

proper analysis of substantive and procedural due process claims of the detainee. Substantive due process is violated if the solitary confinement is deemed punitive or excessive, which could be determined by a jury. Whether the confinement of pretrial detainees is deemed disciplinary or administrative, procedural safeguards are required to protect their due process rights.

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## Limits to Mandatory Child Abuse Reporting

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**Teacher's Mandatory Obligation to Report Child Abuse Does Not Extend Beyond Professional Role**

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In *State v. James-Buhl*, 415 P.3d 234 (Wash. 2018), the Washington Supreme Court considered whether a mandatory child abuse reporting law was properly applied to a case of a teacher. Tanya James-Buhl was prosecuted for failure to comply with a statute requiring professional school personnel to report to authorities when there is reasonable cause to believe that child abuse or neglect has occurred. She was charged with failing to report disclosures by three of her daughters that her husband inappropriately touched them. The Washington Supreme Court held that Ms. James-Buhl was not subjected to statutory reporting duty because her knowledge of the abuse had no connection to her professional role as a teacher.

### Facts of the Case

Tanya James-Buhl was a school teacher living with her three daughters and married to Joshua Hodges. Joshua Hodges was step-father to the three children. Ms. James-Buhl's daughters had never been her students. In May 2015, one of Ms. James-Buhl's daughters told her pastor that Mr. Hodges was touching

her inappropriately. The pastor contacted Child Protective Services. The Pierce County Sheriff's Department investigated and determined that all three of Ms. James-Buhl's daughters had told their mother about Mr. Hodges' alleged abuse, which they said occurred in the home.

Ms. James-Buhl was subsequently charged with three counts of failure to comply with the mandatory reporting law requiring "professional school personnel" to report child abuse. Ms. James-Buhl argued that the charges should be dismissed because she did not learn about the alleged abuse of her daughters in the school setting or while in her role as a teacher. Her charges were subsequently dismissed by the trial court judge.

On appeal, the Washington Court of Appeals reversed, holding that the mandatory reporting duty for the professionals identified applies in all circumstances. The court further elaborated that a teacher can be subject to prosecution for failing to report suspected child abuse based on information obtained at any location, not just when in school or in the context of teaching duties. Ms. James-Buhl petitioned for review, which was granted by the Washington Supreme Court.

### Ruling and Reasoning

The Washington Supreme Court held that the charge of failing to comply with the mandatory reporting duty outlined in the Revised Code of Washington (Wash. Rev. Code § 26.44.030 (2018)) required some connection between the individual's professional identity and the alleged criminal offense. The court reasoned that the mandatory reporting law, because it specifically pertains to certain occupations as opposed to all people, does not imply that the duty is "unlimited" or "ever-present."

The court examined the mandatory reporting law, which imposes a duty on various classes of people, including practitioners, teachers, counselors, administrators, child care facility personnel, and school nurses. According to state statute, "a mandatory reporter named in Wash. Rev. Code § 26.44.030 (2018) who knowingly fails to make an 'immediate oral report' of child abuse 'shall be guilty of a gross misdemeanor'" (*James-Buhl*, p 237).

When considering the application of the statute, the court stated that the state's interest in the protection of children is unquestionably of the utmost importance. The court was unpersuaded, however, by

the state's argument that the reporting duty is ever-present because the statute refers to people by means of their occupation, not just as adults or persons. The court clarified that "failure to comply with the mandatory reporting duty must have some connection between the individual's professional identity and the criminal offense" (*James-Buhl*, p 238). For example, a "connection could be established because of the teacher's relationship to the child or relationship to the alleged abuser, or to the circumstances in which the teacher gained reasonable cause to believe that a child had been abused" (*James-Buhl*, p 238). The trial court recognized the need for this connection, explaining that "James-Buhl was not required to make a mandatory report in this case because she did not have a teacher/professional school personnel relationship with [her daughters]" (*James-Buhl*, p 239). The court considered that "prosecuting the mother of abused children for failure to report may or may not be the best way to advance child welfare" (*James-Buhl*, p 239), but, citing *State v. Jackson*, 976 P.2d 1229 (Wash. 1999), the court said that they should refrain from rewriting an "unambiguous statute" to justify a decision based on a notion of good public policy.

Dissent

The dissenting opinion stated that teachers are mandatory reporters, without exception, and that it was a mistake to hold Ms. James-Buhl to a lower standard because the abuse that she learned about was not linked to her employment duties as a teacher. According to the dissent, there was a clear duty to report because Ms. James-Buhl was employed as a teacher, one of the listed professions in the state statute. The dissent said that the goal of protecting children from physical and sexual abuse was too important to restrict the scope of reporting duties.

Discussion

In this case, the Washington Supreme Court attempted to clarify a gray area within the state of Washington's mandatory child abuse reporting law. With the court's ruling that Ms. James-Buhl was not subject to the mandatory reporting statute because her knowledge of alleged child abuse had no connection to her professional role as a teacher, Washington has narrowed the scope of mandatory reporting of child abuse for professionals in the state.

Like teachers, psychiatrists and other mental health professionals in Washington are mandatory

reporters of child abuse under Wash. Rev. Code § 26.44.030. Mandatory child abuse reporting laws have posed a dilemma for psychiatrists because of potential harmful effects on the patient–doctor relationship that may result from breaking confidentiality. The ruling in this case provides more leeway for psychiatrists and other professionals to not have to report potential child abuse cases that may be encountered outside of their clinical practice. Any limitations set on mandatory child abuse reporting would likely be welcomed by psychiatrists, given that failure to report such abuse could result in negative consequences, such as licensing board investigations, malpractice suits, or other sanctions. An unintended consequence of this ruling, however, might be an overall reduction in the number of child abuse cases reported by professionals. Any missed reported cases of real child abuse would clearly not be in the state's interests of child welfare.

This case highlights the idea that legal responsibility is not always the same as ethics responsibility. Similar to the notion that a physician is not obligated legally, but perhaps is ethically, to provide emergency care to someone who is not his or her patient, psychiatrists who encounter potential child abuse outside of their professional capacity might still be ethically obligated to report, even if legally exempt from doing so. In cases where a psychiatrist might not be legally required to report suspected child abuse, one should carefully weigh the best interests of the child against the potential damage to other parties. In some cases, reporting would still be the best option. In cases where there is ambiguity, psychiatrists should consult with their local medical board, risk-management or ethics boards at their place of employment, or local reporting agencies for guidance.

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## Need for Representation in a Pro Se Case

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