

Penn State

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Former Penn State defensive coordinator Jerry Sandusky has been charged with sexually assaulting eight young boys between 1994 and 2009. The principal *New York Times* story is [here](#). ESPN's coverage is [here](#). The grand jury report on the matter is [here](#). Sandusky allegedly met each of the boys through Second Mile, a charity that he founded for underprivileged children. The state contends that he took the boys to various Penn State football events, and that some of the sexual assaults took place in the Penn State football complex. News reports indicate that in 1998, the mother of one of the boys reported inappropriate contact between Sandusky and her son to campus police. The ensuing investigation apparently resulted in a taped admission by Sandusky, but the district attorney declined to prosecute. A parallel investigation by Child Protective Services failed to substantiate the charges.

In 2002, according to the grand jury report, a graduate student saw Sandusky anally raping a naked 10-year-old in the showers at Penn State. The graduate student reported what he saw to head coach Joe Paterno, who in turn reported it to athletic director Tim Curley. The graduate student then met with Curley and Penn State Senior Vice President for Business and Finance Gary Schultz, who oversaw the campus police, to discuss what he saw. Nothing that I have read suggests that the graduate student, Paterno, Curley, or Schultz reported the matter to any law enforcement agency at any time. Even after the incident, Sandusky – who retired in 1999 but remained a professor emeritus – was allowed on campus and in the football complex, though his access may have been curtailed to some extent. The university continued to promote, and to host at a satellite campus, Sandusky's football camps for high school boys.

Curley and Schultz have been charged with failing to report the assaults and with perjuring themselves before a grand jury. (They testified that the graduate student reported only having seen inappropriate horseplay between Sandusky and the child.) [Both have stepped down](#). Paterno is not a target of the investigation, apparently because he reported the matter up the chain at the university. Sandusky, Curley, and Schultz all maintain their innocence and are presumed innocent.

The case raises a number of legal issues, but perhaps the most controversial issue is whether Curley and Schultz had a duty to report, assuming *arguendo* that they were, in fact, aware of the abuse. Schultz's lawyer has suggested that he did not. The relevant Pennsylvania statute provides in part that “[a] person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report . . . when the person has reasonable cause to suspect . . . that a child under the care, supervision, guidance or training of that person or of an . . . institution . . . with which that person is affiliated is a victim of child abuse.” Curley and Schultz could argue that they do not “come[] into contact with children” as part of their work. While children are sometimes present on Penn State's campus, they could argue that such presence is incidental, and not sufficient to bring them within the scope of the statute. [This article](#) explores that argument, and suggests that the degree of connection, if any, between Sandusky's charity and Penn State may be relevant. Of course, whether Curley and Schultz had a legal duty to report is a separate question from whether they had a moral obligation to do so.

Had the matter arisen in North Carolina, the relevant statute would have been G.S. 7B-301, which imposes a duty to report to DSS on “any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101.” It does not appear that Sandusky was the custodian or caretaker of the victim of the alleged shower assault, so the assault likely does not meet the legal definition of “abuse” and so likely would not

have triggered a duty to report. Although the General Statutes impose a number of other reporting requirements – for example, on school principals, see G.S. 115C-288(g), and on health care providers, see [this post](#) – I'm not aware of any that would apply to university administrators on the alleged facts of the Sandusky case. If I am missing something, please let me know.

This case first came to light several days ago, and the anger surrounding it has only grown since. It is hard to imagine Paterno surviving it. It is hard to imagine the university president – who apparently was briefed to some extent on the allegations and on the university's response to them – surviving it. It raises serious [questions about the role of big-time sports](#) on university campuses.