory reporters in the statute, civil claims are litigated more often than criminal liability.[51] Plaintiffs regularly ask courts to impose civil liability on mandatory reporters who either fail to report or make a report that is unsubstantiated.[52] However, courts agree civil immunity will remain as long as the reporter acted in good faith, had a reasonable suspicion of abuse, and caused reports to be made pursuant to the code section.[53] Courts often interpret the "knowingly and willingly" provision—in determining whether to impose civil liability—by giving it a normal meaning for both the criminal and civil aspect: if the reporter had a reasonable suspicion, but acted in bad faith by intentionally failing to report, both civil and criminal liability can be imposed.[54] Because the majority of litigation regarding the mandatory reporting statute revolves around civil rather than criminal liability, and because failure to report child abuse is not a crime that typically gets statistically reported, it is impossible to know

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48. *Id.* at 243.

49. *Id.* This change evidences an important inference: the legislature could have imposed a general duty for all adult residents to report child abuse, but instead it only imposed a duty on those citizens whose professions allow them to regularly interact with at-risk children.

50. *See Georgia Family Violence Statistics* (2012), GEORGIA BUREAU OF INVESTIGATIONS, services.georgia.gov/gbi/crimestats/displayFamilyViolenceStatForm.do; *see also 2012 Summary Report: Uniform Crime Reporting (UCR) System,* GEORGIA CRIME INFORMATION CENTER (2012), *available at* https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/site_page/2012%20Crime%20Statistics%20Summary%20Report.pdf; *2013 Summary Report Uniform Crime Reporting (UCR) System*, GEORGIA CRIME INFORMATION CENTER (2013), *available at* https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/site_page/2013%20Crimes%20Statistics%20Summary%20Report.pdf.

51. *See, e.g.*, O'Heron v. Blaney, 276 Ga. 871, 583 S.E.2d 834 (2003); Vance v. T.R.C. 229 Ga. App. 608, 494 S.E.2d 714 (1997); Cechman v. Travis, 202 Ga. App. 255, 414 S.E.2d 282 (1991).

52. *See, e.g., O'Heron*, 276 Ga. at 872, 583 S.E.2d at 835.

53. *See, e.g., id.* at 873, 583 S.E.2d at 336.

54. *See id.*

whether the imposition of criminal liability actually encourages more mandatory reporters to report child abuse.[55]

The nation-wide enactment of mandatory reporting statutes did little to combat the growing concern for the welfare and safety of abused children.[56] As a result, mandatory reporter statutes, including Georgia's, have been subjected to national criticism. In 1990, the U.S. Advisory Board on Child Abuse and Neglect proclaimed that the United States was in the midst of a "national emergency" based on the child abuse and child neglect prevalent at that time.[57] Critics emphasize the ineffectiveness of these statutory schemes by comparing past and present statistics that show little change in child welfare as a result of these reporting requirements.[58]

As a result of this growing criticism of national reporting statutes, the Georgia legislature increased the list of professionals from six to twenty-nine,[59] added a new array of definitions, such as "child abuse" and "school,"[60] and expanded methods for making reports to include the larger variety of professions.[61] "Child abuse" now encompasses non-accidental physical harm, neglect, exploitation, sexual abuse, and sexual exploitation.[62] "School" has been clarified to include both public and private schools ranging from pre-kindergarten programs to any postsecondary school.[63]

To compensate for this vast new array of reporters and requirements, the statute was substantially re-written in 1990 to separate the professionals, the methods for reporting, the definitions, and the purpose into distinct subsections for clarity and precision.[64] This new structure is included in the present-day version,[65] but courts did not interpret the statutory language until 2014.[66] As such, until the Georgia Supreme Court's decision in *May*, no Georgia court confronted the issue of

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55. *See supra* notes 49, 52, and accompanying text.

56. U.S. Advisory Board on Children Abuse and Neglect, *Child Abuse and Neglect: Critical First Steps in Response to a National Emergency*, U.S. GPO, 2 (Aug. 1990).

57. *Id.*

58. *See id.*

59. O.C.G.A. § 19-7-5(c) (2014 Supp.).

60. O.C.G.A. § 19-7-5(b) (2014 Supp.).

61. O.C.G.A. § 19-7-5(d)-(i) (2014 Supp.). Notably, the civil liability, criminal liability, and purpose have remained the same. *Id.*

62. O.C.G.A. § 19-7-5(b)(4).

63. O.C.G.A. § 19-7-5(b)(9).

64. Ga. H.B. 1316, Reg. Sess., 1990 Ga. Laws 1761 (codified as amended O.C.G.A. § 19-7-5).

65. O.C.G.A. § 19-7-5 (2010 & 2014 Supp.).

66. *See generally May*, 295 Ga. 388, 761 S.E.2d 38.

whether mandatory reporters should report *all* suspected child abuse or just their suspicions regarding the children to whom they attend.[67]

IV. COURT'S RATIONALE

In June of 2014, the Georgia Supreme Court granted Kristin May's petition for writ of certiorari to determine whether Georgia's mandatory reporter statute obligates the listed professionals to report suspected abuse of any child or just the suspected abuse of those children to whom they attend in connection with their profession.[68] In a unanimous decision, Justice Blackwell explained that the obligation to report only arises because of the professional's attendance of the allegedly-abused children, imposing a narrow interpretation of the statute.[69]

The court initially explained that the trial court's interpretation was flawed because it only looked at the statutory provision without considering the legislative history, the context of the provision, and its relationship to other language found in other provisions of the statute.[70] If read in isolation, the language in subsection (c)(1) seems clear: if you are a member of a listed profession, you are required to report any suspicion of child abuse to authorities.[71] But, according to the court, if the legislature wanted the statute to be interpreted as such, it likely would not have omitted the subsequent paragraph[72] that describes the alternative reporting method that listed professionals working within a facility, such as a school, hospital, or similarly situated agency, should use.[73] The court held that the key language in this particular subsection is,

> *If a person is required to report child abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties*

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67. *See id.* In fact, *May* is one of the first cases in Georgia where a mandatory reporter has appealed their arrest, indictment, or conviction under this statute. As such, this was the first time a Georgia appellate court has had the opportunity to interpret the statutory language.

68. *Id.* at 390-91, 761 S.E.2d at 40.

69. *Id.* at 391, 761 S.E.2d at 41.

70. *Id.* The correct method of interpretation, according to the court, begins by looking at the context of the provision requiring certain professionals to report reasonable suspicions of child abuse. *Id.*; *see also* Smith v. Ellis, 291 Ga. 566, 573-74, 731 S.E.2d 731, 736 (2012) (explaining that it is imperative to consider statutory provisions in relation to their context, both within the statute and legally).

71. O.C.G.A. § 19-7-5(c)(1).

72. *May*, 295 Ga. at 392, 761 S.E.2d at 41-42. The court places great emphasis on the first sentence of this paragraph because it illuminates the purpose of the legislature in requiring these particular professionals to be mandatory reporters. *Id.*

73. O.C.G.A. § 19-7-5(c)(2).

> *as an employee of or volunteer* [at one of these agencies], that person shall notify the . . . designated delegate [within that agency, rather than directly report the abuse to a child welfare agency].[74]

Since legislatures strategically and carefully include every word and phrase in a statute, the court determined that this language lends itself to only one meaning: the legal obligation to report arises only when attending to the child and suspecting abuse of that child, rather than the mere fact that your profession is listed on the statute.[75]

This reading led the court to answer the obvious follow up question: why require some professionals to directly report abuse to a child-welfare agency but require others to report within the institution instead?[76] The court justified this by observing that schools, hospitals, and larger agencies already have internal protocol in place that will encourage reporting, prevent duplicate reports, and ensure delivery of reports to the proper authorities.[77] Since case law concerning this particular issue is sparse in Georgia, the court placed much of its emphasis on the legal background of the statute to determine the legislative intent and overall purpose for including these particular professionals.[78] In determining whether the legislature intended the statute to be read narrowly, the court found insight in the original version of the statute.[79] The original stipulation in 1965 explicitly noted that a professional's duty to report arose when the child was "brought to him or c[ame] before him for examination, care or treatment."[80] Although the statute changed significantly over the next several years to remove that particular phrase, the provision was altered only to encompass the new expansive list of professionals required to report, not to remove the legal effect of its meaning.[81] The legislature intended the statute to only require the duty to arise if the child comes to the professional while they are acting in their professional capacity.[82]

After concluding that a relationship between the professional and child must be established through the attendance of the child, the court

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74. *May*, 295 Ga. at 392, 761 S.E.2d at 41 (quoting O.C.G.A. § 19-7-5(c)(2)).

75. *Id.* at 391, 761 S.E.2d at 41.

76. *See id.* at 393, 761 S.E.2d at 42.

77. *Id.* at 393-94, 761 S.E.2d at 42-43.

78. *Id.* at 394-98, 761 S.E.2d at 43-45.

79. Ga. H.B. 588, Reg. Sess., 1965 Ga. Laws 588 (codified as amended at O.C.G.A. § 19-7-5).

80. *Id.*

81. *See* Ga. S.B. 210, Reg. Sess., 1968 Ga. Laws 1197; Ga. H.B. 375, Reg. Sess., 1973 Ga. Laws 309; Ga. S.B. 146, Reg. Sess., 1974 Ga. Laws 438; Ga. H.B. 48, Reg. Sess., 1977 Ga. Laws 244.

82. *See* sources cited *supra* note 81.

vaguely addressed the type of factual scenario that could evidence this relationship by explaining the factual scenario that *does not* establish such a relationship.[83] In the case at bar, without reference to other factors that could help future courts wrestle with this issue, the court noted that May had been the abused-child's teacher prior to learning of the abuse and that the student confided in May about the abuse when she was no longer a student at the school or in the same school district as May.[84] The court ends its application there, holding that these facts alone do not reasonably establish the requisite relationship required to impose a duty to report child abuse under O.C.G.A. § 19-7-5.[85] The court does not consider whether P.D.M. was May's student at the time of the confirmed abuse or if any alteration of the facts would result in a different conclusion.[86] The court alludes to issues that could arise if, for example, the student remains at the same school but is no longer the teacher's student, but the court does not allude to any possible answers to these troublesome scenarios.[87] Regardless of its implications, the court held that since May did not "attend" to P.D.M. at the time she learned of the abuse, she did not have a duty to report the abuse to authorities.[88]

As a result of this holding, Georgia's mandatory reporting statute must be interpreted narrowly to mean that professionals are only required to report suspicions of child abuse they learn through attending to the alleged victim. However, the majority of interpretive questions remain unanswered.

V. IMPLICATIONS

A. *Legislative and Judicial Changes in Interpretation*

While this was not declared a case of first impression, the court clarified a murky statutory issue by deciding the exact interpretation that courts must use when applying Georgia's mandatory reporting

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83. *See May*, 295 Ga. at 399, 761 S.E.2d at 45-46.

84. *Id.*

85. *Id.* at 399, 761 S.E.2d at 46.

86. *See id.*

87. *Id.* at 399 n.12, 761 S.E.2d at 46 n.12. There are a myriad of alterations to this scenario that could lead to difficult interpretive questions to which this decision lends no guidance. Is it relevant that the abuse could have occurred while May was P.D.M.'s teacher, even though the abuse was not discovered until afterwards? In the legal context, does the "attending" of the child need to occur at the time of the abuse? At the time of the allegation? Or simply at any point in the past? What if P.D.M. had transferred to a school within the same school district?

88. *Id.* at 399, 761 S.E.2d at 45-46.

statute: teachers do not have to report child abuse of children if they do not attend to those children in connection with their profession.[89] This clarification, however, did nothing to help courts interpret the requirement that professionals must "attend to" the child for their duty to arise. The issue will not likely arise in the medical context because it is usually evident when a doctor or dentist attends to the child if the child was brought to him by his guardian for the purpose of being medically treated.[90] The distinction is much more blurred in the educational context because teachers and school employees interact with hundreds of students each day. The court did not clarify whether the employee must actually be teaching the student when the abuse is discovered, or whether a student on the same hallway or in the same school system is sufficiently under their control and the duty arises the moment they arrive at the school building.[91] The bottom line is that after this decision, pertinent professionals need to know exactly what "attend to" means. Whether it comes from further judicial interpretation or immediate legislative intervention, professionals need clarification.

Since this statute has changed in some capacity every few years since its enactment,[92] this restriction on its interpretation will likely cause an amendment to be made to elucidate the statute's application and scope.[93] The statute's declared purpose has not significantly changed over the years, so the Georgia General Assembly will likely agree with the court's decision and re-write the provisions to clarify the relationship between the statute's purpose and the statute's narrow application. If the legislature agrees with the holding that professionals listed within the statute need not report all cases of child abuse they suspect, this documented clarification may require adding a significant amount of professionals to the list to compensate for decreased reporting to prevent children from falling through the cracks.[94]

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89. *Id.* at 391, 761 S.E.2d at 41.

90. *See* Ga. H.B. 588, Reg. Sess., 1965 Ga. Laws 588 (codified as amended at O.C.G.A. § 19-7-5).

91. *See May*, 295 Ga. at 389 n.12, 761 S.E.2d at 45-46 n.12.

92. *See, e.g.*, Ga. S.B. 210, Reg. Sess., 1968 Ga. Laws 1196-97; Ga. H.B. 375, Reg. Sess., 1973 Ga. Laws 309; Ga. H.B. 48, Reg. Sess., 1977 Ga. Laws 244; Ga. H.B. 1316, Reg. Sess., 1990 Ga. Laws 1761.

93. *See generally* Maia Szalavitz, *Viewpoint: Why a Mandatory Child Abuse Reporting Law Could Backfire*, TIME (Dec. 14, 2011), http://healthland.time.com/2011/12/14/viewpoint-why-a-mandatory-child-abuse-reporting-law-could-backfire/. It is natural for people and legislatures to react to reoccurring issues simply to "do something," but it is imperative that these actions at least be a step in the right direction. *Id.*

94. The currently listed professionals are only a handful of the professionals that come into extensive contact with children. Why are lifeguards, recreation-league coaches, private tutors, Boy Scout and Girl Scout leaders, and baby-sitters not mandatory reporters?

This legislative clarification will likely include additional definitions within the statute to explain exactly what "attend to" means, or it may revert to previous statutory language that requires the child to come before the professional to care for them.[95] Other states that construe their statute similarly to the Court in *May* include such definitions.[96] For example, Washington requires that any professional who "regularly exercises supervisory authority" over a child to report suspected child abuse.[97] Within the same statute, the legislature added a paragraph that explains "supervisory authority" occurs when the professional is in a position of authority over the child and acts within a "supervisory capacity on an ongoing or continuing basis."[98] This clarification makes it easy for Washington courts to interpret and apply this standard regularly and consistently because it requires a duty to report only in the "actual regular course of employment."[99]

Since there is no applicable case law regarding the interpretation of this statute, it is difficult to pinpoint exactly how the trial courts have interpreted the statute up until this novel ruling in *May*. Without legislative clarification of this nature, Georgia courts could either further narrow the requirement by declaring that teachers only attend to children to whom they directly teach throughout the day, or they could interpret the holding to find a broad definition requiring teachers to report abuse of any child they come into contact with in their school system.

Perhaps these types of professionals will be named in future versions of O.C.G.A. § 19-7-5.

95. *See* Ga. S.B. 210, Reg. Sess., 1968 Ga. Laws 1196-97; Ga. H.B. 375, Reg. Sess., 1973 Ga. Laws 309; Ga. H.B. 48, Reg. Sess., 1977 Ga. Laws 244; Ga. H.B. 1316, Reg. Sess., 1990 Ga. Laws 1761.

96. *See, e.g.*, WASH. REV. CODE § 26.44.030(1)(b) (2014 Supp.).

97. *Id.*

98. WASH. REV. CODE § 26.44.030(1)(b)(ii).

99. Jane Doe v. Corp. of President of Church of Jesus Christ of Latter-Day Saints, 167 F.3d 1193, 1204 (Wash. Ct. App. 2007). This case deals with the specific issue posed to the court in *May*. The civil plaintiff argued that the state's mandatory reporting statute should be interpreted broadly to include anyone employed in one of the professions listed. *Id.* at 1202. The Washington court disagreed. *Id.* at 1197. Even though the legislature intended the statute to be interpreted broadly, the plaintiff's interpretation would broaden the requirements further than the legislature actually intended. *Id.* at 1203. The court relied on the language in the statute that only requires these professionals to report if they are acting within their professional capacity or "in the course of regular employment." *Id.* at 1204. This interpretation follows the interpretation in *May*: professionals listed are not mandated to report all suspected abuse, only when they suspect abuse throughout the course of their profession. *Id.*; *May*, 295 Ga. at 391, 761 S.E.2d at 41.

B. *Renewed State and Nation-wide Attention on Child-Abuse Crisis*

It only took one medical essay in the 1960s and one federal statute in the 1970s to spark nation-wide interest and concern for child-abuse issues, so it is possible that this holding, in conjunction with future legislative and judicial interpretations, could renew the nation's interest in the child-abuse crisis and mandatory reporting scheme.[100] Ever since the enactment of the state mandatory reporting statutes, critics have complained of their ineffectiveness because the majority of reports made by mandatory reporters are never substantiated.[101] Other reporters argue that these statutes have turned the mandatory reporters "into a white-collar police force," even though these reporters are not actually discovering child abuse.[102] Many of these critics urge that this police force, made up of professionals dodging civil and criminal liability, should be eliminated because the protective service agencies rely too heavily on these reports that are never substantiated.[103] Reports of suspected child abuse are central to child-welfare agencies across the state, such as the Department of Family and Children Services (DFCS) and Court Appointed Special Advocates (CASA).[104] The entire child-welfare agency focuses on taking incoming reports and investigating those reports to determine their substance.[105] In 2014, Georgia's DFCS has already investigated 33,221 reports of child abuse.[106] If teachers and other mandatory reporters significantly decrease the amount of reports made each year, the number of investiga-

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100. Kempe, *supra* note 14, at 17; Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101-5106).

101. *See* Hafemeister, *supra* note 33, at 900.

102. *Id.* at 900-01.

103. *Id.*

104. *See, e.g.*, *About Us*, CASA, http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301303/k.6FB1/About_Us__CASA_for_Children.htm. (last visited Mar. 7, 2015); *Child Abuse & Neglect*, DHS, https://dfcs.dhs.georgia.gov/child-abuse-neglect (last visited Mar. 7, 2015).

105. Gary B. Melton, *Mandated Reporting: A Policy Without Reason*, 29 CHILD ABUSE & NEGLECT 9, 13, 15 (2005). "[M]andated reporting at times increases distrust among neighbors . . . [and] contribute[s] to increased isolation and interfere[nce] with norms." *Id.* at 15. In fact, the focus placed upon this reporting process has said to be "[t]he most serious shortcoming of the nation's system of intervention on behalf of children." *Id.* at 13. Placing such great emphasis on this scheme focuses on punitively threatening the reporters instead of placing emphasis on encouraging substantial reports from anyone in the community. *Id.* at 12, 13.

106. *Division of Family and Children Services*, HHS, http://dhs.georgia.gov/sites/dhs.georgia.gov/files/DFCS%20FACTS%20SHEET%208.14%20-%20Revised%2C%208-25-14%20.pdf (last visited Mar. 7, 2015).

tions opened each year could significantly decrease. This would have incredible influence across the entire juvenile justice system[107] because there will be fewer dependency[108] and Child In Need of Services (CHINS)[109] cases in the courts.[110] Without this investigative and rehabilitation process for abused children and their abusers, more children would remain in their abuser's care.[111]

The policy within these organizations may have to change to compensate for a decrease in reports, and perhaps more investigations will have to be initiated internally rather than externally. Without these reports, organizations will rely on the permissive reporter provision in the statute to fill the void in reports. In contrast, if this

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107. *See* Melton, *supra* note 105, at 12, 14.

108. O.C.G.A. § 15-11-150 (2014). This statute resonates the purpose of the mandatory reporter statute in that any person who suspects child abuse can make a petition alleging dependency of that child. *Id.* Dependency is defined as a child who "(A) Has been abused or neglected and is in need of the protection of the court; (B) Has been placed for care or adoption in violation of law; or (C) Is without his or her parent, guardian, or legal custodian." O.C.G.A. § 15-11-2(22) (2014).

109. O.C.G.A. § 15-11-390 (2014). A child is in need of services if he meets any of the following requirements:

> (A) A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation and who is adjudicated to be:
>
> (i) Subject to compulsory school attendance and who is habitually and without good and sufficient cause truant, as such term is defined in Code Section 15-11-381, from school;
>
> (ii) Habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable or places himself or herself or others in unsafe circumstances;
>
> (iii) A runaway, as such term is defined in Code Section 15-11-381;
>
> (iv) A child who has committed an offense applicable only to a child;
>
> (v) A child who wanders or loiters about the streets of any city or in or about any highway or any public place between the hours of 12:00 Midnight and 5:00 A.M.;
>
> (vi) A child who disobeys the terms of supervision contained in a court order which has been directed to such child who has been adjudicated a child in need of services; or
>
> (vii) A child who patronizes any bar where alcoholic beverages are being sold, unaccompanied by his or her parent, guardian, or legal custodian, or who possesses alcoholic beverages; or
>
> (B) A child who has committed a delinquent act and is adjudicated to be in need of supervision but not in need of treatment or rehabilitation.

O.C.G.A. § 15-11-2(11) (2014).

110. Melton, *supra* note 105, at 13, 14. The entire juvenile justice system is dependent on the reports made to Child Protective Services and other similar agencies. *Id.* Some critics claim that this over-dependency is the reason that child abuse is still prevalent in our nation today. *Id.*

111. *Id.* at 15.

holding encourages professionals to over-report because of the threat of criminal liability, there will be an influx of cases swamping DFCS and CASA workers who are already tremendously over-worked and understaffed.[112] This influx would cause an increased involvement of law enforcement with these agencies and within the lives of the alleged abuse victims' families. But, even if these agencies could compensate, would it remedy the problem?[113]

Since declaring a "national emergency" of child abuse over two decades ago,[114] the emergency has not dissolved—child abuse is just as prevalent today as it was when the crisis began.[115] If the system put in place by the legislature is not working to effectuate the issue of child abuse and neglect in Georgia, and the Georgia Supreme Court upholds the system and even further limits it, what happens to the victims? In 2012, 129,427 reports were made to Georgia's Child Protective Services.[116] Out of those, only 19,462 reports were substantiated actual child abuse.[117] If it took almost 130,000 reports to uncover only 20,000 cases of actual child abuse, what will happen if the number of initial reports significantly decreases? Failing to report or decreasing the overall number of reports can cause serious consequences "to the child, the family, and ultimately to society" by causing those children to "suffer unnecessarily" at the hands of those entrusted for their safety and well-being.[118] In the alternative, over-reporting can subject families and children to lengthy investigations, numerous court appearances, forced examinations, and invasive agency involvement in their private affairs.[119]

A broader interpretation used by courts prior to this decision could have caused the dramatic reporting of unsubstantiated claims. If this is true, the *May* holding could reduce the amount of unsubstantiated reports made and increase—or remain consistent—the amount of

112. *See* U.S. Advisory Board on Child Abuse and Neglect, *supra* note 56, at 34.

113. Melton, *supra* note 105, at 12-13.

114. *See* U.S. Advisory Board on Child Abuse and Neglect, *supra* note 56, at 2.

115. Melton, *supra* note 105, at 13.

116. *Child Maltreatment 2012*, HHS (2013), www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf.

117. *Id.* Another report from 2001 suggests that only twenty-eight percent of the reports made by mandatory reports were substantiated by findings of actual child abuse. Jessica Ann Toth Johns, *Mandated Voices for the Vulnerable: An Examination of the Constitutionality of Missouri's Mandatory Child Abuse Reporting Statute*, 72 UMKC L. REV. 1083, 1088 (2004).

118. JANET MASON, CONSEQUENCES OF FAILING TO REPORT 53, 54 (2d ed. 2003).

119. Meriwether, *supra* note 16, at 150.

substantiated, serious reports.[120] For better or worse, the *May* holding significantly limits the protection for children in Georgia who are subject to child abuse. The most frightful implication of all, however, is that we will likely never know the actual implication of this decision on the children because abused children are less likely to ever be discovered.[121]

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120. *Id.* at 150-51.
121. *See id.*