History of Child Protection

- In 1874 animals were protected by law from inhumane treatment, children were not.
- In 1875, prompted by the story of a young girl found tied to her bed, neglected and brutally beaten, a small group of concerned citizens in New York formed the first child protective institution.
The girl who inspired change

Meet Mary Ellen McCormack-Wilson
at 10 years of age
Her Testimony:

- My name is Mary Ellen McCormack. I don’t know how old I am.
- I have never had but one pair of shoes, but I can’t recollect when that was. I have no shoes or stocking this winter.
- I am never allowed to play with any children.
Her Testimony continued…

- Mamma has been in the habit of whipping and beating me almost every day.
- She used to whip me with a twisted whip, a raw hide. The whip always left black and blue marks on my body.
- She struck me with scissors and cut me.
Her testimony continued...

- I have no recollection of ever having been kissed.
- I have never been taken on my mamma’s lap, or caressed or petted.
- I have never dared to speak to anybody, because if I did I would get whipped.
- Whenever mamma went out I was locked up in the bedroom.
What happened next?

- Mary Ellen’s foster mother was prosecuted for assault and battery.
- Mary Ellen was placed in a new home and grew up a normal child.
- At 24, she married and had two daughters of her own. She also adopted an orphaned child.
In the End…

- Mary Ellen’s children said their mother didn’t like to talk of the abuse.
- It was her pride and joy to be able to provide her own children with a happy childhood.
- Mary Ellen died in 1956 at the age of 92.
Child Abuse/Neglect Reports

Years 2005 – 2013

Source: Report Published by the Department of Human Services: The Status of Children in Oregon’s Child Protective System - 2008
2013 Child Abuse & Neglect Reports – By the Numbers*

- 64,305 -- Reports received
- 27,644 -- Reports referred for investigation
- 6,900 -- Founded reports
- 10,630 -- Victims of abuse
  - 48.7% -- Victims < 6 years of age

Most common Family Stressors
- 44.7% -- Substance abuse
- 31.8% -- Domestic violence
- 25.8% -- Family financial distress
- 26.4% -- Parental involvement with LEA

*2013 Child Welfare Data Book, Oregon DHS, September 2014
10 children died from causes related to familial or caregiver abuse or neglect.
4 children died as the result of abuse.
5 children died as the result of neglect.
1 child died as a result of abuse and neglect.
7 child fatalities had at least one parent as a perpetrator:
- Mother, alone = 2 fatalities
- Father, alone = 1 fatalities
7 victims were ≤ 5 years of age.
FEDERAL LAW

Child Abuse Prevention and Treatment Act

- 42 USC 5101 \textit{et seq}
- Requires assurance that states have:
  - provisions or procedures for the reporting of 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
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.
Definition of Abuse

ORS 419B.005(1)

- Assault
- Any physical injury to a child that has been caused by other than accidental means, including any injury that appears to be at variance with the explanation given of the injury.
Definition of Abuse – cont.

- ORS 419B.005(1)
  - Mental injury, which 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.
Mental Cruelty?
Definition of Abuse – cont.

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

- Negligent treatment or maltreatment of a child, including but not limited to the 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.
Definition of Abuse – cont.

ORS 419B.005(1)

- 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.
Definition of Abuse – cont.

ORS 419B.005(1)

- Rape, sodomy, unlawful sexual penetration and incest.
- Sexual abuse.
Definition of Abuse – cont.

ORS 419B.005(1)

- Sexual exploitation, including but not limited to:
  - Contributing to the sexual delinquency of a minor;
  - Conduct that allows, employs, authorizes, permits, induces or encourages a child to engage in the 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, sexual abuse involving a child or rape of a child. 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; and
  - Allowing, permitting, encouraging or hiring a child to engage in prostitution.
The Face of Trafficking...
Signs of Sex Trafficking

- Not free to come and go as he/she wishes
- Fearful, anxious, depressed, submissive, tense, or paranoid
- Unusually fearful or anxious around law enforcement
- Shows signs of physical and/or sexual abuse, physical restraint, confinement, or torture
- Has few or no personal possessions
- Is not in control of his/her own money, no financial records, or bank account
- Is not in control of his/her own identification documents
Signs of Trafficking...

- Not allowed/able to speak for themselves (a third party may insist on being present)
- Can’t say where he/she is staying/address
- Lack of knowledge of whereabouts and/or do not know what city he/she is in
- Loss of sense of time
- Has numerous inconsistencies in his/her story
- Excessive school absences
- Drug/alcohol abuse
Portland has, per capita, the largest legal commercial sex industry in the nation.

The vast majority of pimps are gang-affiliated. Gang members perceive trafficking girls as more lucrative and lower risk than trafficking drugs or guns.

While some victims are runaways or children with histories of abuse, we also see victims without histories of dependency or delinquency.
Portland numbers

- 2013 Portland State Professor Christopher Carey:
  - Identified 469 children trafficked for sex in the Portland Metro Area.
  - Numbers come from Child Welfare and the Sexual Assault Resource Center (SARC).
  - We know there are more, but this gives us a starting point to understand the population who could be served, if we had the services.
Reasonable Discipline

“Abuse” does not include reasonable discipline unless the discipline results in one of the conditions defined as “abuse.”
“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
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

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

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

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
- Reasonable cause to believe
- Contact:
  - With child who has suffered abuse; or
  - Contact with person who has abused a child
- 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.
- That legislature used different term indicates intent to mean something different.
- “Reasonable grounds to believe” is different from and less than probable cause. *State v. Gulley*, 324 Or 57, 921 P2d 396 (1996).
- Compared to “reasonable suspicion” in DHS rules; does not rise to level of probable cause. *Berger v. SOSCF*, 195 Or App 587, 98 P3d 1127 (2004).
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 official.
- Duty is not discharged by reporting to supervisor.
- Red flag if official must get permission to report.
How to Report

ORS 419B.015

A person making a report of child abuse, whether voluntarily or pursuant to ORS 419B.010, shall 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 within the county where the person making the report is located at the time of the contact.
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.
Failure to Report

ORS 419B.010(2)
A person who violates ORS 419B.010(1) commits a Class A violation. Prosecution must be commenced at any time within 18 months after commission of the offense.
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)
Oregon enacts new law in 2011

§ 419B.016¹

Offense of false report of child abuse

(1) 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:
False Report Continued…

(a) 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

(b) 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.
What Happens After a Report of Child Abuse

- Cross report – ORS 419B.015
- Law enforcement
  - Investigation
  - Prosecution
- Department of Human Services
  - Screening
  - Assessment
  - Intervention
ORS 419B.020(8) - If DHS completes an investigation and the person making the report provided contact information, DHS must notify the person:

- Contact was made with the child;
- Department determined abuse occurred; and
- Services will be provided.
Confidentiality of Reports

ORS 419B.035(1)

Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and are not accessible for public inspection.
Confidentiality – cont.

- ORS 419B.035
  - Mandatory disclosure – ORS 419B.035(1).
  - Discretionary disclosure – ORS 419B.035(3).
  - Other disclosures
  - Prohibitions on disclosure
A Cautionary Tale
Tragic Ending

“The Killer of Salem toddler gets 77-year sentence

SALEM, Ore. (AP) — A Salem man convicted of sexually abusing and killing his girlfriend's 2-year-old daughter has been sentenced to 77 years in prison.

Natalia suffered internal bleeding, a crushed liver and fractured ribs and bones. The toddler had extensive rectal injuries, and police found Ros' DNA in a semen stain on the collar of Natalia's dress. Marion County Judge Claudia Burton called the crimes cruel, horrific and brutal.”