ORIGINAL

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW

Michael J. McQueary,

Plaintiff,

vs.

The Pennsylvania State University,

Defendant.

Docket No. 2012-1804

Type of Case:
Whistleblower

___Medical Professional Liability Action (check if applicable)

Type of Pleading:
Motion for Post-Trial Relief

Filed on Behalf of:
Defendant, The Pennsylvania State University

Counsel of Record for this Party:
Nancy Conrad, Esquire
White and Williams LLP
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
(610) 782-4909
conradn@whiteandwilliams.com
PA I.D. Number 56157

ORIGINAL

TABLE OF CONTENTS

Page

ORIGINAL

ORIGINAL

ORIGINAL

TABLE OF AUTHORITIES

Page(s)

CASES

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

CONSTITUTIONAL PROVISIONS, STATUTES AND COURT RULES

ORIGINAL

OTHER AUTHORITIES

ORIGINAL

BRIEF IN SUPPORT OF MOTION FOR POST-TRIAL RELIEF

The Pennsylvania State University ("University") filed a post-trial motion regarding Michael McQueary's claims of intentional misrepresentation and defamation. The University files this brief in support of its request for judgment notwithstanding the verdict, or alternatively, a new trial, molding of the compensatory awards, and remittitur because despite the best intentions and efforts of the Court, errors irreparably prejudiced the University.

ISSUES PRESENTED

(1). Is the University entitled to judgment notwithstanding the verdict on Plaintiff's claims of misrepresentation and defamation, or, alternatively a new trial when the Court erroneously instructed the jury that Curley, Schultz, and Spanier were mandated reporters of child abuse when no evidence was presented during trial to establish that they were mandated reporters?

Suggested Answer: Yes.

(2). Is the University entitled to judgment notwithstanding the verdict on Plaintiff's claim of misrepresentation or, alternatively a new trial, when Plaintiff failed to provide sufficient evidence to establish each necessary element of intentional misrepresentation?

Suggested Answer: Yes.

ORIGINAL

(3). Is the University entitled to judgment notwithstanding the verdict when Plaintiff filed his misrepresentation claim outside the statute of limitations.

Suggested Answer: Yes.

(4) Is the University entitled to judgment notwithstanding the verdict, or, alternatively a new trial on Plaintiff's claim of defamation when Plaintiff based his claim on an expression of opinion that implied no undisclosed facts about Plaintiff?

Suggested Answer: Yes.

(5). Is the University entitled to judgment notwithstanding the verdict, new trial, new trial on damages, remittitur, or molding of damages when the compensatory award was not supported by the evidence?

Suggested Answer: Yes.

(6). Is the University entitled to judgment notwithstanding the verdict or remittitur on the punitive damage award for the misrepresentation claim when no evidence of malice, vindictiveness, or wholly wanton conduct sufficient to support an award of punitive damages was presented during trial?

Suggested Answer: Yes.

(7). Is the University entitled to a new trial on Plaintiff's claims of defamation and misrepresentation when its stay request were denied which

required the University to prepare for trial and participate in trial without access to two key witnesses who were asserting their Fifth Amendment Rights?

Suggested Answer: Yes.

(8). Is the University entitled to a new trial on Plaintiff's claims of defamation and misrepresentation when the Court erroneously instructed the jury that it might take an adverse inference against the University for the decision of non-parties to exercise their Fifth Amendment rights?

Suggested Answer: Yes.

(9). Is the University entitled to a new trial when Plaintiff did not show actual malice and the Court failed to instruct the jury that it had to find actual malice since Plaintiff was a public figure or a limited-purpose public figure?

Suggested Answer: Yes.

(10). Is the University entitled to a new trial when Plaintiff did not show actual malice and the Court failed to instruct the jury that it had to find actual malice since Spanier's statement of opinion involved a matter of public concern?

Suggested Answer: Yes.

(11). Is the University entitled to a new trial on the defamation claim when the Court refused to permit the University to publish to the jury news articles that cast Plaintiff in a negative light for reasons independent of Spanier's statement?

Suggested Answer: Yes.

ORIGINAL

(12). Is the University entitled to a new trial on the defamation and misrepresentation claims when the Court improperly threatened to take an adverse inference against the University each time a University witness asserted attorney-client privilege?

Suggested Answer: Yes.

(13). Is the University entitled to a new trial on the defamation and misrepresentation claim because the Court improperly refused to provide special interrogatories to the jury?

Suggested Answer: Yes.

(14). Is the University entitled to a new trial on the defamation and misrepresentation claims because the Court improperly acted as an advocate for the Plaintiff?

Suggested Answer: Yes.

STATEMENT OF THE CASE

I. FORM OF ACTION AND PROCEDURAL HISTORY

Michael McQueary alleged that the University's response to the allegations that another football coach committed sexual misconduct caused McQueary to suffer damages. McQueary asserted three causes of action against the University: (1) defamation; (2) intentional misrepresentation; and (3) a violation of Pennsylvania's whistleblower law.

Trial took place before the Honorable Thomas G. Gavin in the Centre County Court of Common Pleas. The trial on the defamation and misrepresentation claims began on October 17, 2016 and concluded October 27, 2016. Despite a request by the University, the Court did not ask the jury to answer special interrogatories. See N.T. (10/26/2016 (P.M.)) at 62:12-63:4. On October 27, 2016, the jury returned a verdict in McQueary's favor and against the University on both claims. The jury entered identical $1.15 million verdicts on both claims. See Jury Verdict Form (Ex. A). The jury also awarded McQueary punitive damages on the misrepresentation claim in the amount of $5 million.[1] Id. The University timely moved for post-trial relief. The University submits this brief in support of that motion.

II. STATEMENT OF FACTS

On November 4, 2011, the Attorney General of Pennsylvania filed criminal charges against Jerry Sandusky based on his improper sexual conduct with children. See Complaint (Ex. B) at ¶ 26. At the time of several of these offenses, Sandusky was affiliated with the University. See id. at ¶ 10. Testimony showed that Sandusky was also deeply involved with The Second Mile, a non-profit organization to help underprivileged youth. See N.T. (10/17/2016 (A.M.)) at

[1] The whistleblower claim was adjudicated by the Court in a separate opinion on November 30, 2016, and the post-trial motion is due after the Court considers McQueary's fee petition. See November 30 Order and Opinion (Ex. C). The University anticipates filing a post-trial motion on the Whistleblower claim.

77:19-21. Sandusky's indictment and eventual conviction were based, in part, on McQueary's observations. See id. at 75:7-25.

McQueary alleged that when he reported his observations to University officials in 2001, Curley and Schultz intentionally misrepresented to him that they would take the matter seriously, conduct a proper investigation, and take appropriate action. See Complaint (Ex. B). According to McQueary, these intentional misrepresentations caused him harm starting ten years later in 2011. See id. at ¶¶ 60-64. McQueary also alleged that he was defamed by a forward-looking statement of support made by President Spanier in 2011 on behalf of the University officials who spoke with McQueary ten years earlier. See id. at ¶¶ 51-55. McQueary further alleged that the University retaliated against him for his role in the Sandusky investigation. Id. at ¶ 46.

According to trial testimony, in February 2001, McQueary entered the locker room at the University's Lasch Building. He testified as follows: he heard a running shower and slapping noises. N.T. (10/21/2016 (A.M.)) at 47:4-6. He also saw a reflection of Sandusky and a boy under a showerhead with Sandusky's "arms wrapped around him in a severely inappropriate position." See N.T. (10/21/2016 (A.M.)) at 47:4-15; 47:19-48:2. McQueary also testified that he made some noise to make his presence known and left Sandusky and the child in the locker room. N.T. (10/21/2016 (AM)) at 47:19-48:2; (10/21/2016 (P.M.)) at

170:14-170:25. McQueary testified that on the next day, he reported what he saw to head football coach, Joe Paterno. N.T. (10/21/2016 (A.M.)) at 51:5-10. Paterno, according to McQueary's testimony, then reported McQueary's observations to the Athletic Director, Timothy Curley, and the Senior Vice-President of Finance and Business, Gary Schultz. See N.T. (10/21/2016 (A.M.)) at 54:12-21.

President Spanier testified that Curley and Spanier brought McQueary's allegations to Spanier's attention at a meeting which occurred on February 12, 2011 and that the matter was further discussed in email exchanges through February 28, 2011. See N.T. (10/20/2016 (A.M.)) at 43. According to the evidence presented at trial, Schultz also consulted with Wendell Courtney, the University's outside general counsel. See N.T. (10/17/2016 (P.M.)) at 62:11-64:4; 66:1-67:25; 79:21-80:25.

According to McQueary's testimony, in mid-February 2001, Curley and Schultz met with McQueary. See N.T. (10/21/2016 (A.M.)) at 54:12-21. McQueary testified that Curley and Schultz represented to him that Sandusky's conduct was a "serious matter," and they would conduct a "proper investigation," and take "appropriate action." See N.T. (10/21/2016 (A.M.)) at 54:22-55:4; N.T. (10/24/2016 (A.M.)) at 96:1-97:10. Due to the criminal proceedings pending against them, Curley and Schultz asserted their Fifth Amendment rights and did

not testify at trial in this case or otherwise participate, so their version of the meeting is unknown. N.T. (10/25/16 (A.M.)) at 56:22-57:22.

Again according to McQueary's testimony, "[p]ossibly ten days, roughly a week" after that meeting, Curley called McQueary and stated "we told the Second Mile and we've told Jerry he's no longer allowed to bring kids into the facility" and "we've decided to take Jerry's keys away." N.T. (10/21/2016 (A.M.)) at 55:11-23. To corroborate this, McQueary also introduced into evidence a handwritten note dated February 25, 2001 and purportedly written by Schultz that references alerting The Second Mile and restricting Sandusky's use of the University's facilities. See Note (Exhibit P-9) (Ex. D) and an email dated February 26, 2001 from Curley to Schultz which confirms they intended to inform The Second Mile and to address Sandusky directly regarding use of University facilities. See Email (Exhibit P-12) (Ex. E). This email was sent shortly after the meeting that Curley and Schultz had with McQueary, which McQueary testified took place on February 22 or 23, 2001.

McQueary provided no testimony or evidence that suggests that over the next decade he questioned the appropriateness of the actions taken by Curley and Schultz. See N.T. (10/21/2016 (A.M.)) at 55:12-23; N.T. (10/24/2016 (A.M.)) at 97:5-10. Rather, he remained involved in the football program and was promoted to Assistant Football Coach (Wide Receivers) and Recruiting Coordinator. See

Complaint (Ex. B) at ¶ 20; see also N.T. (10/21/2016 (P.M.)) at 16:22-17:8. McQueary testified he also occasionally saw Sandusky at the football facilities. See N.T. (10/21/2016 (A.M.)) at 56:23-57:14.

In late 2010, McQueary began cooperating with an investigation by the Attorney General's Office into Sandusky's conduct. See Complaint (Ex. B) at ¶ 22. In December 2010, McQueary testified before the grand jury. Id. at ¶ 23. In January 2011, Curley, Schultz, and Paterno testified before the grand jury. In April 2011, Spanier testified before the grand jury. In November 2011, the grand jury issued a presentment charging Sandusky with over 40 counts of sex crimes. See N.T. (10/17/2016 (A.M.)) at 40:18-41:1. Curley and Schultz were charged with perjury for their grand jury testimony. Id. In his testimony, McQueary expressed shock that Curley was in trouble with the law, "he could not believe it." See N.T. (10/21/2016 (A.M.)) at 68:17-69:3.

On November 5, 2011, President Spanier released the following statement of support for his two longstanding senior officials, Curley and Schultz:

> The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance.
>
> With regard to the other presentments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee.

> Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.
>
> Graham Spanier

See Statement (Exhibit D-20) (Ex. F). Spanier allegedly repeated similar sentiment during meetings with the athletic department. See N.T. (10/21/2016 (P.M.)) at 185:11-20.

After news broke of the indictment, the University received hateful, vile messages directed against McQueary including death threats directed at him. See N.T. (10/24/2016 (P.M.)) at 19:12-19:22. Also, the press began reporting that McQueary left the locker room without physically intervening between Sandusky and the child. See N.T. (10/17/2016 (P.M.)) at 143:4-143:13. On November 11, 2011, McQueary was placed on paid administrative leave. See N.T. (10/21/2016 (A.M.)) at 100:9-101:10.

In January 2012, Bill O'Brien was named head coach of the football program. He did not retain McQueary as a coach. McQueary's fixed-term appointment with the University expired on June 30, 2012. See N.T. (10/21/2016 (P.M.)) at 90:22-91:1.

ORIGINAL

STANDARDS OF REVIEW

Post-trial motions play an important role in the adjudicative process. "Such post trial reflection and consideration is . . . framed to give the trial judge an opportunity to review, research, and correct the numerous difficult impromptu trial decisions before they are submitted for review on appeal." Lee v. Southeastern Pa. Transp. Auth., 704 A.2d 180, 183 (Pa. Cmwlth. 1997). The University seeks judgment notwithstanding the verdict or, in the alternative, a new trial. Alternatively, the University seeks molding of the compensatory awards and remitting of the punitive damage award.

I. STANDARD FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV)

There are two bases upon which a trial court may award judgment notwithstanding the verdict. "[O]ne, the movant is entitled to judgment as a matter of law and/or two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant." Campo v. St. Luke's Hosp., 755 A.2d 20, 23 (Pa. Super. 2000). "With the first, the court reviews the record and concludes that even with all factual inferences decided adverse to the movant the law nonetheless requires a verdict in his favor, whereas with the second the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure." Id.

II. STANDARD FOR A NEW TRIAL

Trial courts have broad discretion to grant or deny a new trial. Harman v. Borah, 756 A.2d 1116, 1121-22 (Pa. 2000). "The grant of a new trial is an effective instrumentality for seeking and achieving justice in those instances where the original trial, because of taint, unfairness or error, produces something other than a just and fair result, which, after all, is the primary goal of all legal proceedings." Id. at 1121 (quoting Dornon v. McCarthy, 195 A.2d 520, 522 (Pa. 1963). A new trial is appropriate when, as here, the trial court "committed an error of law that controlled the outcome of the case or committed an abuse of discretion." Duncan v. Mercy Catholic Med. Ctr. of Southeastern Pa., 813 A.2d 6, 10-12 (Pa. Super. 2002), appeal denied, 573 Pa. 716, 828 A.2d 350 (2003).

III. REMITTITUR

It is the responsibility of the judiciary to keep jury awards within reasonable bounds. Haines v. Raven Arms, 640 A.2d 367, 370 (Pa. 1994), as supplemented, 652 A.2d 1280 (1995). A trial court should grant a request for remittitur "when a verdict that is supported by evidence suggests that a jury was guided by partiality, prejudice, mistake or corruption." See Sprague v. Walter, 656 A.2d 890, 924 (Pa. Super. 1995). The trial court must determine whether the award of damages "falls within the uncertain limits of fair and reasonable compensation or whether the

verdict so shocks the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption." Haines, 640 A.2d at 369.

IV. MOLDING THE VERDICT

A trial court has the power to mold a jury's verdict to conform to the clear intent of the jury. Groh v. Philadelphia Electric Co., 271 A.2d 265, 270 (Pa. 1970). "[T]he power to mold or more precisely amend a jury's verdict is merely a power to make the record accord with the facts, or to cause the verdict to speak the truth and not a power to enable a judge to invade the province of the jury." House of Pasta, Inc. v. Mayo, 449 A.2d 697, 702 (Pa. 1982) (citations omitted).

LEGAL ANALYSIS

I. MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR A NEW TRIAL

A. THE COURT PREJUDICED THE UNIVERSITY WHEN IT ERRONEOUSLY FOUND AS A MATTER OF LAW THAT CURLEY, SCHULTZ, AND SPANIER WERE MANDATED REPORTERS UNDER PENNSYLVANIA LAW

At trial, the Court raised *sua sponte* the issue of whether Pennsylvania law required Spanier, Curley, and Schultz to report McQueary's observations to the proper authorities. McQueary never pleaded that these men were mandated reporters. See generally Complaint (Ex. B). McQueary never raised this issue at trial. See generally N.T. (10/17/2016 – 10/27/2016).

During a hearing on jury instructions, the Court informed the parties that it would instruct the jury that "if the jury finds as a fact that Mr. McQueary told Mr.

Curley that what he observed was sexual in nature and that Mr. Curley repeated that to Schultz and Spanier, that [sic] all three of those persons are mandated reporters." N.T. (10/27/2016) at 6:4-9. The Court found this position supported by an email chain between Curley, Schultz, and Spanier where Spanier claimed they could be "vulnerable for not having reported it." Id. at 6:10-16; Plaintiff's Exhibit 10 (Ex. G). This instruction was erroneous and essentially sealed the University's fate as to all claims. As the Court recognized, "I don't know how the defense can take the position he told them something else [other than the acts were sexual in nature] when Dr. Spanier is indicating they are vulnerable to [sic] not having reported it...." N.T. (10/27/2016) at 6:21-25.

The University argued that Curley, Schultz, and Spanier did not come into contact with children in their profession so the record failed to support that they were mandated reporters under the statute. See id. at 7:20-25; 8:2-5. The University also objected by explaining that one could interpret Spanier's comment in several ways. See id. at 7:4-19. The Court nonetheless found that it could take "judicial notice of the law and define the law." Id. at 9:13-14. See also N.T. (10/27/2016) at 156:2-4 (restating objection).

The Court instructed the jury that if McQueary reported to Curley or Schultz that the conduct he observed was sexual, either Curley or Schultz was required to

report McQueary's observations to the Department of Public Welfare or Children and Youth Services. The instruction read as follows:

> Now, if you find as fact, and I'm not suggesting it, but if you find as fact that Mr. McQueary reported to Mr. Curley that the conduct he observed between Mr. Sandusky and the boy in the shower that night was of a sexual nature, I tell you as a matter of law that Mr. Curley was a mandated reporter and was required to report that to the police and either the Department of Public Welfare or Children and Youth Services, whatever was the appropriate agency at that point in time, and that when – and again, if you find, and I'm not suggesting you find it – but if you find that Mr. McQueary was told by Mr. Curley and/or Mr. Schultz that appropriate action would be taken, and at the time they made that statement, that was a false statement and that Mr. McQueary relied upon that and that Mr. McQueary has subsequently suffered harm, then Mr. McQueary would be entitled to prevail on the misrepresentation claim. If you find that Mr. Curley told Mr. Schultz and/or told Dr. Spanier what it is that Mr. McQueary says he told Mr. Curley – in other words, it was conduct of a sexual nature – Mr. Schultz and Dr. Spanier were also mandated reporters, and they were required to report it to the police and/or the appropriate agency, DPW or Children and Youth Services.

N.T. (10/27/2016) at 148:20-149:23. When the jury asked for a clarification on the misrepresentation claim, the Court reiterated its view that Curley and Schultz were mandated reporters:

> [I]f you find as a fact that Mr. McQueary told Mr. Curley and/or Mr. Schultz and neither one of them told Dr. Spanier that the conduct he observed was one of a sexual in nature, that [sic] they are mandated reporters and appropriate action and proper investigation would

> include reporting it to the police and DPW or Child and Youth Services, the appropriate agency.

Id. at 178:2-10. The court's clarification was different from its first instruction, and neither the instruction nor clarification was consistent with the law in place in 2001, the time McQueary testified he reported Sandusky's conduct to Curley and Schultz. No mention is made in the clarification that McQueary was required to characterize the events he observed as sexual in nature. Rather, the Court stated only Curley and Schultz were mandated reporters if they did not tell Spanier that McQueary reported activities that were sexual in nature. Both versions of the instructions were erroneous and the change itself was prejudicial as it likely led to jury confusion.

In 2001, when McQueary reported his observation to the University, Pennsylvania law contained a mandated reporter provision, which was codified in the Child Protective Services Law. See 23 Pa.C.S. § 6301, *et seq.* The mandated reporter provision required "persons who, in the course of their employment, occupation, or practice of their profession, come into contact with children shall report or cause to be made . . . when they have reasonable cause to suspect . . . that a child coming before them in their profession or official capacity is an abused child." 23 Pa.C.S. §6311 (2001). No evidence showed that either Curley, or Schultz, or Spanier qualified as a mandated reporter under the 2001 version of the law. Specifically, no evidence was presented that they (1) came into contact with

children as part of their profession; or, (2) that an abused child come before them in their professional or official capacity.

The 2001 version of the statute listed several professions whose practitioners were considered mandated reporters. Those professions included "school administrator." 23 Pa.C.S. § 6311(B) (2001). The inclusion of "school administrator" in that list may have mistakenly persuaded the Court that Spanier, Schultz, and Curley were mandated reporters as the Court quickly interjected "and school administrator" when the University's counsel was arguing that the record did not support they were mandated reporters. N.T. (10/27/2016) at 8:1. However, an analysis of the 2001 version of the statute makes clear that "school administrator" did not include university administrators.

While the statute referred to school administrators, the 2001 version of the law did not define school. See 23 Pa.C.S. at §§ 6303, 6311. Nothing suggests that the definition of "school" refers to postsecondary institutions such as the University. First, minors do not often matriculate at postsecondary schools. Further, the term "school administrator" was followed by "school teacher" and "school nurse" both terms regularly used in primary and secondary education, but not postsecondary education. See 23 Pa.C.S. at § 6311. Notably, the list of professions set forth in Section 6311 does not include professors, deans, provosts, teaching assistants, or resident assistants, occupational terms more common to a

University setting. Here, there was no record evidence provided to show that Curley, Schultz, or Spanier met this definition or fell within any of the professions on the list.

The "plain language" of section 6311 "covers members of those professions who regularly meet with children." See Caswell v. BJ's Wholesale Co., 5 F. Supp. 2d 312, 317 (E.D. Pa. 1998) (emphasis added). This interpretation is "borne out by § 6311(b) which lists, as examples of persons required to report[:] doctors, nurses, clergy members, teachers, police, and social workers." Id. This statute's list of professions includes only professions who come into regular contact with children. While University administrators may occasionally come into contact with a minor, they do not do so on a regular basis so as to make them mandated reporters under the 2001 version of the law. Id. (holding that photo lab technicians do not come into regular enough contact with children to be mandated reporters). Unlike those professions, again here, the trial record did not establish that Curley, Schultz, or Spanier came into regular contact with children.[2]

---

[2] Governor Thomas Corbett and the legislative leaders of the General Assembly in light of the Sandusky investigation created a task force to review the mandated reporter statute. See JOINT STATE GOV'T COMM'N REPORT OF THE TASK FORCE ON CHILD PROTECTION (Ex. H) at pp. 10, 33. The task force recommended that the statute be expanded to define school "to include public and private colleges and universities, community colleges and other post-secondary institutions where children may be involved in programs, activities or services." See id. at p. 33. See also id. at p. 59 (providing text of proposed

Even if the first element is met, the second unmet requirement is that, before any mandatory reporting requirement is triggered, an abused child must come before Curley, Spanier, or Schultz in order to trigger the reporting requirements. No evidence was presented that this occurred.

In Fewell v. Besner, 664 A.2d 577 (Pa. Super. 1995), the Superior Court considered whether a doctor who learned of but never came into contact with an abused child must report the abuse. Id. at 579. The Superior Court found the doctor did not have a reporting obligation because "[t]he plain language of . . . section [6311] makes it clear that only those who come into contact with abused children are required to report incidents of abuse." See id.

Two years later, the Superior Court reached the same result after considering a different fact pattern. In that case, a Big Brothers chapter learned that one of its big brothers, Randall Cassel, had sexually abused a little brother. See J.E.J. v. Tri-County Big Brothers/Big Sisters, 692 A.2d 582 (Pa. Super. 1997). Big Brothers suspended Cassel, but did not report him to authorities. Id. Two years later, Cassel abused another child who was not involved with the Big Brothers program. Id. The Court held that the second child could not hold Big Brothers liable for failing to report the first incident. The court reasoned that "[w]hile the statute was clearly promulgated for the protection of children, it appears that the children the

---

definition of "school"). If the 2001 version included postsecondary education the statute's amendment would not have been necessary.

statute aims to protect must be in some way connected to the persons who, in the course of their employment, come into contact with abused children." Id. at 586.

That did not occur there. Here, in addition to the fact that no evidence supported that they fell into the statute's definition for mandatory reporter, no evidence was presented that linked the child with Sandusky to Curley, Schultz, or Spanier. As such, the Court erred when it found that Curley, Schultz, or Spanier qualified as mandated reporters.

The proof of prejudice is manifest on the intentional misrepresentation claim. The Court instructed the jury that all it needed to find was that McQueary reported that the conduct in the shower was of a sexual nature and the University was automatically liable for intentional misrepresentation because Curley and Schultz were mandated reporters. Based on the evidence, the jury was then locked into finding the University liable for intentional misrepresentation.

While McQueary did not testify that he used the word "sexual" with Curley and Schultz, he did testify that he used the word with his direct supervisor, Joe Paterno. See N.T. (10/21/2016 (P.M.)) at 167:7-167:11. He further told the jury what he saw and heard. He heard slapping noises while the shower was running and a reflection of Sandusky and boy under a showerhead with Sandusky's "arms wrapped around him in a severely inappropriate position." See N.T. (10/21/2016 (A.M.)) at 47:4-15; 47:19-48:2. Further still, the jury was told that the criminal

presentment charged Curley with making a false statement when he testified to the grand jury that "he was not told by the graduate assistant that Sandusky was engaged in sexual conduct or anal sex with a boy in the Lasch Building showers." See N.T. (10/24/2016 (P.M.)) at 51:1:10; see also id. at 52:19-23. McQueary further testified that he told Curley and Schultz "what I had seen." Id.

Based on the testimony and other evidence presented to the jury, no jury would find that McQueary did not report sexual activity to Curley and Schultz. This is especially true when the Court's denial of the stay motions had the effect of depriving the jury of the testimony of Curley and Schultz who were exerting their rights under the Fifth Amendment. Therefore, the Court put the rabbit in the hat by erroneously instructing the jury that all that was needed to establish a duty to report and make out an intentional misrepresentation claim was a report of conduct of a sexual nature. Because the Court was wrong about the law, the jury's verdict was tainted and must be vacated.

The same goes for the defamation claim. The Court's erroneous instruction undercut any defamation defense the University could present. The basis of the defamation claim was Spanier's statement that he had confidence that the record would show that Curley and Schultz acted professionally and appropriately. Self-evidently, if Spanier knew that Curley and Spanier were mandated reporters, but did not report McQueary's observations, his support would be merely feigned,

leading the jury to find that Spanier knowingly made a false statement. As a result, the erroneous mandated reporter instruction fundamentally prejudiced the University's defamation defense.

The prejudice is also amplified because the Court refused to issue a stay that would have permitted Curley and Schultz to testify at the conclusion of their criminal proceedings. The prejudice was further amplified by the Court's instruction to the jury that Curley and Schultz's failure to testify justified an adverse inference against the University. That adverse inference bolstered the mistaken conclusion that the record showed that Curley and Schultz were mandated reporters who failed in fulfilling their obligations.

The Court should not have instructed the jury that Curley, Schultz, and Spanier were mandated reporters. Indeed, the Court directly used the mandated reporter status to bolster the misrepresentation claim. Judgment notwithstanding the verdict is appropriate because without the mistaken instruction on Curley's, Spanier's, and Schultz's status as mandated reporters there is no evidence to support the misrepresentation claim. Similarly, judgment notwithstanding the verdict is appropriate for the defamation claim, which also concerns the adequacy of the actions taken by Curley and Schultz.

Additionally, an erroneous jury instruction will be deemed sufficient to result in a new trial when "the charge as a whole is inadequate or not clear or has a

tendency to mislead or confuse rather than clarify a material issue." Lewis v. CRC Ind., Inc., 7 A. 3d 841, 844 (Pa. Super. 2010). Furthermore, a new trial is justified where the charge can be shown to have caused fundamental prejudice. Pringle v. Rappaport, 980 A.2d 159 (Pa. Super. 2009) (finding that because the erroneous instruction likely misled the jury, rather than clarifying the legal principle at issue, the moving party was entitled to a new trial); Gorman v. Costello, 929 A.2d 1208 (Pa. Super. 2007) (granting a new trial because the trial court's instruction left the jury without essential tools needed to make an informed decision based on correct and complete legal principles). The Court's instruction was akin to taking the case out of the jury's hands and directing a verdict` in favor of McQueary. If the Court does not enter judgment of the University's behalf, it should grant a new trial on both the defamation and intentional misrepresentation claims.

B. THE COURT ERRED WHEN IT FOUND THAT MCQUEARY PRESENTED SUFFICIENT EVIDENCE TO SUPPORT AN INTENTIONAL MISREPRESENTATION CLAIM

At the close of McQueary's evidence, the University moved for a compulsory non-suit on McQueary's intentional misrepresentation claim because McQueary's evidence was insufficient to support that claim. See N.T. (10/25/2016 (A.M.)) at 63:21-69:2; Non-Suit Brief (Ex. I). The Court denied the Motion. See N.T. (10/25/2016 (A.M.)) at 67:25-69:2. The Court should reconsider now and

enter judgment notwithstanding the verdict, or in the alternative, grant a new trial on the misrepresentation claim.

McQueary based his intentional misrepresentation claim on three statements purportedly made by Curley and Schultz to him at a February 2001 meeting. See Complaint (Ex. B) at ¶¶ 15-16, 59-64;[3] N.T. (10/21/2016 (A.M.)) at 45; 51, 54. McQueary claimed that Curley and Schultz told him in February 2001: (1) "that they thought it [– what McQueary reported to them and to Coach Paterno –] was a serious matter"; (2) "that they would see that it was properly investigated"; and (3) "that appropriate action would be taken." Id., ¶¶ 16, 60.

(1). *Standard for Establishing Intentional Misrepresentation (Fraud)*

To establish an intentional misrepresentation in Pennsylvania, a plaintiff must prove by *clear and convincing evidence* the following elements: (1) misrepresentation; (2) a fraudulent utterance thereof; (3) an intention by the maker that the recipient will thereby be induced to act; (4) justifiable reliance by the recipient upon the misrepresentation; and (5) damages to the recipient as a proximate result. Pittsburgh Live, 615 A.2d at 441-42. Further, a plaintiff must show that the fraud was committed knowingly or through conscious ignorance of the truth. B.O. v. C.O., 590 A.2d 313, 316 (Pa. Super. 1991). "Unsupported

[3] In paragraph 60 of the Complaint, McQueary mistakenly alleged the meeting occurred in 2011. See id. at ¶ 60.

assertions and conclusory accusations cannot create genuine issues of material fact as to the existence of fraud." Hart v. Arnold, 884 A.2d 316, 339 (Pa. Super. 2005). Here, McQueary's evidence was deficient in several ways.

(2). *McQueary Did Not Establish a Misrepresentation*

McQueary did not satisfy the first element of a misrepresentation claim: a misrepresentation. See N.T. (10/25/2016 (A.M.)) at 63:25-66:14; 67:16-24; Non-Suit Brief (Ex. I). First, McQueary alleged that Curley and Schultz falsely represented that they thought his allegations were serious. That was no misrepresentation. Even without the testimony of Curley and Schultz, the record demonstrated that Curley and Schultz took the matter seriously. First, the term "seriously" is subjective and since it is subject to various interpretations, it is not a proper basis for a defamation claim. See Petula v. Mellody, 588 A.2d 103, 108 (Pa. Cmwlth. 1991). President Spanier testified that Curley and Schultz brought McQueary's allegations to his attention at a meeting which occurred on February 12, 2011 and they followed-up in email exchanges through February 28, 2011. See N.T. (10/20/2016 (A.M.)) at 44:24-47:3 (quoting Exhibit P-10). President Spanier testified that the fact that Curley and Schultz elevated this matter to him was consistent with the handling of a serious matter as the volume of matters which a university president has to address at any time requires that senior administrator handle most issues without input from the president. See id. at 43:11-21. Schultz

also sought advice from the University's outside general counsel, Wendell Courtney, showing that he took McQueary's allegations seriously. See N.T. (10/17/2016 (P.M.)) at 62:11-64:4; 66:1-67:25; 79:21-80:25.

McQueary also based his misrepresentation claim on Curley and Schultz's representation that the matter would be properly investigated and appropriate action would be taken. See Complaint (Ex. B) at ¶¶ 15-16. McQueary testified that "possibly ten days, roughly a week" after their meeting, Curley called him and stated "we told the Second Mile and we've told Jerry he's no longer allowed to bring kids into the facility" and "we've decided to take Jerry's keys away." N.T. (10/21/2016 (A.M.)) at 55:11-23. To corroborate this, Plaintiff also introduced into evidence a handwritten note dated February 25, 2001 and purportedly written by Schultz that references alerting The Second Mile and restricting Sandusky's use of the University's facilities. See Note (Exhibit P-9) (Ex. D) and an email dated February 26, 2001 from Curley to Schultz which confirms they intended to inform The Second Mile and to address Sandusky directly regarding use of University facilities. See Email (Exhibit P-12) (Ex. E). This email was sent shortly after the meeting that Curley and Schultz had with McQueary, which McQueary testified took place on February 22 or 23, 2001.

McQueary did not question the appropriateness of the investigation or Curley and Schultz's subsequent actions. Indeed, McQueary expressed shock that

Curley was in trouble with the law, "he could not believe it." See N.T. (10/21/2016 (A.M.)) at 68:10-69:3. Also, no evidence disputed that the Second Mile was alerted and that Sandusky's access to University facilities was restricted, as Curley said they would be. As such, McQueary established no misrepresentation and certainly did not do so by clear and convincing evidence.

The Court based its denial of non-suit on a possible jury finding that Curley and Schultz were mandated reporters. See N.T. (10/25/2016 (A.M.)) at 68:1-9. But as explained in the previous section, the record did not show that Curley and Schultz were mandated reporters. As such, the Court erred in finding adequate evidence to support the misrepresentation claim on that ground.

As McQueary testified, Curley and Schultz explained to him what actions they took in light of their investigation. See N.T. (10/21/2016 (A.M.)) at 55:11-23. That is not a misrepresentation. That also does not show an intention by them to induce McQueary to act based on a false statement. As such, McQueary failed to provide sufficient evidence to support the first, second, or third element of intentional misrepresentation.

(3). *McQueary Did Not Establish Justifiable Reliance*

To establish justifiable reliance, it is insufficient to simply assert fraudulent conduct, and claim that reliance upon it induced some action. Blumenstock v. Gibson, 811 A.2d 1029, 1038 (Pa. Super. 2002). Absent justifiable reliance, there

is no actionable fraud. Bowman v. Meadow Ridge, Inc., 615 A.2d 755, 758 (Pa. Super. 1992). Common sense must be consulted in determining whether the recipient of a statement acts justifiably and reasonably in relying on that statement. See De Martino v. Albert Einstein Med. Ctr., N. Div., 460 A.2d 295, 302 (Pa. Super. 1983). It is not reasonable or justifiable for a person to allow himself to be "lulled into a state of acquiescence" in the face of surrounding circumstances and common sense. See id.

Here, McQueary cannot show justifiable reliance on a misrepresentation. First, as discussed above, McQueary testified that Curley and Schultz explained to McQueary exactly what they planned to do in light of his allegation. According to McQueary and corroborating documentary evidence, Curley and Schultz advised the Second Mile charity of McQueary's observations about Sandusky, barred Sandusky from bringing children into the facility, and took Sandusky's keys away. See N.T. (10/21/2016 (A.M.)) at 55:11-23; Note (Exhibit P-9) (Ex. D), Email (Exhibit P-12) (Ex. E). McQueary did not testify that Curley or Schultz stated or implied to McQueary that they would go to law enforcement or a child welfare agency. Therefore, it was not justifiable for McQueary to rely on assurances that were never made.

Further, since McQueary was well informed of the actions taken by the University, he cannot plausibly claim that it was justifiable for him to not have

called – at any time during the next decade – the State College or Pennsylvania State Police, the Centre County District Attorney's Office, or the Department of Public Welfare or to have followed-up with the administration. McQueary's life was that University and that football team. He knew that Sandusky remained in the community and was not criminally held responsible. N.T. (10/21/2016 (A.M.)) at 56:23-57:14. For these reasons, McQueary did not establish that he justifiably relied on the statements of Curley and Schultz.

(4). *McQueary Did Not Establish Factual Causation or Legal Causation*

Similarly, McQueary cannot demonstrate the 2001 statements made by Curley and Schultz factually caused or proximately caused damages to McQueary in 2011. "Conduct is a factual cause of harm when the harm would not have occurred absent the conduct. An act is a factual cause of an outcome if, in the absence of the act, the outcome would not have occurred." See Gorman, 929 A.2d at 1212. Proximate cause is present if a wrongful act "was a substantial factor in bringing about the plaintiff's harm." Eckroth v. Pa. Elec., 12 A.3d 422, 428 (Pa. Super. 2010). "A determination of proximate or legal causation therefore essentially regards 'whether the alleged negligence was so remote that as a matter of law, the defendant cannot be held legally responsible for the subsequent harm.'" Id. (quoting Holt, 932 at 921). Put another way, "[p]roximate cause does not exist where the causal chain of events resulting in plaintiff's injury is so remote as to

appear highly extraordinary that the conduct could have brought about the harm." See Commerce Bank v. First Union Nat'l Bank, 911 A.2d 133, 141 (Pa. Super. 2006). Therefore, the trial court must determine whether an ordinary person would have foreseen the injury as the natural and probable outcome of the complained-of act. Id.

When determining foreseeability, the Court should consider the following elements: (a) the number of other factors which contribute to producing the harm and the extent of the effect which they have in producing it; (b) whether the actor's conduct created a force or a series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; and (c) lapse of time. Id. (citing Holt v. Navarro, 932 A.2d 915, 921 (Pa. Super. 2007)).

To succeed with his misrepresentation claim, McQueary had the high burden of showing by *clear and convincing* evidence that a decade-old representation that Curley and Schultz would conduct an investigation and take appropriate actions would permit an ordinary person to foresee damages a decade later. McQueary cannot meet this high standard.

As a threshold matter, "Pennsylvania courts have consistently held that a lapse of time between a defendant's alleged conduct and a plaintiffs [sic] alleged damages can, under the right circumstances, serve as a complete bar to recovery."

See Zimmerman v. Zimmerman, No. CI-15-01440, 2015 Pa. Dist. & Cnty. Dec. LEXIS 2803, at *18 (C.P. Lancaster 2015) (citing Eckroth, 12 A.3d at 428). The delay here was a decade long. The passage of time in this situation is sufficient to find a lack of factual or proximate cause. This is not a latent situation that foreseeably exposed itself years later like a slow growing cancer that a physician failed to tell his patient about when it was first discovered. Rather, McQueary knew he, the witness, was not approached for a decade by law enforcement or child welfare. McQueary also worked at the University and lived in the community. He had ample opportunity to observe that Sandusky suffered no criminal consequences. See N.T. (10/21/2016 (A.M.)) at 56:23-57:14. He had ample opportunity to ask Curley, Paterno, Spanier, or Schultz about the status of any additional investigation. He did none of that. As such, factual and proximate causation are not present here. According to McQueary's own testimony, he knew that he was the only person to witness the alleged conduct in the shower. See N.T. (10/20/2016 (P.M.)) at 50:17-51:51:9; N.T. (10/21/2016 (A.M.)) at 49:5-17. No law enforcement officer had ever followed up with him during that decade. It is beyond the pale for him to now claim that he did not learn until 2011 that no investigation had been done. See N.T. (10/21/2016 (P.M.)) at 178:9-179:7.

McQueary's argument in support of causation strains logic. McQueary's allegation is that Curley and Schultz's comments were meant to induce him to not

report Sandusky's actions to law enforcement. See Complaint (Ex. B) at ¶ 61. But that argument only makes sense (arguably) if there was no follow up from Schultz and Curley. However, the undisputed facts are that no more than two weeks after the alleged representation, Curley and Schultz followed up with McQueary to inform him of the actions they took. N.T. (10/21/2016 (A.M.)) at 55:11-23. McQueary raised no objection. See N.T. (10/23/2016 (A.M.)) at 54:17-55:23.

McQueary introduced no evidence that Curley and Schultz either stated or implied that they reported or planned to report Sandusky to law enforcement or a child welfare agency. If McQueary felt that his observation should be reported, there is no evidence that anything allegedly said by Curley or Schultz would have caused him not to report his observations. As such, there is no evidence that whatever Curley and Schultz may have said to McQueary was the cause for McQueary not alerting the authorities. As for proximate cause, an ordinary person would not think that Curley and Schultz induced him not to report his observations to authorities. Put another way, Curley and Schultz's statement that they would investigate the matter and take appropriate actions did not create "a force or a series of continuous forces" that led to McQueary's harm. Commerce Bank, 911 A.2d at 141. Rather, once they gave McQueary an update (which did not include alerting law enforcement or child welfare), the force no longer exerted any power over McQueary. He was under no inducement to stay silent about what he saw.

Finally, McQueary asserted that the misrepresentations made it appear that he was part of a cover-up. N.T. (10-25-16 (A.M.) at 67:5-10. No evidence was submitted to show that McQueary failed to find a new job due to the perception he was involved with a cover-up. Rather, the reasons provided at trial for McQueary;s inability to find employment were that he walked out of the locker room without intervening on behalf of the boy and that his presence would cause a media frenzy that would distract from a new coach and athletic director. N.T. (10/26/2016 (P.M.)) at 3:2-7; (10/20/2016 (P.M.)) at 79:11-80:12 99:19-100:3; N.T. (10/21/2016 (P.M.)) at 141:15-142:9.

For all these reasons, McQueary failed to show by clear and convincing evidence that any statements by Curley and Schultz proximately caused him any damage. In fact, no evidence supported McQueary's misrepresentation claim at all. Curley and Schultz made no misrepresentation.[4] Further, the Court erred by instructing the jury that it was required to find the University liable for misrepresentation if McQueary reported to Curley and Schultz that he observed sexual misconduct against a minor and they were mandated reporters under Pennsylvania Law.

[4] Relatedly, as discussed in Section I(A) of the Legal Analysis, the Court erred by tying the misrepresentation claim to the status of Curley, Schultz, and Spanier as mandated reporters. No evidence established that they were mandated reporters. See supra Section I of Legal Analysis.

(5). *The Statute of Limitations for the Intentional Misrepresentation Claim Lapsed*

In addition to the above, the time to file the misrepresentation claim has passed. A plaintiff has two years to bring an action for injury based on intentional misrepresentation. 42 Pa.C.S.A. § 5524(a)(7). The alleged misrepresentation occurred in mid-February 2001. See N.T. (10/21/2016 (A.M.)) at 54:12-21. McQueary waited until 2012 to file his complaint, about eight years after the statute had run. See generally Complaint (Ex. B). Therefore, this claim is out of time. See Answer to Complaint (Ex. AA) at ¶ 75 (pleading statute-of-limitations new matter).

McQueary cannot avail himself of the discovery rule because he failed to exercise any due diligence to determine whether the University contacted authorities about Sandusky's conduct. See Wilson v. El-Daief, 964 A.2d 354, 356 (Pa. 2009). McQueary remained affiliated with the University and had access to his Athletic Director, Curley; his boss, Joe Paterno; and other University officials to further inquire about whether the University took any additional steps as a result of Sandusky's actions. He did not do so. Moreover because McQueary knew he had not been contacted by law enforcement, he also should have known there were not any law enforcement investigations being done. Accordingly, the statute of limitations has lapsed and entry of judgment notwithstanding the verdict is appropriate. See N.T. (10/21/2016 (P.M.)) at 178:9-179:7.

(6). *Conclusion*

For all the foregoing reasons, the Court should enter judgment notwithstanding the verdict on the misrepresentation claim or, in the alternative, grant a new trial.

C. THE ALLEGED DEFAMATORY STATEMENT WAS AN OPINION THAT AS A MATTER OF LAW WAS NOT DEFAMATORY

To be adjudged defamatory, a communication must have been found to have the defamatory meaning ascribed to it by the complaining party. See Baker v. Lafayette Coll., 532 A.2d 399, 402 (Pa. 1987). To reach this conclusion, the court must view the statements in context and "determine whether the statement was maliciously written or published and tended 'to blacken a person's reputation or to expose him to public hatred, contempt, or ridicule, or to injure him in his business or profession.'" (citations omitted). Id. (quoting Corabi v. Curtis Publishing Co., 273 A.2d 899, 904 (1971)). An "opinion without more does not create a cause of action" for defamation. Id. To overcome this rule, the "allegedly libeled party must demonstrate that the communicated opinion may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion." Id. (citing Beckman v. Dunn, 419 A.2d 583, 587 (Pa. Super. 1980)).

McQueary's defamation claim is based on a statement released by President Spanier after the indictments of Curley and Schultz were announced:

ORIGINAL

> The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance.
>
> With regard to the other presentments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee.
>
> Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.
>
> Graham Spanier

See Complaint (Ex. B) at ¶¶ 50-58; Statement (Exhibit D-20) (Ex. F). McQueary further alleged that these statements were repeated by President Spanier at the Athletic Department staff meetings. See id. at ¶ 51.

This statement does not mention McQueary. It does not set forth any wrongdoing by anyone who would be commonly understood to be McQueary. Rather, it states President Spanier's confidence in the men he had worked with for over 16 years. It was a forward-looking statement that he was "confident the record will show that these charges are groundless. . . ." Complaint (Ex. B) at ¶¶ 50-58. David Joyner, the Athletic Director who replaced Curley, testified as such: "[Spanier's statement was] rather forward looking without, perhaps, any knowledge specific to those statements made." N.T. (10/19/2016 (P.M.)) at 156:23-157:19; see id. at 127:2-11. This is not a defamatory statement, but an

opinion that Spanier's long experience with these officials led him to believe that they conducted themselves properly.

The case of Gordon v. Lancaster Osteopathic Hosp. Ass'n., 489 A.2d 1364, 1369 (Pa. Super. 1985) is instructive. The court considered whether a letter by physicians to a hospital's board of directors that expressed "a vote of no confidence" in the hospital's pathologist, "a lack of confidence," "lack of trust in the reporting ability of [the pathologist]," and criticism of his attitude was defamatory. Id. at 1367. The Superior Court held that these "words . . . bear no reasonable interpretation which would render them defamatory." Id. The phrases used "do not impute a charge of incompetency or unfitness" and "state no more than in the most general terms that appellees, speaking for their departments, lacked confidence in appellant's professional ability and could not recommend that his contract be renewed." Id.

Here, the statement by Spanier did not go as far as the physician in Gordon. Again, Spanier's statements only concern confidence in his employees. His statement did not mention McQueary even indirectly. If the physicians in Gordon failed to publish a defamatory statement, Spanier certainly did not do so either.

For similar reasons, the University is not liable for defamation by innuendo. See Sarkees v. Warner-West Corp., 37 A.2d 544, 546 (Pa. 1944). When words are

"not susceptible of the meaning ascribed to them by the plaintiff and do not sustain the innuendo," the statement "cannot be made [libelous] by an innuendo which puts an unfair and forced construction on the interpretation" of the statement. Under Pennsylvania law, it is for the trial court to determine, in the first instance, whether the communication complained of is capable of a defamatory meaning. E.g., Sarandrea v. Sharon Herald Co., 30 Pa.D.&C.4th 199, 201 (C.P. Lawrence 1996); U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 923 (3d Cir. 1990) (applying Pennsylvania law). Here, Spanier's statement could only be understood to express confidence in Curley and Schultz – employees with whom he worked for over 16 years. The Court erred by not finding that the allegedly defamatory statements were a matter of pure opinion and could not support a defamation claim. Consequently, the University seeks judgment notwithstanding the verdict on the defamation claim, or, in the alternative, a new trial.

II. MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT, A NEW TRIAL, OR REMITTITUR

A. THE DAMAGES AWARDED BY THE JURY WERE NOT SUPPORTED BY THE EVIDENCE

The University asked this Court to instruct the jury that McQueary "should not profit from or be overcompensated for any alleged harm he sustained." See Proposed Points of Charge (Ex. J) at No. 45. Further, the University asked the

court to instruct the jury that "future damages must permit more than a mere guess or speculation." See id. at No. 47. The Court did instruct the jury that its award could not be speculative and any award must contain some nexus between the harm and the reasonable level of compensation. N.T. (10/27/2016) at 138:13-22.

The jury rendered identical compensatory damage awards ($1.15 million) for both the misrepresentation and the defamation claim. See Jury Verdict Slip (Ex. A). Because the issues in this case were so intertwined, the University proposed that it provide the Court with special interrogatories in addition to a sample verdict slip to reduce the chance of duplicate damages. N.T. (10/26/2016 (P.M.)) at 62:12-17. See also November 30, 2016 Order and Opinion of Court (recognizing that claims are intertwined). The judge refused the University's request to submit special interrogatories, instructing it to only submit a straightforward verdict slip. N.T. (10/26/2016 (P.M.)) at 62:15-63:4. The court limited the verdict slip to a determination of whether the University was liable on each claim (Yes or No) and what were the resulting damages. Id. at 62:20-63:4. Such a verdict slip was inadequate to prevent an improper duplication of damages. The next day when the University looked to submit both special interrogatories and a verdict slip, the Court refused to accept them. See Affidavit of George Morrison (Ex. K).

ORIGINAL

The jury's identical verdict of $1.15 million in compensatory damages for each claim suggests that the jury awarded double damages in the case.[5] It is a basic principle of tort law that damages are intended to put the injured person "in a position as nearly as possible equivalent to his or her position prior to the tort." Moorhead v. Crozier Chester Med. Ctr., 765 A.2d 786, 790 (Pa. 2001) (citing Trotsky v. Civil Serv. Comm'n, 652 A.2d 813, 817 (Pa. 1995)). The law is well-established, however, that a court will not allow that person to recover twice for the same injury. Rossi v. State Farm Auto. Ins. Co., 465 A.2d 8, 10 (Pa. Super. 1983) (citing Thompson v. Fox, 192 A. 107 (Pa. 1937)). In other words, a damage award which provides a windfall to a plaintiff "would violate fundamental tenets of just compensation." Moorhead, 765 A.2d at 790. Because special interrogatories were not permitted, it is impossible to know how the jury reached identical awards for each claim.

Regardless of the issue of the use of special interrogatories, the award was not supported by the evidence. McQueary provided no evidence that he had a future at the University once Paterno left either due to the Sandusky matter or his death soon after. In fact, his severance agreement contemplated his separation from the University after Paterno was replaced as head coach. See Severance

[5] It is the University's position that there is also duplication of damages between these claims and the Court's award in the Whistleblower claim. The University will address this issue in more detail in the post-trial motion for the Whistleblower claim.

Agreement (Ex. L). Furthermore, Paterno's successor, Bill O'Brien, had a preset list of coaches he wanted to hire including Stan Hixon for the position then filled by McQueary. Trial Deposition of Coach William O'Brien (Ex. M) at 9:6-10:9; 20:2-24 (read into the trial record at N.T. (10/26/2016 (P.M.)) at 15:8-13). More pointedly, Coach O'Brien testified that based on McQueary's media guide biography nothing about him stood out that would cause Coach O'Brien to want to meet or hire McQueary. See id. at 15:4-5, 15:9-13; 30:16-25.

Further, McQueary provided no evidence that any potential employer, whether it be for a football or non-football position, declined to interview or hire McQueary due to any action taken by the University. To the contrary, Coach Rhule testified that the media coverage may have hurt McQueary's employability. (10/26/2016 (P.M.)) at 3:2-7 (reading into testimony Trial Deposition of Coach Matt Rhule (Ex. N) at 129:8-130:6). Specifically, Coach Rhule believed that reports of McQueary leaving the boy in the shower with Sandusky would hurt his chances of employment. See id. The Savannah State University football coach testified that the media attention would be a distraction for a new coach and athletic director. See N.T. (10/20/2016 (P.M.)) at 79:11-80:12 99:19-100:3. McQueary also recounted an exchange with a contact at Duke University, who assessed that McQueary was "radioactive" because "[h]e is quickly remembered as the guy that did not call the cops" and "[h]is distinctive appearance does not help."

N.T. (10/21/2016 (P.M.)) at 141:15-142:9. He further opines that if McQueary is seen interviewing at Duke University it is an "instant story, perhaps not a positive one." Id. at 142:12-17. Because McQueary cannot show that he lost any work due to the University's actions, any award of front pay was purely speculative and improper.

Further, McQueary did not provide any evidence to support an award of emotional damages. As such, to the extent any part of the award is compensation for emotional damages, it is purely speculative. However, we do not know what portion of the award the jury may have based on emotional damages because the Court did not permit special interrogatories.

The jury's compensatory award of $2,300,000 is the product of a mistake of fact or law, or as a result of some or all of the errors that occurred during trial as discussed herein. The award was against the weight of evidence and inconsistent with the proofs of losses McQueary allegedly sustained. It is also plainly excessive, grossly exorbitant and shocks the conscience. In such cases, the Court is empowered to enter judgment notwithstanding the verdict, award a new trial, award on new trial as to damages only, or remit the award to comply with the evidence.

ORIGINAL

B. UNDER PENNSYLVANIA LAW, PUNITIVE DAMAGES ARE AVAILABLE TO A PLAINTIFF ONLY UPON A SHOWING OF AGGRAVATED CONDUCT BEYOND THE UNDERLYING FRAUD, MCQUEARY DID NOT MAKE SUCH A SHOWING

The Supreme Court of Pennsylvania has long held that only compensatory damages are available for an intentional misrepresentation claim. See Erie City Iron Works v. Barber, 102 Pa. 156, 164, 13. W.N.C. 492 (1883) (holding damages for a misrepresentation about the quality of a boiler was "compensatory only" and could not be "vindicatory"); see also, e.g., High v. Berret, 23 A. 1000 (Pa. 1892) (holding that the measure of damages in an action for deceit is the "actual loss"). In 1922, the Supreme Court first held that a fraud claimant may be awarded punitive damages if he or she shows extreme aggravating circumstances beyond the underlying fraud. See Long v. McAllister, 118 A. 506, 508 (Pa. 1922).

Perhaps, the clearest and strongest statement of this rule comes from the Superior Court in Smith v. Renault, 564 A.2d 188 (Pa. Super. 1989). In Renault, the Superior Court found sufficient evidence that an agent committed fraud by misrepresenting the amount of termite damage. Renault, 564 A.2d at 192. But this same evidence was insufficient to support a punitive damages claim, as no evidence of malice, vindictiveness, or a wholly wanton disregard of the rights of others was shown. Id. at 193-194. The Superior Court reasoned, "fraud which is the basis for the recovery of compensatory damages . . . is not alone a sufficient basis upon which to premise an award of punitive damages." Id. "If the rule were

otherwise, punitive damages could be awarded in all fraud cases. This is not the law." Id. See, e.g., Pittsburgh Live, Inc. v. Sevov, 615 A.2d 438, 442 (1992) (holding that evidence surrounding a real estate agreement may support a fraud claim, but could not support a punitive damages claim because no acts of malice or vindictiveness were shown). The Third and Seventh Circuits have both interpreted Pennsylvania law to require something more than fraud in order to permit punitive damages. See Tunis Bros. Co., Inc. v. Ford Motor Co., 952 F.2d 715, 741 (3d Cir. 1992) (holding that punitive damages will not be awarded in Pennsylvania unless there is evidence of "a quantum of outrageous conduct in addition to that undergirding the fraud liability and compensatory damages."); In re Lemington Home for the Aged, 777 F.3d 629, 631 (3d Cir. 2015) (same); Contractor Utility Sales Co., Inc. v. Certain-Teed Corp., 748 F.2d 1151, 1156 (7th Cir. 1984) (holding that punitive damages are not an "automatic incident" of a plaintiff's showing of fraud at trial; rather, something must be outrageous and aggravated about the defendant's conduct).

Here, the University asked the Court to instruct the jury that more than an intentional tort is required to award punitive damages to McQueary. See Proposed Points of Charge (Ex. J) at No. 53. The Court denied the University's request and continued to instruct the jury that intentionality suffices to establish the imposition

of punitive damage. See N.T. (10/27/2016) at 142:21-144:21. That instruction is incorrect and its prejudice was not harmless.

As noted earlier, McQueary failed to establish intentional misrepresentation at all. Even if he did, he did not show "a quantum of outrageous conduct" in addition to the facts undergirding the misrepresentation liability that would support punitive damages. The alleged misrepresentations were that Curley and Schultz were taking the matter seriously, would conduct a proper investigation, and take appropriate action. See Complaint (Ex. B) at ¶ 61. McQueary testified that "possibly ten days, roughly a week" after making those representations he received a call from Curley where Curley advised McQueary that they "told The Second Mile and we've told Jerry he's no longer allowed to bring kids into the facility" and "we've decided to take Jerry's keys away." N.T. (10/21/2016 (A.M.)) at 55:11-23. No evidence was shown that the misrepresentation involved anything more than these statements. No testimony exists that any effort was made by the University to falsely suggest that they went to law enforcement or a child welfare agency. No evidence was provided that the University falsely claimed that an investigation was ongoing, when it was not. Rather, Curley and Schultz truthfully reported the steps that were taken in response to his report. As such, McQueary has failed to show any aggravating circumstances beyond any underlying

misrepresentation. Long v. McAllister, 118 A. 506, 508 (Pa. 1922). This error was not harmless.

Renault, mentioned earlier, is instructive. Renault concerned a sale of a personal residence. During the sale of the home, the realtor advised the buyer that the home suffered "minor termite damage, but had been repaired, so you don't need to worry about it." Renault, 564 A.2d 190. After buying the house, Smith discovered additional termite damage that was hidden by strips of tape covered by paint. Id. The buyer sued the realtor for fraudulent concealment based on the intentional misrepresentation. See id. The jury found for the buyer and awarded punitive damages in addition to compensatory damages. See id. The Superior Court reversed and remanded for reconsideration of the punitive damage award.

The Superior Court found that to justify punitive damages, "there must be acts of malice, vindictiveness and a wholly wanton disregard of the rights of others." Id. at 193. The Court found that evidence lacking. Id. at 194. While the realtor may have "minimized the termite damage by misrepresenting its seriousness and the extent to which it had been remedied, they did disclose that the property had been infested with termites which had been exterminated." Id. That was enough for the Superior Court to find punitive damages inappropriate.

The facts are similar here. McQueary testified that Curley and Schultz said that they would look into his accusations, they did and they reported the proposed

course of action. No evidence supports that such statements were made due to some malice, vindictiveness and a wholly wanton disregard for McQueary's rights. Under the standard set forth in Renault, this is insufficient to establish punitive damages. Accordingly, this Court should enter judgment notwithstanding the verdict and dismiss the claim for punitive damages. Alternatively, the Court should remit the award of punitive damages or conduct a new trial on punitive damages only.

III. MOTION FOR A NEW TRIAL

A. THE UNIVERSITY WAS UNFAIRLY PREJUDICED BY THE COURT'S REFUSAL TO STAY THIS MATTER TO PERMIT THE UNIVERSITY TO SPEAK TO KEY WITNESSES AND PRODUCE THOSE WITNESSES AT TRIAL

(1). *Introduction*

A hallmark of a fair trial is the meaningful opportunity to offer relevant and competent evidence on each material issue. See, e.g., Am. Future Sys., Inc. v. Better Bus. Bureau, 872 A.2d 1202, 1212 (Pa. Super. 2005); see also Mathews v. Eldridge, 424 U.S. 319, 222 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner") (internal citations omitted). A meaningful opportunity to be heard requires that parties are allowed to call witnesses and proffer other admissible evidence. See Mathews, 424 U.S. at 322.

ORIGINAL

Here, the University was not permitted to call as witnesses or even speak to two key witnesses, Curley and Schulz, because they were under indictment for related, alleged conduct and chose for themselves to invoke their Fifth Amendment privilege against self-incrimination. See N.T. (10/25/16 (A.M.)) at 56:22-57:22 (Court Exhibit 2). The University twice sought a stay to remedy this inequitable situation. First, it moved for a stay at the beginning of the litigation. See generally First Motion to Stay and Supporting Brief (Ex. O). Second, the University moved for a stay after the parties engaged in discovery. See generally Second Motion to Stay and Supporting Brief (Ex. P). The Court denied both motions. See Order and Opinion (12/20/2012) (Ex. Q); Order and Opinion (8/15/2016) (Ex. R).

(2). *Standard for Granting a Stay*

Every court has the inherent power to schedule cases on its docket to advance a fair and efficient adjudication. "Incidental to this power is the power to stay proceedings, including discovery." Luckett v. Blaine, 850 A.2d 811, 819 (Pa. Cmwlth. 2004).

Parallel civil and criminal proceedings arising from the same conduct raise unique concerns:

> On the one hand, a parallel civil proceeding can vitiate the protections afforded the accused in the criminal proceeding if the prosecutor can use information obtained from him through civil discovery or testimony elicited in the civil litigation. . . . On the other hand, the pendency of a parallel criminal proceeding can impede the search

> for truth in the civil proceeding if the accused resists disclosure and asserts his privilege against self-incrimination and thereby conceals important evidence.

See Parallel Civil & Criminal Proceedings ("Parallel Proceedings") (Ex. S), 129 F.R.D. 201, 202 (1990) (Pollack, J.). The power to grant a continuance in a civil case due to a parallel criminal proceeding is "an inherent power of a court and ordinarily is discretionary." Cotter v. State Civil Service Commission, 297 A.2d 176, 178 (Pa. Cmwlth. 1972); U.S. v. Mellon Bank, N.A., 545 F.2d 869, 873 (3d Cir. 1976). In making such a decision, "the chief consideration is whether the grant or denial [is] in furtherance of justice." Cotter, 297 A.2d at 178. The court must also balance the prejudice faced by the requesting party if the continuance is not granted against the prejudice faced by the opposing party. Id.

To guide its discretion in deciding whether to stay a civil case pending a related criminal case, a court should consider (1) the extent to which the issues in the civil and criminal cases overlap; (2) the status of the criminal proceedings, including whether any defendants have been indicted; (3) the plaintiff's interests in expeditious civil proceedings weighed against the prejudice to the plaintiff caused by the delay; (4) the burden on the defendants; (5) the interests of the court; and (6) the public interest. E.g., In Re Adelphia Communications Securities Litigation, Civ. A. No. 02-1781, 2003 WL 22358819, at *3 (E.D. Pa. May 13, 2003) (citing Walsh Securities, Inc. v. Cristo Prop. Mgmt. Ltd., 7 F.Supp.2d 523 (D.N.J. 1998)).

ORIGINAL

The court should also consider the interests of non-parties. In Re Plastics Additives Antitrust Litigation, 2004 WL 2743591, at *4 (E.D. Pa. Nov. 29, 2004); Kaiser v. Stewart, 1997 WL 66186, at *2 (E.D. Pa. Feb. 6, 1997); Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., 87 F.R.D. 53, 56 (E.D. Pa. 1980) (all listing factors similar to those in Adelphia Communications in addition to the interests of non-parties).

Each of these factors weighs in favor of staying this case pending resolution of the related criminal proceedings.

(3). *Substantial overlap existed between the pending criminal trials and this civil trial.*

The amount of overlap between the civil and criminal proceedings is generally regarded as the most important factor. See Adelphia Comms, 2003 WL 22358819 at *3 (citing Walsh Securities, 7 F.Supp.2d at 527); Parallel Proceedings, 129 F.R.D. at 203.

Courts applying Pennsylvania law have granted a stay when a significant overlap between related civil and criminal proceedings exists. In Anderson v. Scott, 2011 WL 10795429 (C.P. Lawrence 2011), the trial court addressed a defendant-physician's request to stay his deposition in a wrongful death action due to his plan to invoke the Fifth Amendment in related criminal proceedings against him. Id. at *1-2. The criminal complaint against the defendant-physician included similar allegations of medical malfeasance, but did not involve the decedent in the

civil case. Id. Even though the cases involved different decedents, the court found overlapping evidentiary issues, stating that "any evidence offered against the defendant in the civil case would be relevant to the criminal case. This factor weighs heavily in favor of granting the defendant's request for a protective order and stay his deposition until a conclusion of the criminal case." Id. See also Adelphia Communications, 2003 WL 22358819, at *1 (holding that since one of 24 criminal counts involved issues and allegations similar to those in the private securities lawsuits, this factor weighed heavily in favor of the stay).

In denying the first Motion to Stay, the Court found that "while there may be overlapping witnesses, there are no overlapping issues in the criminal and civil cases." See Order and Opinion (12/20/2012) (Ex. Q) at p. 7. In denying the Second Motion to Stay, the court correctly found that there were overlapping issues regarding the misrepresentation claim. See Order and Opinion (8/15/2016) (Ex. R) at p. 5. As the Court recognized, McQueary's misrepresentation claims concerned Curley and Schultz's actions during and after their investigation of McQueary's report. Id. Likewise, the charges of child endangerment and failure to report suspected child abuse which Curley and Schultz were set to face in their criminal cases concern that same conduct. Further, contrary to the Court's finding, the defamation claim also overlaps with the issues in the criminal cases. The allegedly defamatory statement was an expression of trust by Spanier in his two

co-workers. Whether his trust was justified is best answered by the testimony of Curley and Schulz regarding what they actually did.

Indeed, the overlap of issues for both the defamation claim and the misrepresentation claim is broader than recognized by the Court. Schultz and Curley invoked their Fifth Amendment privilege with respect to the following issues, each of which is highly relevant in this case: (1) all facts and circumstances regarding their knowledge and involvement in a 1998 incident involving Sandusky and a child; (2) all facts and circumstances regarding Curley and Schultz's 2001 involvement with McQueary's alleged report of "highly inappropriate sexual misconduct" as between Sandusky and a child; (3) all information regarding the 2001 alleged verbal communications and meeting(s) between them and McQueary regarding that report; (4) information related to their employment histories and job duties with the University; and (5) various 2011 communications between them and non-parties regarding the allegations of the Complaint. See Second Motion to Stay (Ex. P) at ¶ 24 (citing Deposition Transcript of Gary Schulz at pp. 62-65); id. at ¶ 29 (citing Deposition Transcript of Timothy Curley at pp. 46-54). All of these issues are critical to the University's defenses.

Although the Court acknowledged significant overlap between the misrepresentation allegations and the pending criminal actions against Curley and Schulz, it did not find that this factor weighed in favor of a stay. See Order and

Opinion (8/15/16) (Ex. R) at p. 5. In fact, the Court found that this factor weighed **against** a stay. Id. According to the Court, the University "[c]ertainly . . . as the possessor of its own records had had adequate time to search them to determine what, if any, action they took in order to refute [McQueary's] claim." Id. The Court had no factual basis to find that the University possessed any records regarding Curley and Schultz's investigation and subsequent actions. In fact, the University did not. Further, even if records did exist, the University should have had an opportunity to question Curley and Schultz about them.

Additionally, the Court found that the use of special interrogatories "would enable the Court to assess and address the impact of . . . Curley['s] and Schultz's unavailability on any verdict rendered on the misrepresentation count and take appropriate action, if required." Id. However, the Court denied the University's request for special interrogatories. See N.T. (10/26/2016 (P.M.)) at 62:12-63:4.

The Court erred when it twice found that this factor weighed against a stay. Rather, this factor, the most important factor, weighed heavily in favor of a stay.

(4). *The Status of the Criminal Proceedings Weighed in Favor of a Stay.*

The second factor is the status of the criminal proceedings, including whether any defendants had been indicted. "The strongest case for a stay in a civil case occurs during a criminal prosecution after an indictment is returned." Parallel Proceedings, 129 F.R.D. at 204; Adelphia Communications, 2003 WL 22358819,

at *3. The need for a stay is greatest after an indictment is returned because of the potential for self-incrimination faced by the criminal defendants, and any prejudice to the civil litigants is mitigated because the criminal case is likely to be resolved promptly under the jurisdiction's speedy-trial rules. Walsh Securities, 7 F.Supp.2d at 527 (quoting Parallel Proceedings (Ex. S), 129 F.R.D. at 203). Further, the prevailing case law in Pennsylvania and its neighboring district courts provides that delaying a civil matter is appropriate when a criminal trial is reasonably close at hand. Anderson, 2011 WL 10795429, at *2-3 (citing State Farm Mut. Auto. Ins. Co., 2002 WL 31111766, at *3 (U.S.D.C. 2002).

Here, both Curley and Schultz are under indictment for allegedly criminal acts based on the same critical facts and circumstances that underlie the claims asserted by McQueary in this case. Schultz and Curley invoked their Fifth Amendment privilege and refused to discuss the claims in the instant civil action. The stage of the criminal proceedings favored a stay of this action. The Dauphin County Court of Common Pleas' May 25, 2016 Scheduling Order demonstrated that the criminal matters were moving forward with meaningful progress. See Scheduling Order (Ex. T). Indeed, trial is now scheduled for next month, March 2017. See February 1, 2017 Order (Ex. U). The delay was not very long and was necessary to prevent manifest injustice.

(5). *The Issuance of a Stay Would Not Have Unfairly Prejudiced McQueary.*

ORIGINAL

The third factor is the prejudice to the plaintiff caused by the delay. To show prejudice, the plaintiff must establish "more prejudice than simply a delay in his right to expeditiously pursue his claim. . . . Instead, the plaintiff must demonstrate a particularly unique injury, such as the dissipation of assets or an attempt to gain an unfair advantage from the stay." Adelphia Communications, 2003 WL 22358819, at *4. In Adelphia Communications, the District Court found that the plaintiffs did not demonstrate sufficient prejudice to warrant lifting the stay, as they had not shown "any prejudice other than delay in pursuing their suits, which is insufficient to support vacating the stay." Id. at *4 (citing Walsh Securities, 7 F.Supp.2d at 528).

Here, McQueary cannot establish a "particularly unique injury." Once Coach Paterno was removed and permanently replaced from the football program, McQueary was likely out of a job. See Severance Agreement (Ex. L); N.T. (10/26/2016 (A.M.)) at 88:21-90-12. Regardless of whether the trial proceeded, the fact that the public knew he did not immediately intervene and left Sandusky in the locker room with the boy would likely adversely affect his ability to find a new job. Therefore, his lack of employment was not attributable to the stay. A stay also would not have hindered McQueary's ability to conduct discovery. By the time of the University's second request for a stay, McQueary had already received a voluminous amount of written discovery and he had conducted numerous

depositions of his self-identified key witnesses. Accordingly, McQueary would not suffer any economic harm from a stay. If after a stay he had been successful on any of his claims, he would have been able to recover interest as part of his judgment. See Walsh Securities, 7 F.Supp.2d at 528. Further, as evidenced by the criminal court's May 25, 2016 scheduling order, trial was set to commence in the near future and is now expected to start next month.

On ruling on the second motion for a stay, the court stated that this factor was "dispositive." Order and Opinion (8/15/2016) (Ex. R) at p. 5. However, despite the importance the Court placed on this factor, it nonetheless relied on "informal" information from McQueary that he was unable to get a job and that he had expended the resources available to him. The University was prejudiced by the Court's refusal to conduct a hearing to have McQueary make a showing under penalty of perjury that he had suffered a unique injury. He could not make such a showing. This factor supported a stay.

(6). *The Failure to Impose a Stay Significantly Impeded the University's Ability to Prepare and Present a Defense.*

The next factor is the burden on the University. The University was significantly prejudiced by the Court's refusal to stay the case for the same reasons that, as described above, there was significant overlap between this case and the pending criminal cases against Curley and Schultz. The University was denied access to two key witnesses whose insight could have helped develop defenses and

whose support and corroboration might have aided the presentation of the University's defenses. Because the facts and claims are intrinsically intertwined with the factual allegations in the underlying criminal charges against Schultz and Curley, the University was severely constrained during discovery and at trial.

McQueary's defamation and intentional misrepresentation claims each raise factual questions that ultimately relate to the February 2001 incident and the actions and communications of McQueary, Curley, and Schultz in response to it. The University could not fully explore such questions without access to Curley and Schultz and was significantly prejudiced in its ability to defend against those claims at trial.

The University was particularly prejudiced in its ability to defend against McQueary's intentional misrepresentation claim. In particular, McQueary's intentional misrepresentation claim involves the state of mind of Schultz and Curley, as well as remaining substantial questions of fact as to the substance of communications between them and McQueary regarding McQueary's report of misconduct. Without the testimony from Schultz and Curley, the University was unable to adequately develop its defenses, including testing the veracity of what McQueary claims to have allegedly caused him millions of dollars in damages.[6]

[6] McQueary's whistleblower claim also illustrates this point. As protected reporting activity supporting his whistleblower claim, Plaintiff relies on his grand jury testimony and his testimony at the December 2011 criminal preliminary

Similarly, the defamation claim concerned whether Spanier reasonably trusted the actions taken by Curley and Schultz.

This factor clearly weighed in favor of the stay. In hindsight, the prejudice suffered by the University by refusing to issue the stay was compounded by the Court's erroneous decisions (1) to instruct the jury that it may make an adverse inference from Curley's and Schultz's decisions to invoke their Fifth Amendment constitutional protections; and (2) to instruct the jury that Curley, Schultz, and Spanier were mandated reporters. As discussed below, the adverse inference was improper, and the record did not show that Curley and Schultz were mandated reporters under the law in place in 2001. This confluence of decisions by the Court created an atmosphere where the jury was compelled to find the University liable not due to the evidence before it, but due to the legal decisions made by the Court. This situation would have been avoided if the University's Motion for a stay had been granted.

(7). *A Stay would have Advanced the Interests of the Court.*

The fifth factor concerns the interests of the trial court. The Court found that this factor weighed against a stay because "my interest is and has been to promptly

---

hearing against Curley and Schultz. Without the ability to question Curley and Schultz about what, specifically, McQueary communicated to them in February 2001 and how, specifically, they responded to McQueary at that time, the University cannot fully explore the factual issues of McQueary's multiple claims.

resolve this case." See Order and Opinion (8/15/2016) (Ex. R) at p. 8. As other judges have recognized, prompt resolution of McQueary's claims is only one consideration when evaluating the interests of the Court. If it were the only factor, the Court's interests would be no different than McQueary's.

In evaluating its interests, the court must consider efficiency as well as expediency. E.g., Adelphia Communications, 2003 WL 22358819, at *5. A stay would have promoted judicial economy both at the time of the first stay request (early in the litigation) and at the time of the second stay request (late in the litigation). Resolution of the criminal cases would have increased prospects for settlement of the civil case and removed the need for discovery and a trial. See Parallel Proceedings (Ex. S) at 204; Doe v. Pa. State Univ., No. 4:12-CV-2068, 2013 U.S. Dist. LEXIS 21604, at *7 (M.D. Pa. Feb. 14, 2013). It would have also prevented the need to engage in piecemeal litigation and trial practice, which is generally disfavored by courts as inefficient and costly to all involved. See, e.g., McClendon v. Dougherty, No. 2:10-CV-1339, 2011 WL 4345901, at *1 (W.D. Pa. Sept. 15, 2011); Carpenter Technology Corp. v. Armco, Inc., Civ. A. No. 90-0740, 1990 WL 61180, at *4 (E.D. Pa. May 8, 1990).

Staying this civil action could have preserved judicial resources, promoted judicial efficiency, saved the parties unnecessary expense, and avoided further

piecemeal litigation. At the time each motion to stay was filed, this factor weighed in favor of a stay.

(8). *A Stay would have Advanced the Interests of the Public.*

The sixth factor is the interest of the public. The court found this factor neutral because "[i]nterest in the Sandusky and related cases remain high and the sooner the remaining cases can be resolved, the better." Order and Opinion (8/15/2016) (Ex. R) at p. 8; see also Order and Opinion (11/30/2016) (Ex. C) at p. 12. However, while the public may have an interest in seeing that civil matters concerning Sandusky are litigated in a timely manner, "the public has a greater interest in enforcement of the criminal law." Kaiser, 1997 U.S. Dist. LEXIS 1377, *12; Golden Quality Ice Cream, 87 F.R.D. at 58 (public interest in quick and diligent resolution of antitrust violations through private litigation only weakened when federal government receives indictment and chooses to prosecute criminal antitrust case); In re Plastics Additives Antitrust Litig., No. 03-2038, 2004 U.S. Dist. LEXIS 23989, at *27-28 (E.D. Pa. Nov. 29, 2004). The public's interest in the fair administration of criminal proceedings may be enough to stay an entire civil proceeding, or at least limit the scope of civil discovery. See Kaiser, 1997 U.S. Dist. LEXIS 1377, *15 (citing Campbell v. Eastland, 307 F.2d 478, 487 (5th Cir. 1962)).

As recognized by the Court, the civil and criminal cases were well followed by the public. Order and Opinion (8/15/2016) (Ex. R) at p. 8. Allowing the civil trial to proceed risked poisoning the criminal jury pool by allowing McQueary to present his evidence in a well-followed proceeding where it was against the interests of Schultz and Curley to testify and provide their version of events. In addition, certain rulings that were made during trial also could infringe on the integrity of the criminal trial by influencing the jury pool. For example, the Court found as a matter of law that Curley and Schultz were mandated reporters when that is an issue directly at play in the criminal prosecutions. If this case had been stayed, it would have been unnecessary for this Court to rule on those issues while the criminal trial was pending.

As these matters are of great interest to the public, the Court should have allowed the criminal proceeding to occur first; thereby, permitting the criminal trial to occur without any influence from the rulings, testimony, and verdict from the civil trial. Any prejudice to the civil trial from the criminal trial could have been managed more easily and the University would have had full access to its witnesses. This factor weighed heavily in favor of a stay.

(9). *A Stay would have Advanced the Interest of Non-Parties.*

The final factor is the interests of non-parties. In denying the first stay request, the Court considered the effect of a stay on Curley and Schultz. Order and

Opinion (12/20/2012) (Ex. Q) at p. 11-12. The Court found that as to the whistleblower and defamation claims, their interests were irrelevant. Id. at 11. The Court did not address the misrepresentation claim; the claim the Court later conceded included overlap between the civil and criminal proceedings. Id. at pp. 11-12; Order and Opinion (8/15/2016) (Ex. R) at p. 5. In denying the second stay request, the Court found that no non-party had an interest in this action. Order and Opinion (8/15/2016) (Ex. R) at p. 8. That is not the case.

Curley, Schultz, and Spanier were all non-parties to the litigation with great interest in this case. They all had an interest in not having the jury pool hear evidence about events related to their criminal indictments and render judgment on them before their criminal proceedings. For Curley and Schultz, this prejudice was amplified because they had to choose whether or not to testify at the civil trial. "The dilemma [of whether to testify in a civil actions] for [non-parties] . . . is severe because they face serious penalties in the event of a criminal conviction, and because they are not themselves parties to th[e] civil action." Quality Ice Cream, 87 F.R.D. at 58. They also had an interest in not having a court make a finding that they were mandated reporters, an issue at the time of the civil

proceedings which was still the basis of criminal counts against Spanier, Curley and Schultz.[7]

Balancing the factors discussed above, it is clear that they all favor granting a stay. As such, the Court erred by not granting the stay. This alone calls for the granting of a new trial and an order staying the new trial until the conclusion of the criminal proceedings.

(10). *To Ensure a Fair Trial, a Stay was Required in this Matter*

As described above, the legal standard for granting a stay was satisfied. Further, the Court's decision not to grant a stay caused the University severe prejudice, justifying a new trial.

The University's inability to contact Curley and Schultz was not a sanction for any misconduct by the University. It was the result of Curley's and Schultz's independent decisions to invoke their constitutional rights. Nonetheless, by forcing the University to move forward without access to key witnesses, the University suffered greater prejudice than most sanctioned litigants. See Jacobs v. Chatwani, 922 A.2d 950, 962 (Pa. Super. 2007) (quoting Smith v. Grab, 705 A.2d 894, 902 (Pa. Super. 1997)) (holding that even when a party has acted improperly,

[7] The Court has dismissed the failure to report charges based on the lapsed statute of limitations. See February 1, 2017 Order (Ex. V). However, imagine if the criminal court and its higher burden found that University officials were not mandated reporters after this court had. A stay was necessary to avoid such unjust results.

the decision "to preclude the testimony of a witness is a drastic sanction, and it should be done only where the facts of the case make it necessary.") This alone requires a new trial. But the prejudice was compounded by the Court's decision to (1) instruct the jury that it could take an adverse inference from the failure of the University to present Curley and Schultz, even though the University was powerless to compel Curley and Schultz to testify, and (2) *sua sponte* instruct the jury that the jury must consider Curley and Schultz mandated reporters, even though the failure of Curley and Schultz to testify made it impossible for the Court to properly consider whether their job responsibilities satisfy the statutory criteria for a mandated reporter. Each error alone requires a new trial to cure. The combined effect of each error certainly warrants a new trial.

B. THE COURT IRREPARABLY PREJUDICED THE UNIVERSITY BY INSTRUCTING THE JURY THAT IT COULD MAKE AN ADVERSE INFERENCE AGAINST THE UNIVERSITY BECAUSE SCHULTZ AND CURLEY EXERCISED THEIR RIGHTS UNDER THE FIFTH AMENDMENT

The Supreme Court of the United States has ruled that the "Fifth Amendment does not forbid an adverse inference **against parties to civil actions** when they refuse to testify in response to probative evidence offered against them: the Amendment 'does not preclude the inference where the privilege is claimed by a *party to a civil cause.*'" Baxter v. Palmigiano, 425 U.S. 308, 318 (U.S. 1976) (quoting 8 J. Wigmore, Evidence 439 (McNaughton rev. 1961)) (italics in original,

bolding added). The University is unaware of any case law from the Supreme Court of the United States or the Supreme Court of Pennsylvania which specifically considered whether a trial court may provide an adverse inference instruction against a party when, like here, a non-party asserts his protections under the Fifth Amendment.

However, the Supreme Court of Pennsylvania has considered the issue more generally. Over sixty years ago, the Supreme Court of Pennsylvania explained that "where a witness is equally available to both parties, no unfavorable inference can be asserted by either against the other for failure to call him. . . ." Haas v. Kasnot, 105 A.2d 74, 76 (Pa. 1954) (citing Mosely v. Reading Co., 145 A. 293, 295 (Pa. 1954) (same for documentary evidence)). In Pratt v. Stein, 444 A.2d 674 (Pa. Super. 1982), a physician accused of malpractice asserted that a trial judge erred by failing to instruct the jury that the physician's failure to testify should not serve as proof of his negligence. See id. at 795. The physician argued that an "[adverse] inference does not arise when the witness who does not testify is equally available to either party. This is an accurate statement of the law." Id. at 705, n.51. The court agreed with his recitation of the law, but stated that it did not apply because the physician was a party-witness. Id. The Superior Court later reaffirmed its position that an adverse inference is inappropriate when a non-party is available to either side. See Fitzpatrick v. Philadelphia Newspapers, Inc., 567 A.2d 684 (Pa.

Super. 1989) ("The fact that Lame [a party-witness] was available to be called by either side does not bar the application of . . . [an adverse inference], as it would if he were a non-party witness."); Bulman v. Myers, 467 A.2d 1353, 1355-1356 (Pa. Super. 1983) (holding that malpractice plaintiff was not entitled to an adverse inference for the failure of the defendant-dentist to testify because she could have called him as a witness or offered part of his deposition testimony at trial).

The situation considered in Haas, Pratt, and Fitzpatrick presented itself here. Either McQueary or the University could have subpoenaed Curley and Schultz to testify. Despite equal access to the witnesses and the well-developed law of this Commonwealth, the Court issued the following instruction to the jury:

> Now, you will recall that a stipulation was read during the trial with regard to Mr. Curley and Mr. Schultz, and essentially the stipulation read that, if called as witnesses, they would decline to answer certain questions on the grounds that their answers might tend to incriminate them. A person has a constitutional right to remain silent and decline to answer on the grounds that an answer may tend to incriminate him or them. You may, but need not, conclude that the answer would have been adverse to Penn State's interests. So, in the civil law, there is a provision that, if a person is within the control of a party, that the expectation is they would call the party and the party would state whatever it is that the party is going to state. Penn State contends in this case that Mr. Curley and Mr. Schultz are really not within their control, they don't work for them anymore, and that they don't really have the ability to call them. On the other hand, the plaintiff asserts that, if, in fact, the position is that Mr. McQueary did not tell them what he claims that he told them and that conversely he told them that he only saw

> horseplay, they would have no Fifth Amendment privilege because if they said we only told it was horseplay, they can't get in trouble for that, and the plaintiff wants you to draw the adverse inference that the reason they are not testifying is because, in fact, if they did answer the question, it would be something other than horseplay so that they assert that they're entitled to that adverse inference. You are not required to do that, so you have to ask yourself which party has control over them, and is the drawing of the adverse inference permissible?
>
> The plaintiff cannot meet his burden of proof based solely on an adverse inference. There has to be other evidence that the plaintiff presented, and you will have to recall what the evidence was that was presented with regard to the misrepresentation count.

N.T. (10/27/2016) at 126:25-128:19. The University properly objected and briefed the issue. See N.T. (10/27/2016) at 126-128; Memorandum (8/26/2016) (Ex. W). Consequently, the Court's instruction ran afoul of Pennsylvania law and the Court committed reversible error when it provided an adverse inference instruction.

The analysis used by other courts also leads to the conclusion that the adverse instruction was inappropriate here. Some courts apply and consider on a case-by-case basis a list of non-exhaustive factors to determine whether an adverse inference instruction is appropriate. See Coquina Investments v. TD Bank, 760 F.3d 1300, 1309-1312 (11th Cir. 2014), (cited in Pa. SSCJI, § 5.51); Libutti v. United States, 107 F.3d 110, 123-124 (2d Cir. 1997). Those factors are (1) the nature of the relevant relationships; (2) the degree of control of the party over the

non-party witness; (3) the compatibility of the interests of the party and non-party witness in the outcome of the litigation; and (4) the role of the non-party witness in the litigation. Coquina, 760 F.3d at 1311 (quoting LiButti, 107 F.3d at 123-124). "The overarching concern that should guide the admissibility inquiry is fundamentally whether the adverse inference is trustworthy under all of the circumstances and will advance the search for the truth." Coquina, 760 F.3d at 1304. "Because the witness cannot be made to explain why the privilege has been invoked, the reliability of the adverse inference drawn from his silence is limited." Id. at 1310.

When considering the first element – the nature of the relevant relationship – the court should examine the relationship "from the perspective of a non-party witness' loyalty to the plaintiff or defendant, as the case may be." LiButti, 107 F.3d at 123. Curley and Schultz were not employees of the University at the time they invoked the rights under the Fifth Amendment. Their criminal prosecution and the situation surrounding it were well covered by the press and considered by the public. They are both trying to succeed in the criminal courts and the court of public opinion. No reason has been provided to believe that the University shares a common interest with Curley or Schultz to justify an adverse inference instruction. Similarly, the second factor – the amount of control by the University over the witnesses – weighs against an adverse inference. The employment

relationship had long been severed when their rights were invoked. The only allegation of control is that the University continues to pay the legal fees of Curley and Schultz.

The fact that the University has paid the legal fees for Curley and Schultz in the criminal proceedings does not change this analysis; the individual counsel of Curley and Schultz maintain a professional responsibility to act solely in their clients' best interest. See Bonfilio v. United States, No. 15-1015, 2016 U.S. Dist. LEXIS 145142, at *49 (W.D. Pa. Oct. 20, 2016) (stating "in the context of criminal defense, certain litigation decisions are considered fundamental and are for the client to make . . . includ[ing] decisions on . . . whether to testify . . . ."); Pa.R.P.C. 5.4(c) (mandating that "[a] lawyer shall not permit a person who . . . pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."). No evidence suggests that the University controls their defense in anyway including the invocation of their rights under the Fifth Amendment. Further, Curley and Schultz have not cooperated at all in any matter relating to Sandusky's conduct. They provided no information during discovery in this case or during the Freeh Group investigation commissioned by the University. See *Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky*, Freeh Sporkin & Sullivan, LLP (Ex. X)

at p. 12. Rather, they declined to participate in the investigation on the advice of their counsel. Id. This is a further sign that the University has no control over them. See LiButti, 107 F.3d at 123 (finding party's payment on non-party's legal fee were relevant when the non-party cooperated in the investigation).

The University continues to pay their legal fees. It does not do so to curry favor with Curley and Schultz. It does not do so as *quid pro quo* for their silence. It does not do so to induce Curley and Schultz to provide them with information on how they would testify. Rather, it does so to honor its prior agreements with Curley and Schultz.

The third factor – the compatibility of interests – is absent. Curley and Schultz are no longer employed by the University and are not parties in this case. Thus, they have no interest in whether the University prevails in this action.

The fourth and final factor – the role of a non-party witness in the litigation – does not support an adverse-inference instruction in this case. Curley and Schultz each play an important role in this litigation, but that role does not make an adverse inference drawn against the University more reliable. "The overarching concern that should guide the admissibility inquiry is fundamentally whether the adverse inference is trustworthy under all of the circumstances and will advance the search for the truth." Coquina, 760 F.3d at 1304. "Because the witness cannot be made to

explain why the privilege has been invoked, the reliability of the adverse inference drawn from his silence is limited." Id. at 1310.

Although Curley and Schultz play an important role in this litigation, that important role does not make an adverse inference drawn against the University any more reliable. It does, however, magnify the unfair prejudice to the University of such an inference. This is particularly so in light of the University's lack of authority to compel them to provide information relevant to its defense.

Curley and Schultz were equally available to both parties. The invocation of their Fifth Amendment right was not caused by the University. The University alone was harmed for the actions of others beyond its control. "While a party may be able to deflect the damage of adverse inferences taken from his own invocation through, for example, rehabilitating examination by his counsel, he is unable to defend against an adverse inference drawn against a witness which in turn harms his own case." Lionti v. Lloyd's Ins. Co., 709 F.2d 237, 246 (3d Cir. 1983) (Stern, dissenting). For these reasons, the adverse inference was inappropriate and the Court should grant a new trial.

ORIGINAL

C. MCQUEARY IS A PUBLIC FIGURE OR LIMITED-PURPOSE PUBLIC FIGURE AND THE COURT SHOULD HAVE REQUIRED MCQUEARY TO PROVE THAT PRESIDENT SPANIER ACTED WITH ACTUAL MALICE IN MAKING HIS STATEMENTS

The standard of fault in the defamation claim depends on whether the plaintiff is a public or private figure. Am. Future Sys., Inc. v. Better Bus. Bureau, 923 A.2d 389, 400 (Pa. 2007). If the plaintiff is a public figure or public official and the statement relates to a matter of public concern, then the plaintiff must prove the defendant acted with actual malice. Id. Actual malice is a reckless disregard of the truth or falsity of the statement. Id. at 395 n.6; Norton v. Glenn, 860 A.2d 48, 50, n.3 (Pa. 2004).

The actual malice standard also applies to limited-purpose public figures. A limited-purpose public figure "thrusts himself into the vortex of the discussion of pressing public concerns." Rosenblatt v. Baer, 383 U.S. 75, 87 n. 12. (1966). He becomes a limited-purpose public figure because he invites and merits "attention and comment." Gertz v. Welch, 418 U.S. 323, 342 (1974). A person may become a limited-purpose public figure if he attempts to have, or realistically can be expected to have, a major impact on the resolution of a specific public dispute that has foreseeable and substantial ramifications for persons beyond its immediate participants." Wolston v. Reader's Digest Assoc., 443 U.S. 157, 167 (1979).

ORIGINAL

McQueary pressed the public-figure standard in his Complaint: "Exhibit C was published by President Spanier with actual malice and/or with reckless disregard for the truth in an outrageous effort to provide full and public support of the University. . . ." See Complaint (Ex. B) at ¶ 53. At a conference on the first day of trial, the Court expressed skepticism about whether McQueary was a public figure, but permitted additional briefing. See N.T. (10/17/2016 (Chambers)) at 4:21-6:16. Consequently, the University supported its position with a bench brief provided to the Court. See Bench Brief (Ex. Y). The University also proposed that the Court provide the jury with defamation instructions consistent with McQueary's Complaint and the alleged defamation of a public figure or limited-purpose public figure. See Proposed Points of Charge (Ex. J) at Nos. 33, 35, 36 & 38. During the charging conference, the Court found that McQueary was not a public figure or limited-purpose public figure at the time of the allegedly defamatory statement. N.T. (10/26/2016 (P.M.)) at 24:10-25:20. Over the University's objections, the jury was not provided the heightened standard attendant to a public figure or limited public figure. This was an error and prejudiced the University.

The two factors that determine whether a plaintiff is a limited-purpose public figure are: (1) whether the allegedly defamatory statement involved a public controversy; and (2) the nature and extent of the plaintiff's involvement in that

controversy. Marcone v. Penthouse International Magazine for Men, 754 F.2d 1072, 1077 (3d Cir. 1985) (applying Pennsylvania Law). First and without question, the Sandusky investigation and subsequent proceedings were a matter of public controversy. Second, McQueary had "a major impact on the resolution of a specific public dispute" prior to the defamatory statement when he involved himself in the Sandusky investigation. Wolston, 443 U.S. at 167. On this basis, McQueary qualified at the very least as a limited-purpose public figure.

Courts have found athletic coaches to be limited-purpose public figures. In Sarandrea v. Sharon Herald Co., 30 Pa.D.&C.4th 199 (C.P. Lawrence 1993), the Court considered whether an article in a local newspaper and a promotional poster for that article were defamatory. The crux of the allegations was that two statements were defamatory: (1) assertions that the National Collegiate Athletic Association (NCAA) inquiry into the recruiting conduct of a former college coach, now a high school coach, was certain, months before the NCAA issued any report on the matter, and (2) an implication that the coach was now involved in suspicious recruiting/school transfer efforts in high school, made at a time when the object of the recruiting drive was not clearly going to transfer. Id. at **10-12. The Court found that "[h]igh school coaches are not immune to the glare of adverse publicity . . . such coaches, and their policies are of as much concern to the community as other public officials and public figures." See id. at *17 (internal citation and

quotations omitted). Accordingly, the high school football coach was found to be "a limited public figure and that the actual malice standard is applicable to this case." Id. Similarly, in Basarich v. Rodeghero, 321 N.E.2d 739 (Ill. App. 1974), coaches, teachers, and the teachers' association alleged defamation against publishers of a local newsletter. Id. at 741. The Court found that "coaches and teachers" were "subject to intense public interest and substantial publicity." Id. at 742. Accordingly, the Court found them to be public figures.

McQueary was more of a public figure than local, high school coaches. He testified that he was a successful University quarterback at one of the most followed colleges in America. N.T. (10/21/2016 (A.M.)) at 38:20-38:24. He also served as a graduate assistant coach for Joe Paterno, an iconic coach. See Complaint (Ex. B) at ¶ 4. If Courts characterize local high school coaches as public figures, certainly McQueary was such a figure as well.

No testimony was provided that Spanier spoke with a reckless disregard of the truth or falsity of the statement or even, at a minimum, "entertained serious doubts about the truth of his publication. . . ." Masson v. New Yorker Magazine, 501 U.S. 496, 510 (1991). McQueary did not prove that President Spanier falsely suggested that McQueary lied about what he saw. The jury instruction improperly lowered McQueary's burden of proof and therefore, the University seeks a new trial.

D. PRESIDENT SPANIER'S STATEMENT WAS A MATTER OF PUBLIC CONCERN; THEREFORE, MCQUEARY MUST SHOW THAT SPANIER ACTED WITH ACTUAL MALICE IN MAKING HIS STATEMENTS

Even if McQueary is considered a private figure, the "actual malice" standard applies if the allegedly defamatory speech was a matter of public concern. See ToDay's Housing v. Times Shamrock Communications, Inc., 21 A.3d 1209 (Pa. Super. 2011); Rubin v. CBS Broad., Inc., No. 01515, 2016 Phila. Ct. Com. Pl. LEXIS 30, at *8 (C.P. Phila. Jan. 20, 2016). When a private figure brings a defamation claim on a matter of public concern, he or she must also prove the element of falsity in addition to the statutory requirements for defamation found in 42 Pa.C.S.A. § 8343(a). Id. See also Krajewski v. Gusoff, 53 A.3d 793, 803 (Pa. Super. 2012) (citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 17 (1990)).

The subject of the statement was clearly a matter of public concern. President Spanier's statement concerned his confidence in the actions taken by Schultz and Curley with respect to Sandusky's misconduct. The safety of children and the Sandusky investigation are self-evidently matters of public concern. See Rubin, 2016 Phila. Ct. Com. Pl. LEXIS 30, at *12 (holding sexual misconduct with a student is a matter of public concern). It is also a matter of public concern whether the Commonwealth's largest University and its high-level employees properly dealt with such charges. See id.; N.T. (10/27/2016) at 10:5-12:15.

ORIGINAL

The University proposed that the Court provide the jury with instructions regarding matters of public concern and the need to show material falsity. See Proposed Points of Charge (Ex. J) at Nos. 33, 35, 36 & 38. The Court declined to provide the jury with those instructions. The University was prejudiced by the Court's ruling that the defamatory statement was not a matter of public concern. McQueary could not have met that burden. See N.T. (10/27/2016) at 9:16-12:18; 15:11-25. Consequently, the University seeks a new trial.

E. THE COURT PREJUDICED THE UNIVERSITY BY REFUSING TO PERMIT THE UNIVERSITY TO PUBLISH TO THE JURY NEWS ARTICLES THAT CAST PLAINTIFF IN A NEGATIVE LIGHT IN ORDER TO REFUTE THE CLAIM THAT THE UNIVERSITY'S ACTIONS HARMED PLAINTIFF'S REPUTATION.

The Court committed an error of law, resulting in prejudice to the University, when it precluded the University from offering the contents of news articles which cast McQueary's reputation in an extremely negative light ("News Articles"). The University sought to enter these News Articles to defend itself against McQueary's claim that the University's actions or the Spanier Statement, were the cause of McQueary's injured reputation.

On the second day of trial, Mr. Mahon, the University's Vice President for University Relations during the time in question, testified on direct examination that his Office was responsible for monitoring the news media for articles that were being published about the University. N.T. (11/26/16 (P.M.)) at 4-5. During the

week that the story of the Sandusky matter broke, the level of press coverage "built during the course of the week as many more reporters showed up in town in person to cover different story angles." Id.

So that this point is clear, up front: the public-at-large was exposed to, and any potential employer of McQueary who did a simple Google-search would find, excoriating content in News Articles published about McQueary[8] during the time period in question, and before the University made the decisions to not allow McQueary to coach and to place him on leave. The contents of two of the News Articles which were sought to be introduced into evidence and published to the jury during Mr. Mahon's Day 2 testimony are set forth below. See also List of Articles (Ex. Z) (listing other articles with similar content).

DATE	SOURCE	CONTENT	TRIAL EX. #
11/9/11	*The New York Times*	**Title:** "An Aspiring Coach in the Middle of a Scandal" **Content:** "According to the [Grand Jury] report, McQueary heard 'rhythmic, slapping sounds," which he believed to be those of sexual activity. He walked into his locker, opened it and put his	70

[8] These are by no means the only articles critical of Plaintiff published during this timeframe. They are merely examples of the sentiment that existed in the public mind at that time. Mr. Mahon testified that the new coverage during the week in question was "[p]robably the most coverage I've ever seen for a story at Penn State". N.T. (10/26/2016 (A.M.)), 5. He estimated that his department saw "hundreds of stories . . . each day." Id.

ORIGINAL

		sneakers inside. He then turned his head and looked into the shower. He said under oath that he saw Sandusky raping what appeared to be a 10-year-old boy. He immediately left . . . But there is no evidence that he did anything else to see Sandusky more meaningfully investigated or punished. What he did do was continue to climb up the ranks of Paterno's coaching staff. . . ."	
11/10/11	*The Washington Post*	**Title:** "Penn State and Joe Paterno: A scandal that could so easily have been avoided" **Content:** "But in 2002, when grad assistant Mike McQueary allegedly walked in on that horrible scene in the showers, on campus, right there it could have been stopped. That child, and every child that came after, could have been saved. . . . All that it would have taken is a call to 9-1-1. Three little digits. Three little numbers, and that boy's life might have been changed. Other boys' lives might have been changed. Sandusky's life certainly would have changed. And Penn State wouldn't be leaderless this morning. Instead, McQueary left and called . . . his dad. McQueary was not a child, or an 18-year-old freshman. He was a 28-year-old, presumably of good health and strong build. Yet he walked away? When I was 28, I probably still called my dad if I had a perplexing question about my tax return, but if I saw a naked man raping a young boy in the showers, I would have dialed 9-1-1, pulled the man off the boy, incapacitated the man with a well-placed and much-enjoyed knee to the groin, and gotten the boy out of there. Isn't that what anyone in his right mind would do if he saw someone being raped? I certainly hope our world hasn't fallen so far into the Slough of Despond that seeing forcible sex acts performed on a child isn't something we shrug off. This is the sort of	71

ORIGINAL

		thing for which 9-1-1 was invented. But for some reason, McQueary didn't do those things, nor did his father call 9-1-1. Opportunity No. 2, wasted. . . . McQueary was later told, according to the report, that Sandusky's locker room keys had been taken and the incident had been reported to Second Mile. This was opportunity No. 4, in my opinion, because this was McQueary's chance to make the call. It was clear no one had contacted anyone with actual authority. Might McQueary have lost his job? Yes. Is letting a child be raped and doing nothing worth a line on your resume? I would say no. Wouldn't you?"	

In connection with the University's attempt to examine Mr. Mahon on the second day of trial about the News Articles, and to publish the contents of the News Articles to the jury, the Court determined that the News Articles were hearsay – despite the fact that the contents of the News Articles were not being offered for the truth of the matters asserted therein; but, instead, only to prove that the statements in the News Articles, set forth above, were made to the public.

The Court held that it would not let the University publish the contents of the News Articles to the jury because: (a) "the content of" the News Articles that Mr. Mahon was "monitoring" -- "like the proceeding one, The Washington Post article, [is] offer[ing] the opinion of someone who's not here subject to cross-examination[.] I'll let you identify [the News Articles] but not publish [them] to

the jury." N.T. (10/18/16 (A.M.)) at 53:16-54:8; (b) the argument that the contents of the News Articles were not being offered for their truth was "splitting a very fine hair, especially in a case like this", Id. at 54:25-55:1; (c) in a jury trial, the fact finder "cannot parse quite as easily the distinction between a statement not offered for the truth of the matter asserted and when offered for the truth of the matter asserted." Id. at 57:24-58:5; (d) the Court was "not going to build in any error for you later on". Id. at 58:13-14; and (e) it was McQueary's side of the case, and the University was not permitted to enter evidence into the record therein[9].

Then again, on the eight day of trial, the University attempted to recall Mr. Mahon to the stand. After the University's counsel showed one of the News Articles to Mr. Mahon, the Court again refused to allow the University to publish its content to the jury through Mr. Mahon, because: (a) there was "plenty of that in the record already"; (b) "[t]his is the opinion of someone that's writing a magazine article and your saying what he said"; (c) "if this jury hasn't figured out that the news media is accusing [McQueary] of not being a man" they never will and; (d)

---

[9] In response, the University reminded the Court that the parties had, for the sake of efficiency, agreed that the University could put on its case with Mr. Mahon, on Plaintiff's side of the case, rather than re-calling him back on the University's side. The Court then stated that the University did not tell it of that agreement. The University then remind the Court that that agreement had been reached in the Court's chambers, with the Court present. The Court indicated it had "no recall of that". Counsel for Plaintiff then confirmed that that agreement had been shared with the Court. The Court responded that Plaintiff's counsel's "memory is better than mine [on] that point, there's no problem. So you can continue to proceed as you have been." N.T. (10/18/2016 (A.M.)) at 59:5-60:6.

"we went back and forth so many times [on the issue of the admissibility of the contents of News Articles] that I feel like a fish flopping one way or that other." N.T. (10/26/2016 (P.M.)) at 9:15-10:5.

Despite the University's protest that McQueary was "claiming that his reputation has been injured. This article goes directly to the reputational claim that he is making. And, I say for a third time, [McQueary's counsel] was permitted" to do exactly what the University sought to do[10], the Court only allowed the University to ask Mr. Mahon "was the media coverage direct to the sexual incident [involving Sandusky] and Mr. McQueary's response to that incident", not to publish the contents of any News Articles – and concluded "[t]hat's the solution that I'm giving you. If I'm wrong, you have the point for appeal." N.T. (10/26/2016 (P.M.)) at 10:6-11:9.

The Supreme Court of Pennsylvania has determined, in the landmark case of Corabi v. Curtis Publishing Co., supra, that, when determining what injury has been done to a defamation plaintiff's reputation, the jury may consider, inter alia, the character and previous general standing of the plaintiff in the community. Corabi, 273 A.2d at 920 (citing Restatement, Torts, Section 621, comment (c)

[10] When *Plaintiff* wanted to examine *his* witnesses about the contents of news articles, the Court determined that the contents of news articles was not hearsay – and could be published to the Jury. See N.T. (10/21/16 (A.M.)), at 74, 75.

(1938)), overruled on other grounds by Dunlap v. Philadelphia Newspapers, Inc., 448 A.2d 6 (Pa. Super. 1982). If the reputation of a defamation-plaintiff is "already bad, evidence of this fact is admissible and should be considered in mitigation of damages." Id.[11]

Further, a defamation defendant is permitted to rebut a plaintiff's damages calculation by showing that independent factors harmed plaintiff's economic and reputational standing. Marcone, 754 F.2d at 1079 (holding that newspaper stories concerning plaintiff, other than the publications at issue, were admissible "to mitigate the level of compensatory damages").

The United States Third Circuit Court of Appeals in Wallace v. Media News Group, Inc., 568 Fed. Appx. 121 (3d Cir. 2014), has recently reiterated that the Pennsylvania Supreme Court treats "the issue of a plaintiff's already tarnished reputation as going to damages" because "evidence of a tarnished reputation is admissible and should be considered as a factor to mitigate the level of compensatory damages". Wallace, at 125.

---

[11] In the most extreme cases, the "libel-proof plaintiff doctrine" has been extended by Courts in the Commonwealth so far as to preclude even "nominal damages" to a poorly reputed defamation plaintiff – and, even, to necessitate the dismissal of such a "claim with prejudice to avoid the unnecessary costs of defending the claim". Griffin v. Griffin, 2008 Phila. Ct. Com. Pl. LEXIS 300 (2008).

ORIGINAL

As applied to this case, in order to prove that he was defamed, McQueary was required to not only prove that he had been spoken of falsely, but also that his reputation in the community was lowered as a result. Even if McQueary could prove that he was spoken of falsely by the University, if he could not prove that those falsehoods were what caused his reputational injury, he was not defamed. As such, a central question attendant to McQueary's defamation action against the University was whether the Spanier Statement was the cause of McQueary's alleged reputational injury.

At its root, McQueary's defamation action contends that McQueary held a good reputation in the community for possessing positive character traits (*e.g.*, honesty, integrity, trustworthiness, bravery, compassion, selflessness, empathy, moral rectitude, *etc.*) and for not possessing negative character traits (*e.g.*, misplaced loyalty, selfishness, cowardice, *etc.*). In his defamation action, McQueary further contends that, after the Spanier Statement was made, and because of that statement's being heard by the community which supposedly previously held him in high regard, that high regard evaporated and was replaced by a newly acquired poor reputation in the community -- which now saw him as possessing negative character traits.

McQueary bore the burden of proving that it was the Spanier Statement that caused this sea-change in public sentiment about McQueary's reputation to occur.

ORIGINAL

If McQueary failed to prove any one of the following, then he could not meet his burden of proving that he was defamed: (a) that he had a good reputation for possessing positive character traits before the Spanier Statement was made; (b) that he had a poor reputation for possessing negative character traits after the Spanier Statement was made; and (c) that the Spanier Statement caused that shift.

Because of these requirements for proving his defamation claim, there necessarily exists a temporal aspect to McQueary's burden of proof – it not only mattered what McQueary's reputation in the community was, but, also: (a) what become known by the public about McQueary that had nothing to do with the Spanier Statement; and (b) what effect the public's prior possession of that *other knowledge* had on McQueary's reputation.

The University sought to defend against the claims made by McQueary in his defamation action, in part, by proving to the jury that McQueary's reputation in the community for possessing positive character traits was destroyed by his own decision and coverage of that decision by third parties over whom the University had no control – not by the Spanier Statement. The University intended, and was entitled, to attempt to prove to the jury – though its witness Mr. Mahon, who was the very University official in charge of monitoring the public sentiment about the Sandusky affair – that McQueary's reputation was entirely damaged, or else was

damaged in large part, by sentiments in the public mind about his character that had nothing to do with the Spanier Statement.

"Hearsay" is a statement that the declarant does not make while testifying at the current trial and that a party offers in evidence to prove the truth of the matter asserted in the statement. Pa.R.E. 801(c). A "statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion. Pa.R.E. 801(a). A "declarant" is a person who makes a statement. Pa.R.E. 801(b). Hearsay is not admissible except as provided by the Rules of Evidence, by other rules prescribed by the Pennsylvania Supreme Court, or by statute. Pa.R.E. 802.

The News Articles are statements made by various declarants. As such, the News Articles are hearsay only if they were to be offered in evidence by the University at trial to prove the truth of the matters asserted in the News Articles. See Pa.R.E. 801(c). But, if the News Articles were offered into evidence for a purpose other than to prove the truth of the matters asserted in the News Articles, then the News Articles are not hearsay. Id.

In Raintree Homes, Inc. v. Birkbeck, 2011 Pa.Dist. & Cnty.Dec. LEXIS 164 (2011), affirmed at 2013 Pa.Super. Unpub. LEXIS 1777 (2013), the Court affirmed, in an opinion denying plaintiff's post-trial motion, its decision to permit the defendants to show to the jury a news report about Raintree Homes' poor

reputation prior to the statements in question in that case being made about Raintree Homes by Birkbeck (a newspaper reporter for the Pocono Record). Defendants in Raintree Homes argued that the prior news report in question in that case -- a CBS News report which criticized plaintiff's business practices – was offered "not for the truth of the statements therein – namely, allegations of McQueary's misconduct" but that "the Report was simply offered to establish that the Report was broadcast."

The Raintree Homes Court concluded that "Defendants sought to introduce the [prior CBS News video] to establish [the video's] existence – which would presumably weaken Plaintiffs' claims of economic and reputational damage. And we reiterate that the video was properly shown to the jury because its probative value rested with the fact that . . . Plaintiff's reputation was not harmed solely by Defendants. See Duffy v. Dept. of Transp., 694 A.2d 6, 9 (Pa. Cmwlth. 1997) ('if the out-of-court statement is offered not to prove the truth of the statement made by the out-of-court declarant, but instead to prove that the statement was in fact made, the out-of-court statement is not hearsay regardless of who made it or how it was reported to the witness')." Raintree Homes, at **32-33.

In this case, the University did not seek to offer the contents of the News Articles into evidence through their witness Mr. Mahon (who was the University official most involved with monitoring such articles) on the trial's second day in

order to prove that the statements about McQueary's character made in those articles were true. Whether the statements made about McQueary's character in the News Articles were true or not is, in fact, irrelevant. The relevance of the News Articles was to prove what the public was previously told by sources independent from the University about McQueary (*i.e.*, that McQueary was someone who the public should scorn because the poor choices he made about how to handle witnessing Sandusky in the shower with a child revealed his poor character).

That purpose is a non-hearsay purpose. As such, the Court should have permitted the University to examine its own witness – the person who was most knowledgeable about the News Articles (*i.e.*, Mr. Mahon) -- about those News Articles, and allowed the University to publish to the jury the contents of those News Articles during its examination of Mr. Mahon. The Court's refusal to allow the University to do so, because of its claim that the News Articles were hearsay, constituted a material error of law that warrants a new trial – wherein Mr. Mahon may be examined by the University about the News Articles, and their contents.

Even if the News Articles could somehow be considered hearsay – *i.e.*, because it were to be determined that the University sought to offer the News Articles into evidence through Mr. Mahon to prove the truth of the matters asserted in those articles – the Court nonetheless committed a material error of law by

refusing to allow the News Articles to be published to the jury during the testimony of Mr. Mahon, because, alternatively, the University sought to enter the News Articles into evidence, and publish them, through Mr. Mahon for purposes that are exceptions to hearsay under Pa.R.E. 803.

Under Rule 803(21), the following is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: statements dealing with "[a] reputation among a person's associates or in the community concerning the person's character". Under Pa.R.E. 405, character may be proven by either reputational evidence (Rule 405(a)) or by specific instances of conduct if, in a civil case, a person's character or a character trait is an essential element of a claim (Rule 405(b)).

In this civil case, because of the nature of a defamation claim (*i.e.*, that plaintiff's reputation for having a good character was injured), McQueary's character was an essential element of his claim. See e.g. Corabi, supra., at 920 (citing Restatement, Torts, Section 621, comment (c)). The News Articles were statements critical of McQueary which revealed specific instances of McQueary's conduct (*e.g.*, McQueary's conduct on the night that he found Sandusky and the child together in the shower), and which were published to the very public that McQueary claims he was defamed in the mind of by the Spanier Statement.

ORIGINAL

As the Raintree Homes Court noted, "alternatively, Defendants cite to Pa.R.E. 803(21), which provides that out of court statements showing 'reputation of a person's character among associates or in the community' are excepted from the ban on hearsay testimony". The Raintree Homes Court reasoned:

> We also concluded that the CBS Report is admissible as a hearsay exception pursuant to Rule 803(21) and Pennsylvania case law, because the statements in the video pertain to Plaintiffs' claimed damages as a result of Defendants' publications. ***Defendants were permitted to rebut Plaintiffs' damages calculation by showing that independent factors harmed Plaintiffs' economic and reputational standing***. . . . We ***also affirm our decision to permit Defendants to show the CBS Report to the jury on this basis***.

Id. (emphasis added).

The News Articles constituted statements under Pa.R.E. 803(21), made about Plaintiff's "reputation among a [his] associates or in the community concerning the person's character". Accordingly, the News Articles should have been permitted by the Court to be admitted into evidence, and published to the jury, during the testimony of the University's witness, Mr. Mahon, because they constituted excepted hearsay.

In conclusion, the News Articles constituted powerful corroborative evidence in support of the University's defense. The outcome of the trial very likely would have been different if, early on in the trial, the jury would have been permitted to see the contents of the News Articles that supported the University's

position that McQueary's reputation was damaged by his own actions and inactions, the highly critical public statements made in the News Articles about those actions and inactions, and the public's reaction to those News Articles – not by the Spanier Statement.

The public was repeated told by third parties who had no connection to the University that McQueary's actions and inactions in dealing with a vulnerable child meant McQueary was of bad character. This evidence is critical to show that something other than the alleged actions of the University caused McQueary's public reputation to suffer.

The Court's ruling was not only an error of law that warrants a new trial, but also an abuse of discretion, and further evidence of the bias against the University that the Court demonstrated throughout these proceedings.[12]

---

[12] Clear-cut evidence of the Court's disparate treatment of the University can be seen in how the Court dealt with news articles that *Plaintiff* wanted to show the Jury several days after the Court had refused to allow the University to publish the contents of the News Articles to the Jury during the testimony of Mr. Mahon. See N.T. (10/21/16 (A.M.)), at 74. When *Plaintiff* wanted to examine *his* witnesses about the contents of news articles, the Court reconsidered its earlier ruling, and determined that the contents of news articles was not hearsay – and could be published to the Jury. *Id.*, at 75. Of course, by that time, Mr. Mahon was off the stand, and the opportunity for the University to establish its defense by providing the Jury with the contents of the News Articles early on in the Trial was gone and could never be recovered.

F. THE COURT ERRED WHEN IT HELD THAT IT WOULD TAKE AN ADVERSE INFERENCE AGAINST THE UNIVERSITY WHEN THE UNIVERSITY'S AGENTS ASSERTED THE ATTORNEY-CLIENT PRIVILEGE AT TRIAL.

On the trial's first day, McQueary's counsel asked Lisa Powers, the Director of News and Media Relations for the University, questions about "removing President Spanier's statement [from the University website] and the attorneys attendant there with legal counsel?" N.T. (10/17/2016 (P.M.)) at 121:13-15. This question was directly related to McQueary's defamation cause of action that was tried to the jury. In response to McQueary's question to Ms. Powers, the University asserted the attorney-client privilege. Id. at 122:13-15. The Court stated: "Then are we going to be – are we going to be revisiting the same issue that there is an adverse inference to be drawn by you invoking the right [of] counsel or is he asking is was there a discussion to withdraw it?" Id. at 123:13-17. The University again asserted the privilege. Id. at 124:15-16. The Court concluded: "Okay. So if you [] assert the privilege then they get the adverse inference? . . . So the adverse inference would be that they were given the chance to withdraw [the Spanier Statement] and they didn't." Id. at 124:17-19, 125:12-14.

ORIGINAL

Later at trial, in the context of McQueary's whistleblower claim, the Court examined Dr. Rodney Erickson,[13] who followed Spanier as President. The Court asked Erickson the following: "Did you or anyone on behalf of the University reach out to Mr. McQueary and say [McQueary did] the right thing?" Erickson answered: "I didn't reach out to him personally. No." The Court then asked Mr. Erickson: "Were you relying on advice of counsel that you take a neutral stance because of the Whistle Blower [sic] Law?" N.T. (10/24/2016 (A.M.)) at 139:11-18. The University's counsel objected on the basis that the Court was asking the witness to disclose privileged information. In response, the Court stated: "Okay. So again, counsel, if you are directing him to take the attorney/client privilege then the Court is going to draw the inference that his response would be negative to the University." Id. at 139:22-140:1. Because of the threat of an adverse inference being taken against it, and because the answer to the Court's leading question was not the answer that the Court clearly expected the witness to give, the University was forced to waive -- for purposes of this question -- the attorney-client privilege,

[13] As an initial matter, "[w]hen the client is a corporation, the privilege extends to communications between its attorney and agents or employees authorized to act on the corporation's behalf." Pa. State Univ. v. Workers' Comp. Appeal Bd. (Sox), 83 A.3d 1081 (Pa. Cmwlth. 2013) (citing In re Condemnation by City of Philadelphia in 16.2626 Acre Area, 981 A.2d 391, 396 (Pa. Cmwlth. 2009)).

so that the witness could answer that, no, the Whistleblower Law had nothing to do with how Plaintiff was treated. Id. at 139:19-142:6.

In Sprague v. Walter, 516 A.2d 706 (Pa.Super. 1986), the Superior Court noted that, in the context of a defendant's invocation of the Reporter Shield statutory privilege, the trial court had, in effect, exacted "a penalty upon the defendant for its exercise of a statutory right, and tr[ied] to accomplish by indirection what it could not achieve directly. See Branzburg v. Hayes, 408 U.S. 665, 681, 92 S.Ct. 2646, 2656-57 (1972); Jamerson v. Anderson Newspaper, Inc., 469 N.E.2d 1243, 1250 (Ind. App.1984)." Sprague, 516 A.2d at 714. The Sprague Court went on to state:

> We mention for edification purposes that it is not the practice in this Commonwealth to resort to the use of an adverse inference to neutralize one's invocation of any of the other statutorily created privileges relating to non-disclosure. See 42 Pa.C.S. § 5923 (Spouses); 42 Pa.C.S. § 5928 (Attorney -- Client); 42 Pa.C.S. § 5929 (Doctor -- Patient); 42 Pa.C.S. § 5943 (Priest -- Penitent).

Id. at fn. 4 (emphasis added).

The stance taken by the Sprague Court squares exactly with the holdings of United States Supreme Court and other Federal cases: a negative inference should not be drawn based upon the assertion of the attorney-client privilege. Moseley v. V Secret Catalogue, Inc., 537 U.S. 418 (2003), superseded by statute on other grounds as recognized by Starbucks Corp. v. Wolfe's Borough Coffee, Inc., 736

ORIGINAL

F.3d 198, 206 (2d. Cir. 2013); United States v. St. John, 267 F. App'x 17, 22 (2d Cir. 2008). See Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp., 383 F.3d 1337, 1344-1345 (Fed. Cir. 2004) (citing cases); In re Tudor Associates, Ltd., II, 20 F. 3d 115, 120 (4th Cir. 1994) ("A negative inference should not be drawn from the proper invocation of the attorney-client privilege.").

Here, the Court committed an error of law when it determined that an adverse inference would be taken whenever the University invoked the protection of the attorney-client privilege. The Court's decision is markedly at odds with the law of the Commonwealth. Invocation of the attorney-client privilege is not a "sanction-able" act; instead, it is an affirmative, statutorily created, right held by litigants.

The Court, by its actions, seeks to make the attorney-client privilege no "privilege" at all. The rule applied by the Court in this case which holds that "every communication between attorney and client must be presumed to be adverse to the client's interest" would eviscerate the privilege.

The "penalty" of an adverse inference exacted by the Court upon the invocation of attorney-client privilege by University officials at trial materially tainted the proceedings in such a way that fundamental fairness requires that a new trial on all claims– wherein no such improperly applied "penalty" is levied – be conducted.

G. THE COURT'S REFUSAL TO PRESENT SPECIAL INTERROGATORIES TO THE JURY CONSTITUTES REVERSIBLE ERROR.

In its pre-trial opinion filed on August 15, 2016, denying the University's second Motion to stay the proceedings, the Court concluded that no stay was needed because: "The use of juror questions on the verdict slip will enable the court to assess and address the impact of Messrs. Curley and Schultz's unavailability on any verdict rendered on the misrepresentation count and take appropriate action, if required." See Order and Opinion (8/15/2016) at p. 5. At trial, the University prepared and attempted to submit to the Court proposed special interrogatories – dealing with Plaintiff's defamation and misrepresentation claims -- to be used in connection with the Verdict Slip.

Despite what it had concluded earlier about the need for special interrogatories, at trial the Court changed its mind and advised the parties about what the verdict sheet would contain: "I mean, you know, did the Spanier statement defame Mr. McQueary? Yes or no. And depending on that, you get to answer a damage question and then [the] same thing with the misrepresentation. I mean, I don't see it as rocket science and I'm not going to be going down each individual element, do you find this element, do you find that element, you know, I don't think we need to do that." N.T. (10/26/2016 (P.M.)) at 62-63.

ORIGINAL

Generally, a trial judge in Pennsylvania may grant or refuse a request for special findings on the basis of whether such would add to the logical and reasonable understanding of the issue. Century 21 Heritage Realty, Inc. v. Bair, 563 A.2d 114, 116 (Pa.Super. 1989); Fisch's Parking v. Independence Hall Parking, 638 A.2d 217 (Pa. Super. 1994), petition for allowance of appeal denied, 668 A.2d 1132 (Pa. 1995). When analyzing whether special interrogatories should be presented to the jury, appellate courts "view the charge to the jury in its entirety". Century 21, 563 A.2d at 116 (citing Reilly by Reilly v. SEPTA, 489 A.2d 1291 (Pa. 1985)).

A trial judge's decision to grant or refuse such a request constitutes reversible error when the trial judge commits an abuse of discretion. Willinger v. Mercy Catholic Medical Center, 393 A.2d 1188, 1190 n. 4 (Pa. 1978); Krock v. Chroust, 478 A.2d 1376 (Pa. Super. 1984); Walsh v. Pennsylvania Gas & Water Co., 449 A.2d 573 (Pa. Super. 1982).

It is reversible error for a trial court to refuse special interrogatories in a case where the jury "was presented with two theories upon which [plaintiff] could recover and . . . one of the theories was premised upon trial court error." Century 21, 563 A.2d at 118 (without special interrogatories having been used, "we cannot determine whether the jury's decision was based upon the valid theory . . . or the erroneous theory"). Further, a refusal to provide special instructions to the jury is

reversible error where the judge's instructions to the jury did not present the jury with all of the considerations to determine the case. See e.g., Fisch's Parking, 638 A.2d at 223. Requests for submission of special interrogatories to a jury are improperly denied by a trial court if the issues to be decided by the jury are "complex and/or lengthy." See Harsh v. Petroll, 840 A.2d 404, 440 (Pa. Cmwlth. 2003) (citing Moran v. G. & W.H. Corson, Inc., 586 A.2d 416 (Pa. Super. 1991)), petition for allowance of appeal denied, 602 A.2d 860 (Pa. 1992).

Presenting the requested special interrogatories to the jury in this case -- which was complex and long -- would certainly have served to eliminate confusion in the minds of jurors. The torts of defamation and intentional misrepresentation are not garden variety. They are intricate, multi-factorial, fact-sensitive, torts that involve allegations of non-physical injury to esoteric concepts such as "reputation," involve the application of unique affirmative defenses, complex questions of causation, damages that are not visible, or easily quantifiable – on top of the separate, yet equally complex, questions which surround the concept of punitive damages.

As set forth in the special interrogatories that the University sought to present to the jury with the Verdict Slip, the tort of defamation, as applied to this case, required the jury to make independent determinations about the following:

(a) whether the Spanier Statement was one of "opinion";

ORIGINAL

(b) whether the Spanier Statement involved a "matter of public concern";

(c) whether the Spanier Statement applied to McQueary;

(d) whether any recipient of the Spanier Statement interpreted it to apply to McQueary, and interpreted it to be defamatory of McQueary;

(e) whether the Spanier Statement was "false", or whether "truth" was a defense;

(f) whether the Spanier Statement had a defamatory meaning – in other words, was a reasonable interpretation of the statement that it meant that McQueary lied to law enforcement or the grand jury;

(g) whether (i) on the one hand, the Spanier Statement "tended to harm the reputation" of McQueary by "lowering him in the estimation of the community" or "deterring third parties from associating or dealing with him" or (ii) on the other hand, factors other than the Spanier Statement "tended to harm the reputation" of McQueary by "lowering him in the estimation of the community" or "deterring third parties from associating or dealing with him";

(h) whether the Spanier Statement was "published" by the University;

ORIGINAL

(i) whether the Spanier Statement was published with "actual malice";

(j) whether the Spanier Statement caused McQueary to suffer harm to his "reputation" or "ability to earn a living";

(k) the quantification of those compensatory damages, if any, that McQueary proved an entitlement to; and

(l) the quantification of those punitive damages, if any, that McQueary proved an entitlement to.

Interwoven with all of the concepts relevant to the tort of defamation were those relevant to the separate tort of intentional misrepresentation. As further set forth in the special interrogatories that the University sought to present to the jury with the Verdict Slip, that tort required the jury to decide whether or not the statements that McQueary claimed Tim Curley and Gary Schultz made in February, 2001, were in fact made, whether they were "material," whether they were made "falsely or with reckless disregard to whether they were true or false," whether those statements were made "with the intent to mislead Plaintiff into relying upon them," whether McQueary "justifiably and reasonably relied" upon those statements, whether McQueary suffered "harm" as a result of those statements, and the amount of compensatory and punitive damages to which McQueary proved an entitlement. See Affidavit of George Morrison (Ex. K).

ORIGINAL

Further, the jury was required to determine whether McQueary mitigated his damages by exercising "reasonable diligence" in seeking "substantially comparable employment" after June 30, 2012. Finally, during trial, the jury heard significant evidence from many witnesses, over many days, relevant to claims that it would decide (*i.e.*, defamation, intentional misrepresentation) interspersed with evidence that was only relevant to claims that it would not decide (*i.e.*, the Whistleblower claim).

The presentation of varied recovery theories in this complex case necessarily made it a highly, and unduly, confusing one for the jury. The Court itself noted, in the context of precluding the University from admitting the News Articles, that this was a jury that would have a difficult time merely "parsing the distinction between" a statement offered for a non-hearsay purpose and one offered for a hearsay purpose. See N.T. (10/18/16 (A.M.)) at 58:.2-5. Since the Court denied the University's request to present special interrogatories, it cannot be determined whether the jury's decisions on liability are valid, as well as whether the jury impermissibly awarded duplicative compensatory damages under the multiple claims. It also cannot be determined if the jury awarded punitive damages on proper grounds. Under these circumstances, the Court committed reversible, prejudicial error – and, as such, a new trial is warranted.

ORIGINAL

H. THE COURT COMMITTED REVERSIBLE ERROR BY ACTING AS A BIASED ADVOCATE FOR PLAINTIFF, AND AGAINST DEFENDANT, DURING TRIAL

A claim that a judge has been partial, biased and/or prejudiced in his conduct towards a litigant "is one of the most serious charges that can be leveled at a judge. The record must clearly show prejudice, bias, capricious disbelief or prejudgment." Nemeth v. Nemeth, 451 A.2d 1384, 1388 (Pa. Super. 1982) (citing In re J.F., 408 A.2d 1382 (Pa. 1979)). Prejudice in a judge is defined as a mental attitude or disposition which sways judgment and renders the judge unable to function impartially in a particular case. Feingold v. Skipwith, 11 Phila. 20, 1984 Phila. Cty. Rptr. LEXIS 64, 1984 WL 320886 (1984) (citing Black's Law Dictionary, 1061-1062 (5th ed. 1979)).

When a judge's "apparent antagonism towards [a party] is evident from the record," an "appearance of impropriety" rule is used to analyze putatively biased in-court conduct. In re Adoption of L.J.B., 18 A.2d 1098, 1111 (Pa. 2011); see In Interest of Morrow, 583 A.2d 816, 819 (Pa. Super. 1990) (applying impropriety standard to circumstances in which the "lower court judge twice interrupted the testimony of a crucial witness for appellee" and cut short the witness's "ability to complete her testimony for the defense.").

An appearance of impropriety warrants new proceedings before another judge. Joseph v. Scranton Times, L.P., 987 A.2d 633, 634 (Pa. 2009). There is an

appearance of impropriety "whenever there are factors or circumstances that may reasonably question the jurist's impartiality in the matter." Id. (citing In Interest of McFall, 617 A.2d 707, 712-13 (Pa. 1992)). Unlike the rule applied to other kinds of errors warranting a new trial, when appearance of judicial impropriety has been established, no showing of actual prejudice is required to compel recusal and new trial. Scranton Times, 987 A.2d at 634.

It is important for trial courts to remain vigilant of the fact that "[t]he trial judge is not an advocate, but a neutral arbiter interposed between the parties and their advocates." Commonwealth v. Overby, 809 A.2d 295, 316 (Pa. 2002) Only in certain rare exceptions is the trial judge duty-bound to raise additional arguments on behalf of one party or another such that, if and when the judge fails to do so, he has 'erred.'" Id.

In Commonwealth v. Pachipko, 677 A.2d 1247 (Pa.Super. 1996), the Superior Court held:

> this court has expressed its disapproval when a trial court raises a defense or issue which was not raised by either party. It is clearly inappropriate for a trial court to raise an issue on behalf of a party, thereby acting as an advocate. MacGregor v. Mediq Inc., 395 Pa. Super. 221, 576 A.2d 1123, 1128 (1990); see also Wojciechowski v. Murray, 345 Pa. Super. 138, 142, 497 A.2d 1342, 1344 (1985) (trial court had no authority to employ *sua sponte* Political Subdivision Tort Claims Act as basis for dismissing claim against defendant who had not raised defense).

Pachipko at 1249. See Commonwealth v. Edwards, 637 A.2d 259, 261 (Pa. 1993)) (holding that it is *per se* reversible error if a judge advocates on behalf of a party).

In Edwards, the Supreme Court of Pennsylvania reiterated: "As the U.S. Supreme Court said in Dennis v. United States, 384 U.S. 855, 86 S. Ct. 1840, 16 L. Ed. 2d 973 (1966): In our adversary system, it is enough for judges to judge. The determination of what may be useful to [a litigant] can properly and effectively be made only by an advocate. 384 U.S. at 874-875, 86 S. Ct. at 1851, 16 L. Ed. 2d at 986. Id. In Commonwealth v. Baumhammers, 960 A.2d 59 (Pa. 2008), the Supreme Court of Pennsylvania saw fit to again reiterate this admonition of the United States Supreme Court.

Multiple instances exist where the Court acted as an advocate on behalf of McQueary. For example, the Court acted as an advocate on behalf of McQueary when it *sua sponte* instructed the jury that Curley and Schultz held the status of "mandated reporters" – even though McQueary did not seek that instruction and presented no evidence to support it at trial. See also Post-Trial Motion, at ¶¶ 53-67. The Court again acted as an advocate when at several points during the trial it decided, of its own accord, to itself question witnesses in the jury's presence. N.T. (10/17/2016 (A.M.)) at 113:6-113:22; (10/18/2016 (P.M.)) at 141:25-142:18. Other examples include the disparate treatment related to its handling of News Articles, supra, and threatening to provide an adverse inference if a University

witness invoked the attorney-client privilege, supra, ignoring its own earlier decision when it decided to deny the University's request to use special interrogatories on the verdict sheet, supra.

Under these circumstances, Defendant, The Pennsylvania State University, respectfully requests that this Honorable Court grant judgment notwithstanding the verdict, or alternatively, grant a new trial.

ORIGINAL

RELIEF REQUESTED

For all the foregoing reasons, the University respectfully requests that the Court grant judgment notwithstanding the verdict in favor of the University or grant a new trial, or remit improperly awarded damages.

Respectfully submitted,

WHITE AND WILLIAMS LLP

By: _____

Nancy Conrad, Esq.
Attorney PA I.D. No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909/ Fax 610.782.4935
conradn@whiteandwilliams.com
Attorneys for Defendant,
The Pennsylvania State University

Dated: February 6, 2017

ORIGINAL

WHITE AND WILLIAMS LLP
Nancy Conrad, Esquire
Identification No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909/Fax 610.782.4935
conradn@whiteandwilliams.com

Attorneys for Defendant,
The Pennsylvania State University

MICHAEL J. MCQUEARY,	: IN THE COURT OF COMMON
	: PLEAS OF CENTRE COUNTY
Plaintiff,	:
v.	:
	: CIVIL ACTION NO. 2012-1804
THE PENNSYLVANIA STATE	:
UNIVERSITY,	: HON. THOMAS G. GAVIN
	:
Defendant.	:

CERTIFICATE OF SERVICE

I, Nancy Conrad, Esquire, hereby certify that on this 6th day of February 2017, a true and correct copy of the BRIEF IN SUPPORT OF POST-TRIAL BRIEF was served upon the following persons via the methods noted below.

By Hand Delivery

Honorable Thomas G. Gavin
Justice Center, Courtroom 7
201 West Market Street
West Chester, Pennsylvania 19380-0989
Judge

ORIGINAL

By Pre-Paid Fed-Ex Overnight

Elliot A. Strokoff, Esquire
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101
Counsel for Plaintiff

William T. Fleming, Esquire
Fleming Law Offices
111 Sowers Street, Suite 330
State College, PA 16801
Local Counsel for Plaintiff

WHITE AND WILLIAMS LLP

By: _____

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

MICHAEL J. MCQUEARY, Plaintiff	:	
V.	:	No. 2012-1804
THE PENNSYLVANIA STATE UNIVERSITY, Defendant	:	

2016 OCT 28 AM 8:50

VERDICT SLIP

AND NOW, this 27th day of October, 2016, we the jurors empaneled in the above-entitled case find as follows:

Question 1: DEFAMATION

Do you find in favor of Plaintiff?

yes X no _____

If you answer yes, what amount of damages do you award for:

a) compensatory damages $ 1,150,000

b) punitive damages 0

Proceed to Question 2.

Question 2: MISREPRESENTATION

Do you find in favor of Plaintiff?

yes X no _____

EXHIBIT "A"

If you answer yes, what amount of damages do you award for:

a) compensatory damages $1,150,000

b) punitive damages $5,000,000

After you have answered Question 1 and Question 2, notify the tipstaff that you have reached a verdict without revealing the verdict.

Foreperson

EXHIBIT B

I hereby certify that the within document is a true and correct copy of the original filed in this matter.

Elliot A. Strokoff, Esq.
Strokoff & Cowden, P.C.
132 State Street
PO Box 11903
Harrisburg, PA 17108-1903
(717) 233-5353
eas@strokoffandcowden.com

MICHEL J. MCQUEARY	: IN THE COURT OF COMMON PLEAS
Plaintiff	: CENTRE COUNTY, PENNSYLVANIA
	:
vs.	: NO. 2012-1804
	:
THE PENNSYLVANIA STATE UNIVERSITY,	: CIVIL ACTION
	:
Defendant	: JURY TRIAL DEMANDED

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH ON THE NEXT PAGE. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

EXHIBIT "B"

COURT ADMINISTRATOR
Centre County Courthouse, Room 208
S. Allegheny Street & High Street
Bellefonte, PA 16823
(814) 355-6727

A V I S O

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objecciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

COURT ADMINISTRATOR
Centre County Courthouse, Room 208
S. Allegheny Street & High Street
Bellefonte, PA 16823
(814) 355-6727

Elliot A. Strokoff, Esq.
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101
(717)233-5353
eas@strokoffandcowden.com

MICHAEL J. MCQUEARY, Plaintiff	IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
v.	DOCKET NO. 2012-1804
THE PENNSYLVANIA STATE UNIVERSITY, Defendant	CIVIL ACTION - LAW JURY TRIAL DEMANDED

COMPLAINT

1. The Plaintiff, Michael J. McQueary, is an adult individual and, at all times relevant to this Complaint, was a resident of State College, Centre County, Pennsylvania.

2. The Defendant, The Pennsylvania State University (hereafter PSU), was incorporated for educational purposes by the Act of February 22,

1855, PL 46, and has its principal administrative office located at 201 Old Main, University Park, Centre County, Pennsylvania 16802.

3. Defendant PSU, at all times relevant to this Complaint, received millions of dollars annually from the Commonwealth of Pennsylvania for use in funding its operations.

4. From February 2000 through February 2003, the Plaintiff was a Graduate Assistant Coach for the Defendant's intercollegiate football team.

5. In February 2001, Plaintiff's supervisor was Head Football Coach Joseph V. Paterno.

6. In February 2001, Head Football Coach Paterno's supervisor was the PSU Director of Intercollegiate Athletics, Tim Curley (hereafter Athletics Director Curley).

7. In February 2001, Athletics Director Curley's supervisor was PSU's Senior Vice President, Finance and Business, Gary Schultz (hereafter Senior Vice President Schultz).

8. In February 2001, the Defendant's University Police provided all law enforcement and security services to the Defendant's University Park Campus located in State College, Pennsylvania, with the same powers as police of municipalities, including the power and duty to prevent crime, investigate criminal acts, apprehend, arrest, and charge criminal offenders.

9. In February of 2001, the Director of the University Police, Thomas Harman, was supervised by, and reported to, the Defendant's Senior Vice President Schultz.

10. At approximately 9:00 p.m. on February 9, 2001, the Plaintiff witnessed an adult male, formerly employed by the Defendant as an Assistant Football Coach and Defensive Coordinator, engaging in highly inappropriate and illegal sexual conduct with a boy who appeared to be about ten to twelve years old in the Support Staff Locker Room showers in the Lasch Football Building located on the Defendant's University Park Campus.

11. At no time prior to February 9, 2001, had the Defendant University, or any of its employees or agents, provided the Plaintiff with any instruction, guidance or training as to the jurisdictions of the Defendant's University Police and/or the police of the Borough of State College, and/or the Pennsylvania State Police, with respect to criminal acts occurring on the University Park Campus, nor had the Defendant provided the Plaintiff with any instruction, guidance or training with respect to reporting sexual misconduct under the federal Clery Act.

12. At about 8:00 a.m. February 10, 2001, Plaintiff personally reported what he had witnessed the night before, as described in paragraph 10 above, to his supervisor, Head Football Coach Paterno. Coach Paterno told the Plaintiff that he had done the right thing in reporting this to him, that this was

very disturbing, that he would tell some people about what the Plaintiff had witnessed and that he would get back to the Plaintiff.

13. Based upon information and belief, Plaintiff avers that by February 11, 2001, Head Coach Paterno reported what the Plaintiff had witnessed to Athletics Director Curley.

14. A few days after February 10, 2001, Head Football Coach Paterno told the Plaintiff that he had reported what Plaintiff had witnessed on February 9, 2001, to Athletics Director Curley and at that time Head Football Coach Paterno reiterated that the Plaintiff had done the right thing in reporting what he had witnessed to him.

15. About 9 or 10 days after making his report to Head Coach Paterno, at the direction of Athletics Director Curley, the Plaintiff met with Athletics Director Curley and Senior Vice President Schultz in a conference room in the Bryce Jordan Center and told them about the aforementioned highly inappropriate sexual misconduct that he had witnessed the night of February 9, 2001.

16. Senior Vice President Schultz and Athletics Director Curley thanked the Plaintiff for providing them with this information, told the Plaintiff that they thought this was a serious matter, that they would see that it was properly investigated and that appropriate action be taken.

17. The Plaintiff believed and relied upon Athletics Director Curley's and Senior Vice President Schultz's statements that they would see

that the incident was properly investigated and that appropriate action be taken.

18. Athletics Director Curley and Senior Vice President Schultz requested the aforementioned meeting and conducted the aforementioned meeting within the scope of their employment by Defendant.

19. Plaintiff believes and therefore avers, that neither Athletics Director Curley nor Senior Vice President Schultz reported what the Plaintiff had reported to them to the Defendant's University Police, or to the State College Police, or the Pennsylvania State Police or to the Centre County Children and Youth Services.

20. Beginning about March 1, 2004, the Plaintiff became a full-time Assistant Coach for the football team of Pennsylvania State University.

21. As an inducement to retain the Plaintiff as an Assistant Football Coach, on or about December 17, 2008, Athletics Director Curley provided the Plaintiff with a letter memorializing a severance commitment, a true and correct copy of which is attached hereto as Exhibit A hereto. Plaintiff believes and therefore avers that on or about December 17, 2008, the Defendant's other Assistant Football Coaches received similar severance commitments as an inducement to retain their services.

22. In November 2010, the Plaintiff provided information to investigators from the Pennsylvania Attorney General's Office and the Pennsylvania State Police about what he had witnessed as is described in ¶10

above and that he had, about 10 days thereafter, told Athletics Director Curley and Senior Vice President Schultz what he had witnessed.

23. On December 14, 2010, the Plaintiff testified in Harrisburg, Pennsylvania, before a Statewide Investigating Grand Jury about what he had witnessed in the Lasch Football Building Support Staff Shower Room as described in ¶10 above. Also, included in the Plaintiff's Grand Jury testimony was that he had reported the incident to Athletics Director Curley and Senior Vice President Schultz.

24. The Plaintiff's base salary for the 2011-2012 year was $140,400, plus discretionary and/or bowl bonus, and fringe benefits, including paid family health insurance coverage, pension contribution, a motor vehicle and a cell phone.

25. As of November 4, 2011, the present value of the Plaintiff's reasonably anticipated future earnings over the course of the next 25 years in the profession of football coaching was at least $4,000,000.

26. On or about November 4, 2011, the Statewide Investigating Grand Jury issued a Presentment finding, among other things, that Athletics Director Curley and Senior Vice President Schultz each made a materially false statement to the Grand Jury concerning the Plaintiff's report of sexual misconduct to them.

27. Pursuant to the Grand Jury Presentment, both Athletics Director Curley and Senior Vice President Schultz were charged with violations of the Pennsylvania Crimes Code.

28. On Saturday, November 5, 2011, Defendant's President Spanier, acting within the scope of his employment, issued a statement, published on Penn State Live, the Defendant University's official news service, a true and correct copy of which is attached hereto as Exhibit B.

29. On Monday, November 7, 2011, Defendant's President Spanier, acting within the scope of his employment, reiterated his unconditional support for Athletics Director Curley and Senior Vice President Schultz to a meeting of numerous staff of the Defendant's intercollegiate athletic department held at the Mount Nittany Lounge at Beaver Stadium, reiterating his affirmation of the honesty and integrity of Athletics Director Curley and Senior Vice President Schultz and stating that the charges against them were groundless.

30. Even though the Plaintiff was quite ready, willing and able to do so, on Thursday afternoon, November 10, 2011, Acting Head Coach Tom Bradley told the Plaintiff that the Defendant's Administration was prohibiting the Plaintiff from coaching in any capacity in the upcoming football game that Saturday.

31. On Thursday evening, November 10, 2011, Acting Athletics Director Sherburne told the Plaintiff that the Defendant's Administration was

directing that the Plaintiff leave the State College, Pennsylvania area for the weekend.

32. By telephone call from Acting Athletics Director Mark Sherburne on Friday, November 11, 2011, at approximately 1:30 p.m., Mr. Sherburne told the Plaintiff, who had left the state pursuant to the directive of the evening before, that he was going to be placed on paid administrative leave and that Plaintiff would be advised as to what that meant in a meeting to be scheduled for Sunday, November 13, 2011.

33. On November 13, 2011, shortly after 7:00 p.m., the Plaintiff attended a meeting in the Athletics Director's office in the Bryce Jordan Center with Acting Athletics Director Sherburne, Human Resources Manager Erika Runkle, and the University's General Counsel, Cynthia Baldwin. At that meeting, Acting Athletics Director Sherburne read to the Plaintiff the statement attached hereto as Exhibit C, and then handed Exhibit C to the Plaintiff.

34. In response to Acting Athletics Director Sherburne's reading of the statement to him, the Plaintiff replied that he was ready, willing, able and desirous of coaching at Penn State and that he did not feel he was "negligent in any way with my job responsibilities." University General Counsel Baldwin replied that "No one is accusing you of being negligent at all."

COUNT 1 – (Whistleblower)

35. Paragraphs 1-34 above incorporated by reference herein as if fully set forth.

36. As the result of being placed on paid administrative leave, from November 13, 2011, the Plaintiff was barred from performing any football coaching duties, including coaching in preparation for, and in, the Ticket City Bowl, and deprived of receiving the bonus paid to Assistant Coaches therefore.

37. As the result of being placed on paid administrative leave on November 13, 2011, Plaintiff was required to immediately turn in, and ceased to have the benefit of, his University provided motor vehicle, a benefit fairly valued at $425 per month.

38. It is believed and therefore averred that the Plaintiff was the only Assistant Football Coach employed by the Defendant at the time of Joseph V. Paterno's departure as Head Football Coach who was not invited to be interviewed for employment as an Assistant Coaching position by Defendant University's incoming new Head Football Coach, Bill O'Brien.

39. The Plaintiff, based upon knowledge and belief, was the only Penn State employee to whom the University has not offered to reimburse counsel fees incurred as a result of legal process related to the Pennsylvania Attorney General's criminal investigations and/or testifying before of the Statewide Investigating Grand Jury. Based upon information and belief, the Plaintiff avers that the Defendant is paying the legal fees incurred by Athletics

Director Curley and Senior Vice President Schultz in defending the criminal charges against them. The Plaintiff has incurred substantial and ongoing counsel fees incurred as a result of legal process relative to the Pennsylvania Attorney General's criminal investigations and testifying before the Statewide Investigating Grand Jury.

40. Plaintiff believes, and therefore avers, that all the other Assistant Football Coaches whose employment has been terminated by the University as a consequence of the decision of the new Head Football Coach not to continue their employment began receiving their severance payments by July 31, 2012. The Defendant University refused to honor its commitment to pay severance to the Plaintiff as set forth in Exhibit A hereto until September 17, 2012.

41. As a result of the Defendant's refusal to honor its commitment to pay severance to the Plaintiff until September 17, 2012, the Plaintiff was financially constrained in August 2012 to take an early withdrawal of his TIAA-CREF Retirement Account, at a substantial, but as of yet undeterminable, tax cost and penalty.

42. Based upon information and belief, all of the other Assistant Football Coaches who were not retained by new Head Football Coach O'Brien, received notices on or before July 31, 2012 of their COBRA rights to continue health insurance to be paid for by the University. Despite repeated demands

therefore, Plaintiff, however, did not receive any notice of his COBRA rights until September 15, 2012.

43. It is believed and therefore averred, that every other Assistant Football Coach who was employed by the Defendant in 2011 and who was not retained by new Head Football Coach O'Brien was notified that he would not be retained by the University no later than January 31, 2012.

44. The Plaintiff received no notice that his employment was terminated until he heard during a televised news conference on July 5, 2012, then Defendant's President Ericson stating that the Plaintiff was no longer employed by the University.

45. By barring the Plaintiff from all facilities associated with Penn State football program as part of being placed on administrative leave, the Plaintiff was ostracized and isolated from a community of individuals, colleagues and friends and a program which had been an integral part of his life for approximately 20 years

46. Plaintiff avers that he was treated in a discriminatory fashion as set forth above, and that his employment was terminated by the Defendant because of his aforementioned cooperation with investigators for the Pennsylvania Attorney General, his provision of truthful testimony to the Statewide Investigating Grand Jury, his truthful testimony at the criminal preliminary hearings for Athletics Director Curley and Senior Vice President Schultz and further because Plaintiff is expected to be a key prosecution

witness at the criminal trials of the Athletics Director Curley and Senior Vice President Schultz.

47. The Plaintiff's aforementioned reports to Head Football Coach Paterno, Athletics Director Curley, Senior Vice President Schultz, the investigators from the Pennsylvania State Police and Attorney General's Office, the Plaintiff's testimony to the Statewide Investigating Grand Jury, and at the Preliminary Hearing on the criminal charges against Athletics Director Curley and Senior Vice President Schultz on December 16, 2011, were truthful, and made without malice or consideration of personal benefit.

48. The aforementioned discriminatory treatment by the University since November 5, 2011 has caused the Plaintiff much distress, anxiety and embarrassment.

WHEREFORE, the Plaintiff demands judgment against the Defendant, Pennsylvania State University liquidated damages consisting of the sum of: (1) the bowl bonus Plaintiff would have received had he not been placed on administrative leave; plus (2) $4,250 representing the fair rental value of his employer provider vehicle for the period November 13, 2011 through September 30, 2012; plus (3) reimbursement of legal fees he incurred and/or paid for legal counsel in connection with the legal process of the criminal investigations and prosecutions; plus (4) back pay and benefits through the date of trial; and plus (5) the amount of tax and penalty Plaintiff will have to pay on account of the early withdrawal of his TIAA-CREF

Retirement Account; prejudgment interest on the foregoing; plus an order for reinstatement, or in lieu thereof front pay, plus general damages as compensation for Plaintiff's distress, anxiety and embarrassment, plus costs of litigation, including reasonable counsel fees.

COUNT II – (Defamation)

49. Paragraphs 1-48 above are incorporated by reference herein as if fully set forth.

50. The written statement released by the University President Spanier on November 4, 2011, as set forth in Exhibit C to the Complaint, and the verbal statement made by University President Spanier to the Athletic Department staff meeting on November 7, 2011, clearly suggest that the Plaintiff was lying in his reports and testimonies that he had reported the sexual misconduct he had witnessed on February 9, 2001 to Athletics Director Curley and Senior Vice President Schultz.

51. The written statement released by the University President Spanier on November 4, 2011, as set forth in Exhibit C to the Complaint, and the verbal statement made by University President Spanier to the Athletic Department staff meeting on November 7, 2011, clearly suggest that the Plaintiff had lied to law enforcement officials and committed perjury to the Statewide Investigating Grand Jury when he stated and testified that he had

reported the sexual misconduct he had witnessed on February 9, 2011 to Athletics Director Curley and Senior Vice President Schultz.

52. Exhibit C to this Complaint was widely reported in the mainstream print, television and radio media, and was viewed by innumerable people on the internet.

53. Exhibit C was published by President Spanier with actual malice and/or with reckless disregard for the truth in an outrageous effort to provide full and public support of the University to two criminal defendants in an effort to assist in their exoneration (regardless of their guilt or innocence) in the belief that their exoneration would help to preserve the reputation of the Defendant, to isolate the Plaintiff and to make the Plaintiff the scapegoat in this matter.

54. To this date, the Defendant University has not retracted, withdrawn or apologized for President Spanier's statement as set forth in Exhibit C. On the contrary, the Defendant's continued financial support for Athletics Director Curley and Senior Vice President Schultz and its maltreatment toward the Plaintiff reinforces the perception that the Plaintiff had lied and committed perjury.

55. President Spanier's statements have irreparably harmed the Plaintiff's reputation for honesty and integrity, and have irreparably harmed the Plaintiff's ability to earn a living, especially in his chosen profession of coaching football.

56. The publication and innumerable republications of President Spanier's statement as set forth in Exhibit C, have subjected the Plaintiff to public scorn and vilification.

57. The President's statements to the members of the Athletic Department staff on November 7, 2011, as aforementioned, have caused certain members of the Athletic Department staff to distance themselves from the Plaintiff and/or cease to communicate or socially interact with him.

58. President Spanier's written and verbal statements as aforementioned have caused the Plaintiff distress, anguish, humiliation and embarrassment.

WHEREFORE, Plaintiff demands judgment against the Defendant Pennsylvania State University for $4,000,000, or such greater amount as may be proven at trial, for lost future earnings, plus general damages to be determined at trial for distress, anguish, humiliation and embarrassment, plus punitive damages, costs of suit, and such other relief deemed appropriate by the Court.

COUNT III (Misrepresentation)

59. Paragraphs 1-58 above are incorporated by reference herein as if fully set forth.

60. Plaintiff believes, and therefore avers, that during the meeting in February 2011 Athletics Director Curley and Senior Vice President

Schultz intentionally misrepresented to the Plaintiff that they thought this was a serious matter, that they would see that it was properly investigated and that appropriate action would be taken. On the contrary, Athletics Director Curley and Senior Vice President Schultz, unbeknownst to the Plaintiff, had decided to pursue a course of action that would avoid an investigation by any law enforcement investigator or other trained investigator and try to keep Plaintiff's report, and the underlying incident, a secret in an effort to preserve the reputation of the Defendant University.

61. Plaintiff believes, and therefore avers, that Athletics Director Curley and Senior Vice President Schultz intended that their misrepresentation induce the Plaintiff not to report the matter to any other law enforcement authority.

62. The Plaintiff relied upon Athletics Director Curley's and Senior Vice President Schultz's misrepresentation and did not report the incident to any other law enforcement authority until he was approached in November of 2010 by investigators from the Pennsylvania Attorney General and Pennsylvania State Police.

63. As a proximate cause of his reliance on the aforementioned misrepresentation of Athletics Director Curley and Senior Vice President Schultz, the Plaintiff has been labeled and branded as being part of a cover-up, which has caused irreparable harm to his ability to earn a living, especially in his chosen profession of coaching football.

64. As a proximate cause of Athletics Director Curley's and Senior Vice President Schultz's misrepresentation and Plaintiff's reliance thereon, Plaintiff has suffered distress, anxiety, humiliation and embarrassment.

WHEREFORE, Plaintiff demands judgment against the Defendant Pennsylvania State University for $4,000,000, or such greater amount as may be proven at trial for lost future earnings, general damages to be determined at trial for distress, anguish, humiliation and embarrassment, plus punitive damages, costs of suit, and such other relief deemed appropriate by the Court.

Respectfully submitted,

STROKOFF & COWDEN, P.C.

By: _____

Elliot A. Strokoff
I.D. No. 16677
132 State Street
Harrisburg, PA 17101
(717) 233-5353

Date: October 1, 2012

PENNSTATE

Timothy M. Curley
Director of Athletics

The Pennsylvania State University
101T Bryce Jordan Center
University Park, PA 16802-7101

(814) 865-1086
Fax: (814) 863-7955

December 17, 2008

Personal and Confidential

Mike McQueary
208 Lasch Building
University Park, PA 16802

Dear Mr. McQueary:

I am pleased to confirm the University's commitment regarding the following terms for your continued employment as Assistant Football Coach.

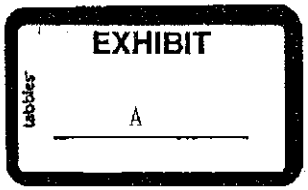
1. You will continue to perform such duties as may be assigned to you by the Head Football Coach, Joseph V. Paterno.

2. If you are employed as Assistant Football Coach at the time of Joseph V. Paterno's departure as Head Coach, and in the event you are terminated by the University, other than for cause, and as a consequence of the decision of the new head coach to not continue your employment as Assistant Football Coach, you will be entitled to the following severance benefits:

   a. The University will continue paying your salary for a period of eighteen (18) months, or until you secure another football coaching position elsewhere at a salary equal to, or greater than, your University salary at the time of termination; provided however, in the event your new salary in another football coaching position is less than your University salary at the time of termination, you will be paid the difference between your former University salary and your salary in the new coaching position for a period not to exceed eighteen (18) months from the date of termination of your University employment.

   b. You will be entitled to continue using the dealer car and cell phones assigned to you for a period of three (3) months following the date of termination of your University employment.

   c. You shall have such rights to health insurance for you and your family at the time of termination as are provided by COBRA coverage and University policy. In the event you elect COBRA coverage, University



shall pay all COBRA premiums for a period not to exceed eighteen (18) months from the date of termination of your University employment.

3. All of the terms of this commitment are completely confidential except for (a) disclosure required by law or in connection with legal proceedings between the parties, or (b) disclosure by you to members of your immediate family or to your attorneys, accountants or tax advisors.

I am delighted to be able to make this commitment in recognition of your outstanding service as Assistant Football Coach.

Please let me know if you have any questions.

Sincerely,

Timothy M. Curley
Director of Intercollegiate Athletics

Enclosure

PENNSTATE LIVE
THE UNIVERSITY'S OFFICIAL NEWS SOURCE

Statement from President Spanier

Statement from President Spanier

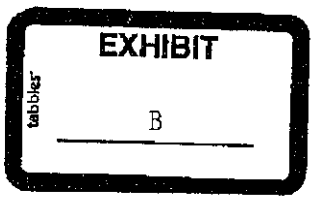
Saturday, November 5, 2011

The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance.

With regard to the other presentments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee.

Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.

Graham Spanier



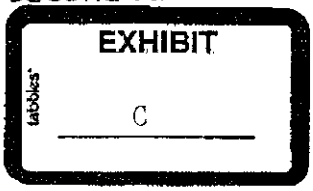
You were placed on administrative leave with pay on Thursday, November 11, 2011 by Acting Athletic Director Mark Sherburne. Your future status has not been determined. During the term of administrative leave you will receive your full current pay and benefits. You are to do no work on behalf of The Pennsylvania State University and any matters for which you are contacted concerning the position from which you are on administrative leave must be referred to Tom Bradley.

The following facilities are off limit: all athletic facilities associated with the Penn State Football Program.

Your fixed term contract is scheduled to end on June 30, 2012 and it has not been determined whether there will be a new contract at this time. A media announcement concerning the above described action was made by President Rodney Erickson on November 11, 2011 at 4:00 p.m.

Arrangements for return of personal items from an office, a locker, etc., may be made through Erikka Runkle, Human Resources Manager, by the close of business on Monday, November 14, 2011.

Arrangements for return of University items, for example, keys, equipment, security badge, second factor authentication token,



purchasing card, and cell phone may be made through Errika Runkle, Human Resources Manager, by the close of business on Monday, November 14, 2011. You may keep your I.D. card and parking permit pursuant to conditions established under University policy.

Arrangements for the return of the dealer vehicle that you have pursuant to your employment with the University may be made through Janet Bosco, Intercollegiate Athletics, by the close of business on Monday, November 14, 2011.You may also discuss the employee assistance program with your Human Resources Manager.

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY, Plaintiff v. THE PENNSYLVANIA STATE UNIVERSITY, Defendant	DOCKET NO. 2012-1804 JURY TRIAL DEMANDED

VERIFICATION

I, **Michael J. McQueary,** certify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

MICHAEL J. McQUEARY

DATE: 11/1/12

MICHEL J. MCQUEARY	: IN THE COURT OF COMMON PLEAS
Plaintiff	: CENTRE COUNTY, PENNSYLVANIA
	:
vs.	: NO.
	:
THE PENNSYLVANIA STATE UNIVERSITY,	: CIVIL ACTION
	:
Defendant	:

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have this day served a true and correct copy of the foregoing Complaint by first-class mail, postage prepaid, on the following person(s):

Nancy Conrad, Esq.
White and Williams LLP
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034

Dated: 10/1/2012

By: _____
Elliot A. Strokoff

EXHIBIT C

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

MICHAEL J. McQUEARY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 2012-1804
	:	
THE PENNSYLVANIA STATE UNIVERSITY,	:	Case Type: Whistleblower
	:	
	:	
Defendant.	:	

Attorneys for Plaintiff: *Elliott A. Strokoff, Esquire*
William T. Fleming, Esquire

Attorney for Defendant: *Nancy Conrad, Esquire*

GAVIN, S.J.

BACKGROUND

On the evening of February 9, 2001, Michael McQueary witnessed Jerry Sandusky engaged in inappropriate sexual activity with a young boy in the Lasch athletic facility. Gerald Sandusky was a retired Penn State football coach who had unlimited access to its athletic facilities. He had been the architect of its nationally renowned defense and was a well-known and popular person in the Penn State and State College communities. Mr. McQueary, after consultation with his father and a trusted family friend, Dr. Jonathan Dranov, reported what he saw to his immediate supervisor, Coach Joseph Paterno the next morning. Thereafter, he met with Coach Paterno's supervisor, Timothy Curley, the Athletic Director of Penn State, and Gary Schultz and repeated what he had told Coach Paterno. Mr. Schultz reported the incident to his supervisor, Dr. Graham Spanier, President of the Pennsylvania State University.

EXHIBIT "C"

Tom Harmon, the Pennsylvania State University Police Director, was not informed of what Mr. McQueary had observed and reported to Messrs. Paterno, Curley, and Schultz. Both Mr. Harmon and Mr. Curley were aware of a similar incident in 1998, which Mr. Harmon vigorously investigated. Mr. Schultz did inquire of Mr. Harmon whether any record of the 1998 Sandusky incident existed and was advised by an e-mail dated February 12, 2001, "the incident is documented in our imaged archives." *See* Exhibit P-8.

Mr. Schultz consulted with Penn State's then counsel, Mr. Courtney, regarding what Mr. McQueary had reported. Attorney Courtney advised him that:

> it would be the smart thing, the prudent thing, to have this reported to the Department of Public Welfare.

Findings of Fact #24.

Messrs. Curley, Schultz, and Spanier consulted among themselves as how best to deal with the situation Mr. McQueary reported, opting for the "humanitarian" approach while recognizing the danger if that approach failed, i.e., **"we then become vulnerable for not having reported it."** (*See* Exhibit P-10) (emphasis added).

Ten years later, the "humanitarian" approach having failed, their fears were realized when the Investigating Grand Jury's Presentment was released and the public outcry and backlash erupted that not only adversely impacted them, but also the reputation of the University. Within days of the release of the Presentment,[1] the Board of Trustees removed Coach Paterno and President Spanier from their positions. A new school President and athletic director were appointed. As these events were unfolding, the media scrutiny and public outcry continued. *See* Exhibits D-68, 69, 72 and 76.

[1] The Presentment was inadvertently released on November 4, 2011 and taken down. It was officially released on November 5, 2011.

Mr. McQueary was summoned to a meeting on Sunday, November 13, 2011, where the acting Athletic Director, Mr. Sherburne, read a "script" (Exhibit P-47) that had been prepared by Penn State's General Counsel, Cynthia Baldwin, Esquire which placed him on administrative leave with pay and stated, "your future status has not been determined." He was also informed, pursuant to the "script", that "all athletic facilities associated with the Penn State Football program" were off limits to him. He was not permitted access to his office following the reading of the "script" and was required to turn in his keys, cell phone, and vehicle which all assistant coaches had use of. In December of 2011, he was required to clean out his office in the Lasch Building in the presence of individuals designated by Penn State.

On July 12, 2012, he learned through a press conference given by President Rodney Erickson that he was no longer employed by Penn State.

Mr. McQueary timely filed suit pursuant to Pennsylvania's Whistleblower Law, 43 P.S. §1421 *et seq.* asserting he was wrongfully discharged by Penn State for his role in providing testimony to the investigating Grand Jury which charged Messrs. Sandusky, Curley and Schultz with having committed various criminal offenses. Penn State asserts that Mr. McQueary was an at will employee whose employment was not renewed and that its decision in that regard was legitimate pursuant to 43 P.S. §1424(c).

The parties agreed the issues involving Mr. McQueary's Whistleblower claim and his defamation and misrepresentation claims were so intertwined that they be tried together.

All claims were tried before a jury from October 17-27, 2016. The parties were afforded the opportunity to submit briefs and did so.

FINDINGS OF FACT[2]

The following Findings of Fact are from the Notes of Testimony of Monday, October 17, 2016, morning session.

Jonelle Harter Eshbach, Esquire testified:

1. At all times material to this matter she was an attorney in the Office of the Attorney General of Pennsylvania, (hereinafter "OAG"). P. 71.

2. She was assigned to handle the investigation into what is commonly referred to as The Jerry Sandusky case, (hereinafter "Sandusky Matter"). P. 72.

3. In the course of presenting the "Sandusky Matter" to the Investigating Grand Jury, she became aware that Michael McQueary might have information related to the investigation. P. 74.

4. Messrs. Curley and Schultz were advised by the supervising judge, Judge Feudale, that they could discuss their grand jury testimony. P. 79.

5. Her belief was that:

> Mike McQueary was one of the best, if not the best, civilian and by that I mean non-law enforcement witness I ever had. He was rock solid in his testimony as to what he had seen. He was very articulate. His memory was excellent. I was delighted to have him as part of my case.
>
> N.T. P. 79, l. 23-P. 80, l. 3.

6. She concluded,

> ...[T]hat Mr. McQueary had done everything he needed to do, that he had not broken any rules or broken any laws.
>
> P. 80, ll. 15-17.

[2] If a witness is quoted verbatim the page and line designation will be cited. Otherwise, only the page(s) supporting the finding will be cited.

7. Exhibit P-35 is the criminal complaint for Tim Curley. Attached to the complaint is the Grand Jury Presentment which reads, in pertinent part, at page 12:

> The grand jury finds that Tim Curley made a materially false statement under oath in an official proceeding on January 12, 2011 when he testified before the 30th statewide investigating grand jury relating to the 2002 incident, that he was not told by the graduate assistant that Sandusky was engaged in sexual conduct or anal sex with a boy in the Lasch Building showers.

8. Exhibit P-36 is the criminal complaint against Gary Schultz, which contains language similar to Exhibit P-35.

9. Both Messrs. Curley and Schultz were charged with perjury and failure to report (suspected child abuse) based on Mr. McQueary's testimony. P. 84 and 85.

10. Mr. McQueary will be the principal Commonwealth witness in the Curley and Schultz criminal cases.

11. She regarded President Spanier's statement, Exhibit P-35, as:

> ...[D]irectly saying that our investigation was false and wrong and that Mr. Curley and Mr. Schultz would be exonerated. That, in turn, meant that everything in our grand jury presentment was false basically.

P. 87, ll. 5-9.

12. She advised Mr. McQueary not to make any public statements. P. 90

13. She had no concerns for Mr. McQueary's personal security. P. 90

The following Findings of Fact are from the Notes of Testimony of Monday, October 17, 2016, afternoon session.

Fran Ganter testified:

14. He is retired from Penn State where he was employed as a football coach. P. 5.

15. He was an associate athletic director for football from 2003-2012 and reported to Tim Curley. P. 6.

16. One of his duties as an associate athletic director was to evaluate the football coaches. P. 11.

17. Exhibits P-15, 16, 17, 18, 21, 23, and 28 are his evaluations of Mr. McQueary's performance as a football coach.

18. Mr. McQueary's performance evaluations were consistently the highest or second highest that could be given.

Wendell Courtney, Esquire, testified:

19. His law firm, McQuaide Blasko, was the outside general counsel for Penn State. P. 59.

20. He was the primary counsel for Penn State from 1995-2010. P. 59.

21. He interacted with Gary Schultz. P. 59.

22. Exhibit P-6 is his billing record for February 11, 2001.

23. Mr. Schultz informed him that:

> A. It was a telephone call that I received from Mr. Schultz. I don't know if I was at home or at the office. He called me to ask for my assistance and he indicated that the University had received a report from an unnamed graduate assistant regarding Jerry Sandusky and young boy unnamed being in the Lasch Building on campus engaging in horseplay in the shower area and that made the graduate assistant feel uncomfortable.
>
> P. 66, ll. 3-11.

24. He advised Mr. Schultz that,

> ...[I]t would be the smart thing, the prudent thing, to have this reported to the Department of Public Welfare.
>
> P. 67, ll. 8-10.

Lisa Powers testified:

25. She has been a Penn State employee since 1991. P. 86.

26. She has been the Director of News and Media relations for Penn State since 2007. P. 86.

27. On October 28, 2011, she attended a meeting with President Spanier, Mr. Mahon (her direct supervisor), Cynthia Baldwin, Esquire (General Counsel for Penn State), and Mr. Steve Garban (Chairman of the Board of Trustees). Pp. 91-92.

28. Dr. Spanier stated,

> A. He said that we had to prepare for something, that two senior leaders were going to be charged with crimes, and that he had a statement that he had written out that he would like us to review.
>
> P. 95, ll. 8-12.

29. Mr. Mahon after looking at Dr. Spanier's version,

> ...[I]ndicated that he felt like there was something missing from the statement, that he felt like there was nothing about the victim or alleged victims, and that that should be added.
>
> P. 96, l. 24-P. 97, l. 2.

30. Dr. Spanier then added the first paragraph to Exhibit P-30. P. 97.

31. She questioned Dr. Spanier as to his use of the term "unconditional support," to which he replied,

> A. He said to me if I was doing my job and doing it correctly and had done nothing wrong would I not want him to support me as his supervisor.
>
> P. 99, ll. 10-13.

32. President Spanier's statement was published on the Penn State news site, Penn State Live, at the direction of Bill Mahon. Pp. 106-07.

33. The attorneys for Messrs. Curley and Schultz participated in the drafting of Dr. Spanier's statement. *See* Exhibits P-31 and 32.

34. Exhibit P-39 is an addendum to Dr. Spanier's statement which includes statements from the attorneys for Curley and Schultz. P. 108.

35. As a result of The Patriot News article regarding Penn State officials appearing before the Grand Jury Bill Mahon met with Dr. Spanier and Cynthia Baldwin, Esquire about what this might mean for Coach Paterno and the athletic department. Mr. Mahon advised her that he was told, "the less we knew the better." Pp. 130, 131, and 132, ll. 11-1.2

36. Lisa Powers stated,

> Q. And what happened following those two events (the removal of Paterno and Spanier)?
>
> A. There was a riot in downtown State College following the removal of Joe Paterno. **I was going to say I don't think that the removal of those two were enough.** I think that the general public was very, very angry and wanted to know who was responsible.
>
> P. 141, ll. 18-25 (emphasis added).

37. Once Mr. McQueary was identified as the graduate assistant, Penn State began to receive calls stating he should not remain at Penn State and should not be a coach. P. 142.

The following Findings of Fact are from the Notes of Testimony on Tuesday, October 18, 2016, morning session.

William Mahon testified that:

38. Penn State Live was the central Penn State website for information about Penn State. P. 9.

39. He felt adding the comments of the attorneys for Curley and Schultz to President Spanier's statement was "odd" and had never been done before, but that Dr. Spanier's instructions should be followed. P. 21.

40. The initial draft of the Spanier statement, Exhibit P-30, was prepared on October 28, 2011, prior to the Grand Jury Presentment's release. P. 27.

41. After the Presentment was made public on November 5, 2011, and the Spanier statement was posted on Penn State Live, his office,

> ...[W]as ordered not to say anything, not to put out a statement, not to Tweet, not to respond to any press inquiries, and **that was an order of the Board of Trustees.**
>
> P. 45, ll. 9-12 (emphasis added).

The following Findings of Fact are from the Notes of Testimony on Tuesday, October 18, 2016, afternoon session.

Cynthia Baldwin, Esquire, testified:

42. She served as Vice-President and General Counsel of Penn State from February 15, 2010 to July 31, 2012. P. 10.

43. I take judicial notice that she was a member of the Board of Trustees from 1995-2010 and chair from 2004-2007.

44. On May 12, 2011, she presented a report to the Board of Trustees regarding the OAG investigation into the "Sandusky Matter". She informed the Trustees that Messrs. Spanier, Paterno, Curley, and Schultz had appeared before the investigating Grand Jury and had been asked about the 2002[3] incident and the 1998 incident.

She advised the Board that the University did not appear to be a focus of the investigation. *See* Exhibit P-43.

[3] The date in her affidavit, Exhibit P-53, is wrong.

45. Dr. Spanier instructed her to forward Exhibit P-31 to Caroline Roberto, Esquire, Mr. Curley's attorney. P. 37.

46. She had not read the Grand Jury's Presentment prior to the publication of Dr. Spanier's statement. P-48.

47. She drafted Exhibit P-47, "the script". Pp. 50, 116.

48. After being read Exhibit P-47, Mr. McQueary stated,

> ...[H]e did not do anything wrong and he really wanted to coach for the University.
>
> P. 123, ll. 11-12.

49. To her, an employee in, "good standing is they are actively employed." P. 127, ll. 1-2.

Mark Sherburne testified:

50. From July 2008 to 2012, he was Associate Athletic Director for Administration. P. 145.

51. On November 6, 2011, Dr. Spanier advised him that he would be named the acting athletic director. P. 150.

52. On Thursday morning, November 10, 2011, acting head coach Tom Bradley held a press conference and said Mr. McQueary would coach in the Nebraska game (on Saturday the 12th). P. 157.

53. His opinion of Mr. McQueary was the following:

> A. I thought Mike was a great coach. He was very organized. He was very on top of the things that I think he was asked to do in terms of coaching. He seemed to get along with the staff. He seemed to get along well with the student athletes. So I thought Mike was a good coach.
>
> P. 158, ll. 14-20

54. Attorney Baldwin approached him on November 10th:

> Q. And what did she say about Mike McQueary's status.

A. She just wanted to let me know that, you know, the decision had been made and Mike was not going to be coaching in the game on Saturday and that his status was to be determined and she told me to please make sure I communicated to Mike and Tom that decision and that's what I planned to do.

P. 160, l. 18-P. 161, l. 1.

55. He had no input into the decision regarding Mr. McQueary's status as:

> ...[I]t was my opinion that any decisions that were being made during the period of time that we are referring to as it related to anybody involved in the matters related to Sandusky or anybody who may have been implicated, including Mike – **that those decisions were being made by the board or those who communicated directly with the board.**
>
> P. 161, ll. 7-14 (emphasis added).

56. On November 11th Attorney Baldwin stopped at his office and:

> A. She met with me and she said, Mark, we are going to need to reach out to Mike and try get ahold of him, **that we need to let him know that his employment status would be changing**, and that we would need to meet as soon as possible, and I said I am not sure that Mike is available to meet. And she said can you please try to reach him by phone and she said to me that she was going to begin to construct information about administrative leave and that we would eventually be inclined to discuss that and she explained that typically when a meeting like that occurs it would be myself, Cynthia Baldwin, our human resource representative, Mike and that we would need to have that meeting as soon as we could, and so I reached out to Mike.
>
> P. 171, ll. 4-19 (emphasis added).

57. He had no input into the preparation of Exhibit P-47. P. 173.

58. He was directed by Attorney Baldwin to read it to Mr. McQueary, which he did. P. 174.

59. Neither Athletic Director Dr. Joyner or Coach O'Brien asked him any questions about Mr. McQueary. P. 177.

The following Findings of Fact are from the Notes of Testimony of Wednesday, October 19, 2016, morning session.

60. Regarding decisions about Mr. McQueary's employment status:

> A. That it was apparent to me that no decisions were being made as it related to anybody related to the Sandusky matters, whether it be those implicated Mike, anybody, other than the board and those who had conversation with the board.
>
> Q. And would that include Dr. Rod Erickson, who by this time had been appointed interim president?
>
> A. Yes.

P. 20, ll. 10-17.

Joseph Doncsecz testified:

61. He has been employed at Penn State since 1994 and is currently Associate Vice President of Finance and Controller. P. 71.

62. Penn State receives general appropriations from the Commonwealth of Pennsylvania that average between $275-285 million. P. 76.

63. Mr. McQueary did not receive the January 1, 2012 pay increase all other Penn State employees received:

> Q. And why didn't he get that pay increase?
>
> A. The question in play was he was on leave at that time and he had been put on leave with pay. I think it was a gray area that we didn't have good direction on for folks in that situation.
>
> Q. And who made the decision with respect to he shouldn't get that modest pay increase?
>
> A. I do not recall specifically who gave me. **Again, I would have been informed by a combination of the athletic director's office and office of general counsel.**

P. 83, l. 20-P. 84, l. 5 (emphasis added).

64. Dr. Joyner determined that Mr. McQueary would not receive the bonus for the Ticket City Bowl. P. 84.

65. Penn State has twenty-four (24) campuses and approximately seventeen thousand (17,000) full-time faculty. P. 100.

Anthony Sassano testified:

66. He is a special agent for the OAG. P. 110.

67. In 2009 he was assigned to the "Sandusky Matter". P. 111.

68. Mr. McQueary was, in his opinion, the linchpin in the Sandusky case. Pp. 113-14.

69. Mr. McQueary will be the main witness in the criminal trials involving Mr. Curley and Mr. Schultz. Pp. 114-15.

70. Mr. Curley and Mr. Schultz did not file any reports (of suspected child abuse) regarding the 2001 incident with Centre County Youth Services, the Department of Public Welfare, or any police agency. Pp. 116-117.

The following Findings of Fact are from the Notes of Testimony, Wednesday, October 19, 2016, afternoon session.

Erikka Runkle testified that:

71. She has been employed by Penn State since 2008. P. 8.

72. She was initially employed as the Human Resources manager in the Athletic Department. P. 8.

73. No one accessed Mr. McQueary's personnel file from November 3-15, 2011. Pp. 25-26.

74. Attorney Baldwin advised her Mr. McQueary would be placed on administrative leave. Ms. Runkle had no input into that decision. Pp. 29-30.

75. She did not recall anyone being placed on administrative leave with pay during her career before Mr. McQueary was. P. 38.

76. At the time Mr. McQueary was placed on administrative leave with pay, there was no policy in existence covering said leave. P. 88.

77. Penn State employees could not ask to be placed on administrative leave with pay. P. 89.

Dr. Jonathan Dranov testified:

78. He is a physician with a practice in State College. P. 99.

79. He has known Mr. McQueary since his birth in 1974. P. 100.

80. He had a professional relationship with Mr. McQueary's father. Pp. 100-01.

81. He was requested to come to the McQueary home on the evening of February 9, 2001 by Mr. McQueary's father. Pp. 102-03.

82. He observed Mr. McQueary being visibly shaken and described the interaction as follows:

> A. Apparently Mike had brought some sneakers or something else that he wanted to put in his locker in the football program. He was a graduate assistant and he went into the locker room. I imagine this was about an hour before and when he went in and was heading toward his locker he said he heard sounds and I asked him what kind of sounds and he said there were sexual sounds. I asked him what he saw and he said nothing. They were sounds. So I tried to focus on that with him to see exactly what his interpretation of the sounds were and he just said they were sexual sounds. When I asked him again what he saw he could not or did not tell me that he had seen anything specific. Then he went on to say that a boy had looked around. I assume it was looked around from corner of shower or wall in the shower but he looked around. I asked Mike if the boy cried for help, if he looked upset, and he said no and then he said an arm came around the boy and pulled him back in. He went to his locker. He slammed the locker door, closed the locker door, and when he turned around the man came

walking out of the shower and it was - - he said to me it was Jerry Sandusky.

P. 104, l. 6 to P. 105, l. 5

83. His understanding as to who had to be notified of what Mr. McQueary saw was as follows:

A. The topic turned to what do you do and apparently one of the reasons John wanted me to come over is who do you report this to at Penn State and **it was my understanding at Penn State that if you are witnessed to some kind of event, whatever it may be that is upsetting you report it to your supervisor and I told him he had to report it to his supervisor.** I think he had already come to that conclusion but I told him that I think his dad told him that his supervisor was Joseph Paterno.

P. 105, l. 21-P. 106, l. 9 (emphasis added).

84. At some point after February 9, 2001, he and John McQueary met with Mr. Schultz for business reasons. At the conclusion of the meeting, the following exchange took place:

A. After the business part John then went onto – or he brought it up in terms of exactly what happened or where the University was in the process of investigating or follow up on Mike's report.

Q. And do you remember Gary Schultz's response?

A. Yes. The first thing he said that – the word he used I found a little bit confusing. He said there were rumors of similar incidents or a similar incident that occurred in the past and then went on to describe an incident that occurred in the late 1990's when there was an apparent rumor – although I think it may have been an allegation because it had apparently been followed up by at least Children and Youth Services, apparently the Department of Public Welfare was involved, two police force were involved, the University and State College, the DA's had been involved. So clearly it must have been an allegation but it was investigated and they said there was nothing that had come of it. The implication also – and he went on to say that they were looking into the incident that Mike reported in a similar

fashion, that the administration was taking it seriously, that I believe at that time the 1990's incident had been discussed with the Second Mile Board. I think he implied at that time that same thing had happened this year that they talked to the board. Someone from Penn State talked to Jerry Sandusky and called him in but beyond that I can't recall that there were any other authorities or anything that had been notified.

P. 111, l. 4-P. 112, l. 12.

Dr. David Joyner's deposition was read into the record. He testified:

85. He is a graduate of Penn State Medical School. P. 122.

86. He had been a member of the Board of Trustees at Penn State since 2000. P. 126

87. He became acting athletic director on November 17, 2011. P. 127.

88. It was his decision not to renew Mr. McQueary's contract. P. 165.

89. His reasons for ending Mr. McQueary's employment were:

A. There was no work for him to do, number one and his term was expiring.

Q. In the whole University there was no work for him to do?

A. Well, one of the things that we're very careful about is that individuals – we don't just pass on work to people to keep them working, so – and we're very careful about that and there was no work in our department or anywhere for Mr. McQueary to do based on his previous employment.

Q. Okay. Now who made that determination that there was no work for him to do?

A. I did.

Q. And you made that determination after reviewing his personnel file?

A. No, sir. There were no jobs available or posted and he would have had the opportunity to do whatever he wanted as an individual would in the community and – but there was not a position that I was looking for someone.

P. 170, l. 10-P. 171, l. 8.

The following Findings of Fact are from the Notes of Testimony, Thursday, October 20, 2016, morning session.

Thomas Harmon testified:

90. He was employed by Penn State from 1972-2005 and was the Director of University Police when he retired. P. 5.

91. He reported to Mr. Schultz. P. 6.

92. Exhibit P-3 is an email chain that he received from Mr. Schultz. P. 10.

93. Exhibit P-3 relates to the "Sandusky Matter" of 1998. P. 11.

94. He advised Mr. Schultz of the investigation:

> **Because this involved an individual who was a high profile figure at the University.**
>
> P. 15, ll. 2-3 (emphasis added).

95. The report regarding Mr. Sandusky's conduct was not placed in the police log available to the public. P. 16.

96. The report was maintained by the University Police, but it was not accessible to the public. P. 16.

97. The District Attorney decided not to prosecute Mr. Sandusky due to a lack of evidence. P. 19.

98. Mr. Schultz was aware of all the investigative steps taken and that the incident was a shower incident. Pp. 20-23.

99. His office was not informed of the February 2001 incident involving Mr. Sandusky. Pp. 30-31.

100. If he had been informed of the February 2001 incident he would have contacted the District Attorney. P. 31.

Dr. Graham Spanier testified:

101. He was initially at Penn State from 1973 to 1982. He returned to Penn State on September 1, 1995 as President and held that position until November 9, 2011. Pp. 35-36.

102. Exhibit P-5 is an email from Mr. Schultz to Mr. Curley which was copied to him. He does not remember receiving it in 1998. P. 39.

103. He had no recollection of the 1998 Sandusky investigation. P. 40

104. Exhibit P-10 is an email exchange between Mr. Curley, Mr. Schultz, and Mr. Spanier, regarding the 2001 "Sandusky Matter". P. 45.

105. Mr. Curley subsequently reported to him that he had spoken to Mr. Sandusky and The Second Mile organization and that the matter was closed. Pp. 69-70.

106. He authored the first draft of Exhibit P-30 and approved the final draft. P. 78

107. Penn State obtained attorneys for Messrs. Curley and Schultz. P. 83.

108. He directed Attorney Baldwin to share Exhibit P-30 with counsel for Messrs. Curley and Schultz. P. 83.

109. He directed that Exhibit P-38 be published:

> ...[A]nd I said to them, (the senior executives of the University), I handed out the statement at that three o'clock meeting, and I said, "This is the statement that I'm about to release." And I said, "I want all of you to know that if you do your jobs and always make decisions that are in the best interest of the University and you operate with complete honesty and integrity and always try to do the right thing, if you were falsely accused of a crime I would issue the same kind of statement for you. I will do that for you. And you need to know that you have my support for always doing the right thing. And that is why I'm supporting Tim and Gary." Everybody in the room worked with them for years

> and had exactly the same sentiment I had. And the chair of the Board who opened the meeting said, "I support this statement. It is exactly what I would say.
>
> P. 88, l. 20-P. 89, l. 11.

110. He believes:

> ...[A]nd the most visible part of the University, for better or worse, is intercollegiate athletics. So, you know intercollegiate athletics was two percent of my budget **but about 75 percent of the visibility.**
>
> P. 91, ll. 12-16 (emphasis added).

The following Findings of Fact are from the Notes of Testimony, Thursday, October 20, 2016, afternoon session.

Dr. Spanier testified:

111. He had no security concerns for Mr. McQueary. Pp. 6-7.

112. Mr. Curley was placed on paid administrative leave on November 6, 2011. P. 7.

113. No restrictions were placed on Mr. Curley's access to the campus. P. 8.

114. In 2011 there were six hundred thousand (600,000) Penn State alumni. P. 8.

115. On Monday, November 7, 2011, he met with the athletic coaches to reassure them that they should feel free to reach out to Mr. Curley to "give him personal support" and that Mr. Curley "had agreed to go on administrative leave." P. 11.

116. He learned Mr. McQueary was the graduate assistant referenced in the Grand Jury Presentment "through a news story" on Monday, November 7, 2011. P. 34.

John McQueary testified:

117. He is Plaintiff's father. P. 45.

118. On the evening of February 9, 2001, his son called to say what he had witnessed between Sandusky and the boy. P. 49.

119. He and Dr. Dranov told his son to report the incident to his supervisor, Coach Paterno. P. 58.

120. Mr. McQueary told him that he did report the matter to Coach Paterno. P. 59

121. At a later point in time, he spoke to Mr. Schultz:

> ...I said Gary, this is big. This is huge. That's the word I used. Huge. I said what's next and this is when Mr. Schultz told me - - he said John, we have heard - - and the word he used was noise. We have heard noise about this before prior to this about the same coach and so on and he says every time we have come up empty. He said we have nothing to sink our teeth into. Quote. That's a quote. I said well this time there is something to sink your teeth into. My son saw what he saw. He said John, I am going to look into it. I am going to get this looked into. I believe that's about where that conversation ended. . .
>
> P. 62, ll. 11-24.

The deposition of **Earnest J. Wilson, III** was read into the record:

122. He is the head football coach at Elizabeth City State University. P. 74

123. He has been coaching football since 1992. P. 74.

124. He knew Mr. McQueary at Penn State when he was a graduate assistant. P. 76-79

125. He wanted to hire Mr. McQueary:

> A. Oh, that was a definite. I wanted him to be an assistant for me. We were trying to work things out not only with salary but also just getting him here. I alerted my administration because I said, guys, University, look now we are going to come with, University, some controversy, but, University, I knew that he was a person that had stepped forward and I felt like he deserved a chance.
>
> P. 78, l. 25-P. 79, l. 10.

126. His athletic director's reaction to his request to hire Mr. McQueary was as follows:

> ...And as I - - And I didn't really know our president too well but I talked to the athletic director and he stewed on it and finally in the end after so many weeks and I thought everything was okay he came to me and said that it was not. It would not be good to have my first head coaching job and the president to have her first job and to have - - they felt like they - - University, he was a controversial person.
>
> P. 79, l. 22-P. 80, l. 9.

127. He has coached at fifteen (15) schools. P. 89.

The deposition of **Thomas M. Bradley** was read into the record:

128. He is the defensive coordinator at UCLA. P. 105.

129. He was employed at Penn State from 1979 to 2012. He was named acting head coach after Coach Paterno was fired. P. 107.

130. He knew Mr. McQueary from when he became a graduate assistant through his progression to full time coach. Pp. 109-111.

131. In 2011, Mr. McQueary coached the wide receivers and was also in charge of signaling in plays during the game. P. 112.

132. He wanted Mr. McQueary to coach in the Nebraska game. P. 114.

133. He was told Mr. McQueary would not be coaching the Nebraska game. P. 115.

134. Practice during the week following the Grand Jury Presentment proceeded the same as always and he was not aware of additional security measures. P. 118.

135. He thought Mr. McQueary was a good football coach. P. 122.

136. In 2004 or 2005, he asked Mr. McQueary about what he had seen and done and he:

> ...[S]aid I turned it into Joe, and Curley and Schultz.
>
> P. 135, ll. 12-13.

137. No one informed him of threats against Mr. McQueary. P. 147

The following Findings of Fact are from the Notes of Testimony of Friday, October 21, 2016, morning session.

Answers to Request for Admissions were read into the record. *See* Exhibit P-88, #5, 10, 11, 12, 13.

Joan Coble testified:

138. She was Gary Schultz's Administrative Assistant for fourteen (14) years. P. 9.

139. She was aware of the existence of a file on Mr. Sandusky and was told not to look at it. P. 10.

140. She said Exhibits P-1, P-2, P-7, and P-9 were in Mr. Schultz's handwriting. These exhibits are his notes regarding the 1998 incident. Pp. 11-15.

Steve Garban testified:

141. He served as a trustee of Penn State from 1998-2012. P. 20.

142. He reviewed Exhibit P-30 on October 28, 2011. P. 21.

143. He concurred in and supported Exhibit P-30 (in his role) as Chairman of the Board of Trustees. P. 22.

144. He had not read the Grand Jury Presentment at the time the statement was put on Penn State Live. P. 23.

Michael J. McQueary testified:

145. His birth date is October 10, 1974. P. 37.

146. He moved to the State College area in October 1981 and has lived there ever since, except for a brief time in 1998. P. 38.

147. He played football for Penn State and graduated in 1997. P. 39.

148. On the evening of February 9, 2001 he witnessed the following:

A. I opened the first door of the locker room and heard some slapping noises, and the shower was running. The next door was propped open by a wedge down in the carpet. And my locker, as you entered that door, is the first door almost directly on your right. Already knew someone else was in there. And turned to my locker and opened it up and glanced over my right shoulder into the mirror. And in that mirror, saw a reflection of Jerry and a boy under the faucet with Jerry directly behind him, his arms wrapped around him in a severely inappropriate position.

Q. All right.

A. Continue?

Q. Yep.

A. Not really believing what I thought maybe I had seen, stepped slightly to my right so I could look into the locker directly - - not into the locker, but into the shower directly, and saw the same exact thing. And put the sneakers in my locker, terrified, slammed the locker shut, and began to walk to the door, saw Jerry and the boy looking right at me, separated, shoulder to shoulder, and walked out of the locker room.

Q. Now, you knew who Jerry Sandusky was?

A. Yes. Jerry Sandusky was almost iconic. I grew up in State College, he was the foundation of Penn State defense and Linebacker U in the 1986 national championship team. I played ball and grew up with his sons, John and Jeff, at State College High, they were on my football team. Jeff was a junior and John was a sophomore when I was a senior. Knew Mrs. Sandusky. He was - - I mean, no one matched Joe's - - no one matched Joe in terms of reputation or reverence but certainly Jerry Sandusky was this, and I'll use a word that we heard yesterday, this boy scout Second Mile founder who was a saint and was an unbelievable iconic football coach.

P. 47, l. 4-P. 48, l. 17.

149. He was told by his father and Dr. Dranov to report the matter to Coach Paterno, which he did the next morning. Coach Paterno said he would tell some people. Pp. 50-52.

150. Approximately ten (10) days later, he met with Messrs. Curley and Schultz. P. 54

151. He told them what he had seen, and they responded, "...we will look into it, it's serious and we will follow up." P. 55, ll. 2-3.

152. Approximately ten (10) days later. Mr. Curley called and told him the incident had been reported to the Second Mile and that Sandusky was no longer permitted to bring children to the athletic facilities. P. 55.

153. In 2010, he met with investigators from the OAG. P. 58.

154. He testified before the Grand Jury about what he told Messrs. Curley and Schultz. P. 64.

155. His reaction to the Spanier statement was as follows:

> A. Because I knew what it was saying. I mean, I knew what it was portraying, that if they did nothing wrong or if the charges brought against them were going to be proven groundless and they weren't perjuring themselves, they had said opposite of what I had said, and that's why they were charged. That calls me a liar.
>
> P. 82, ll. 4-10.

156. In his opinion, practices during the Monday through Thursday morning period after the Grand Jury Presentment was released, had been normal. P. 82.

157. Acting Athletic Director Sherburne told him on Thursday that, "the University doesn't want you to coach in the stadium." P. 94, ll. 2-3.

158. He left town as directed, on Friday. P. 99.

159. Mr. Sherburne told him, on the Friday before Dr. Erickson's announcement, that he would be placed on administrative leave. P. 101.

160. Exhibit P-47 is the "script" Mr. Sherburne read to him regarding being placed on administrative leave. P. 102

161. After Mr. Sherburne read the "script," he indicated he wanted to coach and had done nothing wrong. P. 104.

162. He was not permitted to retrieve anything from his office. P. 104.

163. He learned he was no longer employed during a press conference held by Dr. Erickson. P. 111.

The following Findings of Fact are from the Notes of Testimony, Friday, October 21, 2016, afternoon session.

Mr. McQueary testified:

164. Joe Paterno was his direct supervisor. P. 6.

165. Exhibit P-20 is his severance contract. P. 6.

166. He was never the subject of any disciplinary action while a Penn State employee. P. 7.

167. In addition to base pay, he received pay for coaching at summer football camps for high school students. P. 8.

168. His goal was to be a head coach. P. 11.

169. Exhibit P-56 lists job openings at Penn State during the relevant time frames. P. 20.

170. Exhibit P-59, dated July 13, 2012, informed him that his health coverage was terminated. P. 20.

171. Exhibit P-64 is the check for the proceeds of his retirement account. P. 22.

172. Exhibit P-71 is his resume through 2011. P. 32.

173. He attempted to find other employment:

> A. Oh, I tried to find or tried to think about whatever skills I may possess that carried over into other careers. For instance, as one example, and I've tried to explore medical device sales. They hire a lot of ex-athletes. They hire extremely competitive people, high energy, great interpersonal skills, people who are able to communicate, people who work hard. So I investigated and tried to explore that field and tried to catch on with a medical device sales job. I was a health policy administration major, had been around the medical field a lot of my life through my father, and I thought it would be a good fit.
>
> Q. Any other career choices did you explore?
>
> A. Yes, HR/recruiting. I have tried to explore that. Obviously, the direct area would be - - and while it's not the same, it's similar, the recruiting coordinator role I had at Penn State and recruiting kids out of college to go to work for companies.
>
> I investigated a career in golf, obviously not playing golf, although I wish, but a golf professional or a teacher. There's others. I can't think of them.
>
> P. 33, l. 2-P. 34, l. 3.

174. Exhibit P-79 contains the documents pertaining to his efforts to find employment. P. 36.

175. He sought employment in a local Rite Aid drugstore in August 2016, and did not get the position. P. 49.

176. Credibility is important in obtaining a coaching position. P. 54 and 55.

177. He had the skills necessary to fill the positions referenced in Exhibit P-56 at Penn State 530, 540, and 552. Pp. 56-57.

178. His reaction to being placed on administrative leave was as follows:

A. Yeah. Again, you know, right now, right now, as we sit here today, there is a kid in some locker room or some church having the same thing happen to him, and someone may know about it, and that person is scared to speak up, and to do it to someone, to treat someone that way, who does speak up, and I'm not sitting here saying I handled it exactly perfectly. I have said this before. I will point a finger at myself before I point it at anyone else. I'm a man, and I can take responsibility, but you don't treat someone like that who tries to stop something, maybe not perfectly, but tries to do the right thing in these awful acts, so that's how I feel about it. You don't do that to someone. You stand up and you say, "Hey, listen. This guy tried to do the right thing. He came to us with it," and you don't throw him because he's, quote, unquote, "threatened." You don't throw him somewhere like he's the guy who committed the acts, you know. It's not right.

P. 65, ll. 16-P. 66, l. 15.

179. His reaction to not being able to find employment was as follows:

A. Again, I'm biased, obviously, to myself. I don't think it's fair. I don't. I don't. I'm not a perfect person. I didn't handle this, quote, unquote, "situation" perfectly, but I did I darn good thing. All right. I testified in that courtroom right there. I stood up and I did it, and I can't get a job. I can't get a job at Rite Aid, working a cash register? You know, I'm not the smartest guy in the world. I have skills. I have abilities. I'm going to speak up. I'm a God darn good football coach. I can coach. I know what it means to be a coach. I learned from the best football coach to ever step on this planet. He was the best football coach ever, and for me to not be able to go to work as a coach or work a cash register or - - I mean, that's humiliating. That's humbling. I'm biased. I know it. I get it. That's not fair. It wasn't me who did it. All right. It wasn't.

P. 66, l. 16-P. 67, l. 11.

The following Findings of Fact are from the Notes of Testimony, Monday, October 24, 2016, morning session.

Mr. McQueary testified:

180. Defendant's Exhibits 68, 69, 72, and 76 are news articles questioning Mr. McQueary's failure to act and/or why Penn State is allowing Mr. McQueary to stay as a coach. Pp. 8-12.

181. Defendant's Exhibit D-42 contains excerpts from Dr. Erickson's press conference wherein he stated Mr. McQueary would not be coaching in the Nebraska game. He also stated:

> A. Erickson said that McQueary's leave is indefinite and paid subject to further determination. Asked if McQueary would be fired **Erickson said there are complexities to that issue that I am not prepared to go into at this point.** Asked about the status of Athletic Director Tim Curley and Erickson said that is an ongoing topic of discussion. We will get to that next week.
>
> P. 28, ll. 6-14 (emphasis added).

182. No police official personally spoke to him regarding threats and/or providing security for him or his family. P. 31.

183. He was not frightened by the threatening messages that were being sent regarding him. P. 33.

184. Pursuant to his understanding of how bowl bonuses were paid, he should have received a bonus for the Ticket City Bowl. P. 56 and Pp. 88-90.

185. He withdrew his funds from TIAA-CREF because:

> A. Well, yeah, because you get heavily taxed and heavily penalized. So in order to get what I thought I might need to sustain ourselves, no word from the

> University, no paychecks, no nothing for almost three months, you get scared. I mean, you get really scared.
>
> P. 57, l. 22-P. 58, l. 2.

Dr. Rodney Erickson testified that:

186. He was President of Penn State from November 9, 2011 to May 11, 2014. P. 110.

187. He became interim president the night of November 9, 2011. P. 117.

188. He made the decision that Mr. McQueary would not coach at the Nebraska game. P. 118.

189. He did not consult with interim Coach Bradley before deciding that Mr. McQueary would not coach. P. 118.

190. He never talked to Coach Bradley regarding Mr. McQueary's status. P. 124.

191. General Counsel Baldwin was the liaison to the athletic department at this time. P. 124.

192. He does not recall discussing any alternatives to administrative leave for Mr. McQueary with General Counsel Baldwin. Pp. 124-25.

193. He suggested to incoming head coach Bill O'Brien that:

> ...[H]e might want to retain one or two existing coaches in order to provide some continuity, and, yes, I did suggest Vanderlinden and Johnson.
>
> P. 127, ll. 19-22.

194. As to other jobs at the University that Mr. McQueary could have performed, he stated:

> A. I don't get into job hunting at that level.
>
> Q. Did Athletic Director Joyner tell you there were no other positions for Mr. McQueary?

A. He stated there were no openings in the athletic department.

P. 130, l. 21-P. 131, l. 1.

195. Prior to the Sandusky scandal he was unaware of any plans in 2011 for Coach Paterno to step down. Pp. 136-37.

196. He had no involvement in drafting Exhibit P-47, the Sherburne "script." P. 143.

197. General Counsel Baldwin advised him to have Mr. Sherburne place Mr. McQueary on administrative leave. P. 144.

The following Findings of Fact are from the Notes of Testimony of Monday, October 24, 2016, afternoon session.

Dr. Erickson testified:

198. He decided Mr. McQueary would not coach due to the threats made against him. P. 26.

199. As to Mr. McQueary's fixed term employment contract ending, he stated:

Q. Dr. Erickson, were you aware that Mr. McQueary's fixed term appointment ended on June 30, 2012?

A. I was, yes.

Q. And how were you aware of that?

A. Ms. Baldwin told me that it was a fixed term appointment in early January.

Q. And did you consult with anyone in athletics about whether his fixed term appointment, he would receive a new appointment?

A. No, I didn't.

Q. Did Dr. Joyner at any time consult with you about whether Mr. McQueary would be reappointed?

A. I believe some time in the - - in the spring, perhaps about the April timeframe, Dr. Joyner indicated that there weren't any openings in athletics.

Q. And did Dr. Joyner state to you on that basis then there would be - - Mr. McQueary's contract would end.

A. Well, we both were aware that it was a fixed term contract ending on June 30, 2012.

Q. And did you concur with Dr. Joyner's decision that the appointment would end and that there would be no new appointment?

A. Well, he indicated there was no opening in athletics.

Q. And on that basis, you agreed with that decision?

A. Yes.

P. 45, l. 17-P. 46, l. 21.

John C. Parry, IV testified:

200. He is the Athletic Director at Cleveland State University. P. 54.

201. He has been an athletic director for thirty (33) years. P. 55.

202. He has participated in the search for a head football coach. P. 62.

203. He has hired head football coaches both internally and from the outside. P. 64.

204. Exhibit P-80 is his report. P. 77.

205. He described the usual process to hire a coach as follows:

A. The usual process, in my experience, is when a school either loses their head coach or decides to fire or replace their head coach, that they appoint an interim coach, particularly if it's still during - - late in the season. And even if it's not, they'll appoint an interim because somebody has to kind of hold

the program together, hold the recruits together, hold the players together.

There's then discussion among the assistant coaches to essentially ask if any of them are interested in being the head coach. And they're either encouraged to apply or they could be discouraged, but they're told they have a perfect right to apply.

The process, again, if the University's decided to conduct a full search, they're going to advertise, they're going to make the word that it's an open position. The alternative would be to say we have a logical successor and we're going to promote from within. So if the determination is to run a full search, then internal candidates may or may not choose to be a candidate.

At the end of the search process, it's common practice to inform the head coach to interview all the assistants if it's not one of them that's hired, so that it's the expectation that the new head coach could at the very least interview all the assistants.

And all the studies I've read, all the experiences myself, there's usually one or two assistants that are retained for the purposes of continuity of understanding the players, understanding the contents with the potential recruits, understand how the University works, how to get things purchased, how do you buy supplies, how do you arrange for meals. So oftentimes, one or two assistant coaches are retained for that purpose.

So at that point, there's a new staff in place. It's assumed that every assistant would get an interview, but not every assistant will get a job.

P. 89, l. 2-P. 90, l. 17.

206. The role of an athletic director in hiring assistant coaches as follows:

A. The athletic director, again, in my experience, does not hire the assistant coaches but would reserve the right to veto a choice. It's very hard to tell somebody you have to work with so and so, but if a

head coach were about to hire an assistant who you felt would be problematic for any number of reasons, he would reserve the right to veto that hire.

P. 90, l. 21-Pt. 91, l.3.

207. His opinion as to Mr. McQueary's future prior to November 1, 2011 was as follows:

A. Based on the bio in the Penn State, at that time, called media guide, based on his performance evaluations from the prior six years, three of which were exceptional, three of which were exceeds expectations, which is all high on the performance chart, it appeared that it would make one think that Mike had done very well, he's been well compensated. They have promoted him all the way back from when he was a grad assistant.

And I can't tell you how hard it is to be a graduate assistant in school and then get kept. Every year there's two or three graduate assistants who are working 80 hours a week and want a full-time job. And for Mike McQueary to be at Penn State as a grad assistant and get hired on as full-time is really quite an accomplishment. Because every year there's a handful of grad assistants at every program in the country trying to get hired full-time. So Mike was - - could be viewed as someone rising, someone who's had success, he's in the top 25 program, he's coaching the wide receivers, he's the special teams coach, works with the kickers, and is the recruiting coordinator.

And my belief, he could coach quarterbacks, wide receivers, tight ends, special teams, some combination and/or be a recruiting coordinator. Or more recently, now teams hire what's called a quality control coach for offense, and quality control coach for defense, and Mike could fit that role, which means he's self-scouting, he's looking at our own offense saying what are our tendencies, every time we're on right hash mark, we're running wide, and we need to change that up. So there's a quality control position.

So I think Mike could have done any number of those positions based on, again, the reading, the performance reviews, and what he had done at Penn State.

P. 94, l. 7-P. 95, l. 19.

208. His opinion was that in five to seven (5-7) years, Mr. McQueary would have been a candidate for offensive coordinator or head coach at a Division I football program. P. 95-96.

209. Penn State's actions harmed Mr. McQueary as follows:

A. I base it that they sent a message by putting him on administrative leave, by supporting others, by not allowing him to coach, by not having the new coach interview him, they sent a message to every other school in the country that Mike McQueary did something wrong, that he lied, that he was disloyal, he had no integrity. What did he do wrong? And given that climate, no one was going to hire him to be a football coach.

P. 98, ll. 11-19.

210. The Spanier statement to the athletic department employees of support for Curley and Schultz with no mention of support for Mr. McQueary:

...[S]ent a message to the whole athletic department that Mike is not to be supported.

P. 99, ll. 19-21.

211. An athletic director's reaction to Penn State's actions would be:

A. Well, again, within a reasonable degree of certainty, if I was sitting as an athletic director and head coach came in and said I want to hire Mike McQueary, ever since November 5th, 2011, I would veto it. I think - - because of the unknown. I don't know what happened. I don't know, what did Mike do that put him on persona non grata? What did he do?

> And no one's ever answered that question. Mike may answer the question, but no one has said why, other than the safety, which makes sense for the first weekend.
>
> P. 100, l. 17-P. 101, l. 2.

212. His opinion is that Penn State's actions irreparably harmed Mr. McQueary's football coaching career. P. 101.

213. An outside coach is brought in when:

> A. Again, I can't put myself in Athletic Director Curley's mind and the Board of Trustees and the president, normally it's usual, if a program is successful, you look to promote from within. If the program is losing, not winning, you try to run a search. You don't want to say to the current players if they're successful, why would you change the system? So again, if they're winning, probably a good chance the internal candidate gets elevated.
>
> P. 143, ll. 2-10.

The following Findings of Fact are from the Notes of Testimony of Tuesday, October 25, 2016, morning session.

214. Exhibit P-80 is the expert report of Mr. Parry.

James Stavros testified:

215. He is a forensic accountant. P. 4.

216. Exhibit P-81 is his report and sets forth his damage calculations. P. 11.

217. He did a pre-and-post November 2011 incident analysis of what Mr. McQueary was capable of doing. P. 14.

218. He calculated Mr. McQueary's work life to be to age 62.76 years for the reasons set forth at pages 17 and 18.

219. He determined Mr. McQueary's post-incident earning capacity in the manner set forth at pages 19 and 20.

220. Mr. McQueary paid an additional $61,871.00 in Federal income tax in 2012 due to cashing out his TIAA-CREF retirement plan. P. 41.

221. Each of his damage calculations assumed Mr. McQueary would continue to coach. P. 48.

222. It was stipulated that if Messrs. Curley and Schultz were called as witnesses by either party, they would invoke their 5th Amendment right against self-incrimination. P. 57.

Kirk Diehl testified:

223. He is a Penn State graduate and current Penn State employee. P. 77.

224. He has held various positions in the athletic department continuously since 1992. P. 78-79.

225. He has known Mr. McQueary since 1993. P. 80.

226. He had a close working relationship with Mr. McQueary. P. 88.

227. The "lunch bunch," group included himself, Brad Caldwell, Tom Venturino (Director of Football Operations) and Mr. McQueary. P. 90.

228. He was not aware of any threats against Mr. McQueary. P. 107.

229. He was told:

> A. No. The only thing we were told was to be careful, that he had filed a lawsuit against the University, **and it was in your best interest not to talk about the lawsuit.**
>
> P. 115, ll. 1-4 (emphasis added).

The following Findings of Fact are from the Notes of Testimony of Tuesday. October 25, 2016, afternoon session.

Kirk Diehl testified:

230. He thought Mr. McQueary was a great coach who one day could be a head coach. P. 7.

231. He has not had lunch with Mr. McQueary since he was placed on administrative leave. P. 17.

232. He did not see Mr. McQueary at Mr. Caldwell's retirement dinner to which all "lettermen" were invited. Mr. McQueary is a "lettermen." P. 17-19

James Bradley Caldwell testified that:

233. He has known Mr. McQueary since 1992. P. 32.

234. He was present when Dr. Spanier addressed the intercollegiate athletic staff and recalled him saying:

> ...[E]verything's going to be okay. You know, Mr. Curley and Gary are good men. We're going to get through this.
>
> P. 40, ll. 1-3.

235. He was present when Mr. McQueary and others were discussing what to do about a rules violation and Mr. McQueary said,

> ...[W]ell, I saw something too that changed my life forever."
>
> P. 42, ll. 14-15.

236. Mr. McQueary did not provide any details, and:

> ...[Y]ou know, and I thank him for that to this day."
>
> P. 43, ll. 2-3.

237. He was unaware of any threats made and on Thursday, November 10, Mr. McQueary was there getting ready for the (Nebraska) game. P. 44

238. He believed Mr. McQueary to be a good coach as he had great knowledge of the game, was a very hard worker, (who) was good with the players and was a good recruiter. P. 60.

239. His explanation as to why he was glad Mr. McQueary did not tell him (what he had witnessed),

> Just because of the - - pretty much because what this poor man has gone through, you know, I just feel so bad for him.
>
> P. 62, ll. 7-9.

240. His reaction when he learned that Mr. McQueary was the graduate assistant:

> A. I just felt like - - you know, I just thought the pain and what he saw, it must have just been so hard for him. I don't know, I just felt like he - - I put myself in his shoes and if I, you know, would have seen that I just feel like I would have- - you know, I respected Jerry and we grew up in this town, he was as legendary as Joe. And I - - you know, I just think it would have been even devastating for him to see that. And it just crushed me, just another reason to feel terrible for him, that he had to deal with that sight.
>
> P. 63, ll. 15-25.

241. Before October 2011, he was not aware of any plan to change coaches, that Mr. McQueary's job was in jeopardy or, that when Coach Paterno retired an outside coach would be brought in. Pp. 76-78.

242. He was aware that Mr. McQueary "with someone from the University" was cleaning out his office in December of 2011. P. 78.

Stephen Shelow testified:

243. In November of 2011 he was the assistant vice-president for police and public safety at Penn State. P. 89.

244. Exhibit D-44 contains the only threat against Mr. McQueary that he was personally aware of. P. 96.

The following Findings of Fact are from the Notes of Testimony, Wednesday, October 26, 2016, morning session:

Peter Roussel testified that:

245. He was a student assistant on the University of Mississippi football team where he learned the value of networking. Pp. 6-7.

246. He held football positions at four different schools after graduation. Pp. 8-11.

247. He owned a website called, "footballscoop.com" that listed job openings, etc. P. 12.

248. He founded "coachingsearch.com" which reported on positions, salary, etc. P. 13.

249. He currently is an agent for coaches. P. 17.

250. He explained how coaches hire assistant coaches as follows:

> A. Yeah. I mean, that is correct. Obviously you have nine - - you can hire nine coaches and there are coaches around the country that decide to keep one guy, maybe two guys, for different reasons but by and large when you get a head coaching job you want to bring your own guys. There is a reason there was a coaching change. **Usually it's because the team had not been winning and so it's time to get new blood in the program**, get new coaches who inspire players differently, who have a different level of expertise, who do things different from a philosophical standpoint.
>
> P. 24, ll. 6-18 (emphasis added).

251. The criteria for selecting an assistant coach is as follows:

A. Well I think a proven track record as a recruiter is a very important component. A track record of developing players, especially if you have got a resume of all conference guys on a consistent basis or all Americans, who guys who were high pics in the NFL draft that you coached for three or four years and that's one of the reason why they became a first, or second, or third round draft choice because he was very well coached. Expertise - - just your overall expertise at the position that you are coaching and, you know, on that side of the ball. So, for example, if you are a running back coach you will have a great expertise of offensive football, how to coach offense, and then I would say - - I mean, maybe the most important would be fit. You know, how does - - that's a common phrase in - -

P. 26, l. 18-Pt. 27, l. 9.

252. His impression of Mr. McQueary as a coach was as follows:

A. Well, number one, coach had been at Penn State his entire career. Started as a graduate assistant and then transitioned into the full-time role and it's very rare in college football that you work for the same head coach for more than a decade. There are - - as we talked about earlier there is 27 on average head coach's changes a year since 2010. I mean, this year there will be another 20 something at least. Last year I think it was 31 if I am not mistaken. And so he had been at the same place the entire time and then just knowing the profession - - I didn't even have to look it up but Penn State - - they had very, very, very little staff turnover. Coach Paterno wasn't a guy who fired a lot of coaches. Personally I can't - - and maybe he fired a coach or two. I can't remember one but they also didn't have guy that left Penn State for other jobs. So it just stands out that Mike McQueary was at Penn State his entire career. From a resume standpoint, you know, coached some good players, was a recruiting coordinator, but nothing just jumps out at you like, oh, my - - wow. That would be my evaluation.

P. 32, l. 7-P. 33, l. 5.

253. In 2011, there were approximately one hundred and twenty (120) Division 1 teams. P. 40.

254. His explanation as to why Mr. McQueary has not found a coaching position was as follows:

> A. Well I think coach had a very limited network because he had worked at Penn State for his entire career and I think it was significantly to his detriment that coaches didn't branch off from this staff. Sometimes it's good for you to have some of your colleagues get fired because then they go get other jobs and now you have contacts at other places that are in a position to help you. Sometimes it's good for guys on your staff to get promotions, to go make more money or have a better job title at other places because you have got - - now you have got a lifeline at other places. Guys who you have worked with that are going to be able to speak up for you - - they are all over the country, and you look at coach's timeline both of those hindered him, no doubt, and when you look at his resume - - good resume? Yeah. Good resume. Did they have a good team certain years? Yeah. They had a good team but nothing is like, wow, you have got to hire Mike McQueary, like he is available, and so when you combine all of those, yeah, I think that he was definitely hindered.

P. 46, l. 19-P. 47, l. 1-16.

Samuel Kursh testified:

255. He has a doctorate in business from George Washington University. P. 61

256. He does forensic economic studies. P. 63.

257. Exhibit D-111 is his report. P 67.

258. In employment cases he looks at what a person's "career path" is. P. 70

259. An important fact in his analysis is as follows:

> A. So on average head football coach in an FBS level is expected to stay about 6.4 years and I think that's an important number in our analysis because it helps to define - - given what we know about the industry and what we know about jobs in the industry it helps define how long a typical assistant coach or a staff member would be there as well.
>
> P. 72, l. 20-P. 73, l. 2.

260. He used these sums for his calculations as follows:

> The two numbers we picked $70,432 - - that's the average income of a college graduate in the United States between 35 and 39. $72,605 and that's cross the United States. And in doing this case I thought that was probably not the right number to use here.
>
> So I looked at what we call the area wage survey. Now it's called the area occupational employment and wage estimates for State College. So right for this specific area. A lower level supervisor makes $41,715. So in doing my A minus B calculations I used the $41,715 because I thought that was about the lowest income that ought to be considered as potential B or potential offset.
>
> P. 74, l. 7-21.

261. He calculated damages over the 6.4 year tenure of head coaches as anything beyond that would be speculative. P. 75.

262. In the post-Paterno era he placed Mr. McQueary as follows:

> A. Scenario two is that Mr. McQueary was able to get a job but at a smaller football program. However, still an FBS program because the data I have is on FBS and so I assume that he would make - - he was making 140 which put him in the 65th percentile of assistant coaches. 65th percentile simply means if there is 100 of them there would be 64 below him and 35 above him. He is in 65. I looked at salary - - wages and salaries that came from the NCAS football assistant coaches salary date for 2012 and I

> looked at people making in the bottom two deciles from zero to 20. So go back to the 100 people I just talked about he was 65th at one of the most successful major college programs in the country and I said well where is he going to end up and I felt that a conservative way to look at it was that he would be in the bottom 20 percent of FBS programs because they would be smaller programs, the ones not paying as much, and using the average of people in that he should have made in that situation about $77,000 a year of $76,957.
>
> P. 77, l. 21-Pt. 78, l. 17.

263. Had Mr. McQueary been able to get a job at a similar paying school, his economic loss would be $98,000/year. P. 80.

264. Mr. Stavros's loss calculation over twenty (20) years is speculative. P. 81.

265. His opinion is that because Mr. McQueary did not have a network, his coaching career was over when he lost his Penn State position. P. 90.

The following Findings of Fact are from the Notes of Testimony of Wednesday, October 26, 2016, afternoon session.

Mr. Bill Mahon testified:

266. His office was monitoring media reports during November. P. 5.

267. Exhibit D-76 contains media articles relating to what Mr. McQueary saw between Mr. Sandusky and the child in the shower. P. 14.

Penn State presented the deposition of William J. O'Brien:

268. He is the head coach of the Houston Texans. P. 5.

269. He has been a coach for twenty-five (25) years. P. 6.

270. He has coached for five (5) colleges and two (2) professional teams. Pp. 7-9.

271. As Penn State coach he had complete discretion to hire his staff. P. 11.

272. He would not have hired Mr. McQueary. P. 16.

273. Mr. McQueary's name was not on the list of personnel to be interviewed. P. 21.

274. His interview of existing coaches were "courtesy interviews", i.e., meaningless as he did not intend to retain them. P. 28.

Penn State Presented the Deposition of Matt Rhule:

275. He graduated from Penn State and played on its football team. P. 11.

276. He has coached at five (5) different colleges. P. 14.

277. He is currently head football coach at Temple University. P. 18.

DISCUSSION

Pennsylvania's Whistleblower Law (43 P.S. §1424(b)) requires that (1) the employee performed services for wages under a contract of hire for a public body, and (2) the employee must show by a preponderance of the evidence that prior to the alleged reprisal, the employee reported an instance of wrongdoing to the employer or appropriate authority. If the employee meets his burden, then the burden of proof shifts to the employer to prove by the preponderance of the evidence that the action it took occurred for separate and legitimate reasons which are not merely pretextual. 43 P.S. §1424(c).

For purposes of this discussion I accept as credible the facts set forth in my Findings of Fact.

Penn State, at all times material hereto, was a "public body"[4] as it is funded in part by the Commonwealth of Pennsylvania. *See* Findings of Fact #62.

Mr. McQueary, at all times material hereto, was an employee[5] as he performed services for wages under a contract of hire for a "public body." *See* Exhibit P-14.

[4] 43 P.S. §1422
[5] 43 P.S. §1422

Coach Paterno was an "employer"[6] who supervised Mr. McQueary. *See* Exhibit P-18.

Dr. Spanier, Mr. Curley and Mr. Schultz were employers in that they were superiors of Coach Paterno and/or agents of a public body.

The observation Mr. McQueary made of the interaction between Mr. Sandusky and the boy constitutes "wrongdoing"[7] as the conduct was a violation of the penal code of Pennsylvania. *See* Findings of Fact #148.

Mr. McQueary's report of the conduct he observed to Coach Paterno, Mr. Curley and Mr. Schultz was a "good faith report"[8] as that term is defined in the Statute.

Mr. McQueary was requested by the OAG to testify before the 30th Statewide Investigating Grand Jury looking into the conduct of Mr. Sandusky. *See* Findings of Fact #5.

Mr. McQueary's employment contract was not renewed by Penn State after the Presentment was made public.

Accordingly, Mr. McQueary met his burden of proof, shifting the burden to Penn State to show that it had "separate and legitimate reasons", for not renewing his contract which were not pretextual.

Penn State in defense asserts that:

1. Mr. McQueary's contract expired and that new Head Football Coach O'Brien did not have a place on his coaching staff for him, and/or
2. Dr. Joyner decided not to renew Mr. McQueary's contract as there was no other work for him. (*See* Findings of Fact #89).

---

[6] 43 P.S. §1422

[7] 43 P.S. §1422

[8] 43 P.S. §1422

Penn State asserts either/both of these decisions were based on legitimate non-pretextual grounds and that Mr. McQueary was therefore properly not retained.

Justice, now Chief Justice, Saylor's opinion in O'Rourke v. Commonwealth of Pa., Dept. of Corrections, 778 A.2d 1194 (Pa. 2001) is a virtual roadmap as to how to analyze a Whistleblower case. The fact that it is eerily similar factually is a coincidence.

O'Rourke was a food service instructor at SCI-Dallas who reported a theft ring involving inmates in the culinary department. These inmates were stealing food and trading it to other inmates for cigarettes. Following an investigation, O'Rourke experienced a hostile work environment, was ostracized by culinary staff, and subjected to harassment by the inmates. As a result of these actions, he was reassigned to a less desirable job that limited his ability to earn extra pay and to gain experience necessary for promotion. O'Rourke asserted these actions were taken to chastise him for revealing the theft and mismanagement in the culinary department. SCI-Dallas contended that O'Rourke was removed from his prior duties to "reduce the heightened potential for conflict in the culinary department."

Penn State's asserted defenses must be analyzed in the context of its conduct both pre and post Grand Jury Presentment as this is a case where actions speak louder than words.

Mr. McQueary reported what was arguably criminal conduct to Coach Paterno, his supervisor. He then met with Messrs. Curley and Schultz and repeated what he told Coach Paterno. When Mr. McQueary came to the attention of the OAG, he fully cooperated. His cooperation led, in part, to criminal charges against Messrs. Sandusky, Curley, and Schultz.

When the charges became public, threats were made which raised safety concerns. To this point, one can substitute the name McQueary for O'Rourke. The response of Penn State mirrors that of the Department of Corrections, i.e. his job duties were changed, he was banned

from his usual work place, benefits associated with his position were taken away, and his prospects for advancement destroyed.

The Presentment was officially released on Saturday, November 5, 2011. That afternoon Dr. Spanier had Exhibit P-38 published on Penn State Live. In Exhibit P-38, Dr. Spanier expressed his support for Messrs. Curley and Schultz. It was published with the full support of the then Chairman of the Board of Trustees, Mr. Garban. No mention of support was made for the graduate assistant who had come forward to report the inappropriate conduct. This was the beginning of the disparate treatment accorded Mr. McQueary by Penn State.

On Monday, November 7, 2011, Dr. Spanier first met with all available head coaches and then with all available members of the athletic department where he expressed his support for Mr. Curley. He encouraged members of the athletic department to reach out and give Mr. Curley support. *See* Findings of Fact #115. At the time of his remarks to the coaches and athletic staff the identity of the graduate assistant, Mike McQueary, was known. *See* Exhibit P-91 and Findings of Fact #116. No expression of support was made for him, nor any suggestion that they reach out to him. This was a continuation of the disparate treatment accorded Mr. McQueary. The unmistakable conclusion to be drawn from his failure to mention Mr. McQueary is that he was not being supported by the University and that members of the athletic department should not support him either. *See* Findings of Fact #210. This subtle message clearly was heard as Messrs. Diehl and Caldwell (witnesses called by Penn State) who previously had lunch with Mr. McQueary several days per week over an approximately nine (9) year period, never again had lunch with him and never reached out to support him. *See* Findings of Fact # 232. This subtle message was again reinforced months later when attorneys for Penn State called members of the athletic department including Coach O'Brien, together after Mr. McQueary filed suit and

advised them, "it was in your best interest not to talk about the lawsuit." *See* Findings of Fact #229. This conduct by Penn State's attorneys verges on a violation of Rule of Professional Conduct, 3.4.

Dr. Spanier also informed them that Mr. Curley had agreed to go on administrative leave. He named Mr. Sherburne acting Athletic Director.

Mr. Mahon, Vice President of University Relations, was ordered (after the statement by Dr. Spanier was published on November 5),

> . . . not to say anything, not to put out a statement, not to tweet, not to respond to any press inquiries, and **that was an order of the Board of Trustees**."

Findings of Fact #41 (emphasis added).

The Board of Trustees met on Wednesday evening, November 9, 2011 and took the following actions:

1. They fired Coach Paterno,
2. they fired Dr. Spanier, and
3. they appointed Dr. Erickson interim President.

Dr. Erickson decided that Mr. McQueary would not coach in the Nebraska game. He did so without seeking the input of Coach Bradley or Mr. Sherburne.

General Counsel Baldwin advised Dr. Erickson to have Mr. McQueary placed on administrative leave. Accordingly, Mr. McQueary was directed to attend a meeting on Sunday, November 13, 2011 with Attorney Baldwin, acting Athletic Director Sherburne, and Human Resources representative Runkle. Attorney Baldwin had prepared Exhibit P-47 which she instructed Mr. Sherburne to read word for word to Mr. McQueary. He read:

1) **You were placed on administrative leave with pay on Thursday, November 11, 2011 by acting Athletic Director Mark Sherburne.**

This statement finds no support in the record. In fact, the record contradicts the statement. *See* Findings of Fact #54 and 56. The fact Mr. McQueary was *placed* on administrative leave, as opposed to being given the option to do so as in Mr. Curley's case, is further evidence of the disparate treatment of Mr. McQueary by Penn State.

2) **Your future status has not been determined.**

This statement is contradicted by what occurred at the conclusion of the meeting when Mr. McQueary was told that he could not go to his office to retrieve his personal effects and that "all athletic facilities associated with the Penn State Football Program" were off limits. These directives constitute a *de facto* termination of his employment by Penn State. The fact that Mr. McQueary was barred from his work place but Mr. Curley, who was also on paid administrative leave was not is further evidence of the disparate treatment given to Mr. McQueary by Penn State.

3) **You are to do no work on behalf of the Pennsylvania State University and any matters for which you are contacted concerning the position from which you are on administrative leave must be referred to Tom Bradley.**

A person who is told to do no work on behalf of his employer would implicitly understand this directive to be the *de facto* equivalent of being told they are no longer working for the employer and that they have implicitly been fired.

In fact, General Counsel Baldwin testified that an employee in "good standing is one who is actively employed." *See* Findings of Fact #49. My American Heritage Dictionary, 2d College Edition defines:

> Work: n: physical or mental effort or activity directed toward the production or accomplishment of something.

> Employ: verb: to put to use or service; to provide with gainful work.
>
> Employee: n: a person who works for another in return for financial compensation.

These definitions support the conclusion that Mr. McQueary was *de facto* terminated on November 13, 2011 by Penn State's General Counsel, who acted with the consent of Dr. Erickson. *See* Findings of Fact #197.

Dr. Erickson in his press conference announcing Mr. McQueary would not coach in the Nebraska game acknowledged that there were "complexities" regarding Mr. McQueary's indefinite leave that he was not prepared to discuss. *See* Exhibit P-46

Mr. McQueary was required to clean out his office and belongings from the Lasch building in December 2011 in the presence of designated Penn State personnel. This is further evidence of his *de facto* termination.

In January a new head coach was hired. Penn State provided the list of coaches to be interviewed. *See* Findings of Fact #273. Mr. McQueary was not on that list which is further evidence of his *de facto* termination and disparate treatment.

There were inquiries regarding Mr. McQueary's employment status in June of 2012. *See* Exhibit P-55, and earlier; *see* Findings of Fact #199.

Dr. Joyner never looked at Mr. McQueary's personnel file and did not speak to him before deciding not to renew his contract as he determined there was no work for him. (Findings of Fact #89).

The objective evidence compels the conclusion that Dr. Joyner who had no experience as an athletic director is not a credible witness and that his reasons for not renewing Mr. McQueary's contract are pretextual. The objective evidence is that Fran Ganter who had more

than thirty (30) years coaching experience and who served as associate athletic director for nine (9) years (*See* Findings of Fact #15) gave Mr. McQueary the highest possible performance rating on May 24, 2011. *See* Exhibit P-28. There were open positions in the athletic department (*See* Exhibit P-56) which Mr. McQueary was qualified to perform. Dr. Joyner simply chose to ignore the facts to arrive at his desired outcome. Thus, his reasons for not renewing Mr. McQueary's contract were not based on separate and legitimate reasons, but were pretextual.

I find Coach O'Brien credible when he said he would not have hired Mr. McQueary even if he had interviewed him as he already had a person for Mr. McQueary's position, Mr. Stan Hixson.

However, Coach O'Brien's decision has to be viewed in the context of how he came to be in the position of selecting coaches for Penn State in the first instance.

On November 3, 2011, Penn State's football team had a record of eight (8) wins and one (1) loss. No one from equipment manager, Penn State witness Caldwell, (*See* Findings of Fact #241) through Dr. Erickson, (*See* Findings of Fact #195) believed Coach Paterno had any plans to step down or that the University had any thought of replacing him. In fact, Penn State's expert on coaching changes, Peter Roussel testified that:

> . . . [T]here is a reason there was a coaching change. **Usually it's because the team has not been winning and so it's time to get new blood. . .**

Excerpt from Findings of Fact #250 (emphasis added).

On November 4, there was no need for "new blood." However, on November 5, "blood" was needed and people had to go to satisfy the public outcry. Ms. Powers best expressed that sentiment when she said,

> I was going to say I don't think that the removal of those two (Paterno and Spanier) were enough.

Excerpt from Findings of Fact #36.

I agree with both experts, Mr. Roussel and Mr. Parry, that when a firing occurs mid-season an interim coach is installed. Penn State did that with Coach Bradley who had been at Penn State for thirty-three (33) years. Penn State chose not to retain its loyal coach of thirty-three (33) years as head coach and instead brought in an outsider who happened to have a full complement of coaches in mind. Consistent with what both experts testified, the associate coaches were let go with the exception of those Dr. Erickson wanted retained, another example of the disparate treatment accorded to Mr. McQueary.

But for the Grand Jury Presentment, no Penn State coach would have lost their job and Coach O'Brien would not have been hired. Accordingly, Coach O'Brien's decision not to interview or hire Mr. McQueary does not constitute a separate and legitimate reason for the termination of Mr. McQueary.

THE NEXUS BETWEEN THE REPORTING AND RETALIATION

When Mr. McQueary initially reported what he saw to Messrs. Paterno, Curley, and Schultz, he suffered no disparate treatment or adverse employment consequences. When the Board of Trustees were informed of the Grand Jury investigation in May, 2011, by General Counsel Baldwin, no adverse employment actions were taken against Mr. McQueary even though Penn State could have elected not to renew his contract on July 1, 2011. Neither was he subjected to any disparate treatment.

Only when the "Sandusky Matter" became public was Mr. McQueary subjected to disparate treatment and adverse employment consequences.

The Whistleblower law requires the claimant to come forward with "some evidence" of a connection between the report and retaliation. Golaschevsky v. Department of Environmental Protection, 720 A.2d 757, 759 (1988). Here, the evidence of the connection is overwhelming.

The O'Rourke court concluded that,

> [T]o successfully rebut a prima facie case of reprisal – the employer must prove that it would have taken the same adverse employment action absent the employee's good faith report of wrongdoing.

O'Rourke, 778 A.2d at 1204. The objective evidence is that Mr. McQueary would not have been removed from his coaching position but for his involvement in the "Sandusky Matter" *once it became public knowledge*. Thus, Penn State failed to meet its burden of proof.

Based on the foregoing Findings of Fact and Discussion, I make the following:

CONCLUSIONS OF LAW

1. Penn State is a public body subject to the Whistleblower Law.
2. Mr. McQueary was an employee of Penn State performing services for wages.
3. Mr. McQueary, in the course of his employment, observed wrongdoing in a facility owned by Penn State.
4. Mr. McQueary reported what he had seen in good faith to his immediate supervisor.
5. Mr. McQueary reported what he had seen in good faith to Messrs. Curley and Schultz.
6. Mr. McQueary testified before the investigating Grand Jury at the request of the OAG.
7. As of November 4, 2011, Penn State had no cause grounds to terminate him.
8. Penn State engaged in retaliatory conduct against Mr. McQueary subsequent to the release of the Presentment on November 5, 2011.

9. Penn State treated Mr. McQueary disparately in relation to its treatment of Mr. Curley and all other Penn State employees.[9]

10. Penn State *de facto* terminated Mr. McQueary on November 13, 2011, when it precluded him from accessing his office and personal effects and by informing him that he was to do no work for Penn State and/or when it had him remove his personal effects etc., from his office in December, 2011 under the supervision of Penn State personnel.

11. Dr. Joyner's assertion that he did not renew his contract for lack of available work is not credible.

12. Mr. McQueary met his burden of proof under the Whistleblower Law.

13. Penn State's stated reasons for not renewing his contract are not separate and legitimate reasons within the meaning of the Whistleblower Law.

14. Penn State's stated reasons for not renewing his contract are pretextual.

15. Penn State did not meet its burden of proof.

16. Mr. McQueary was terminated in retaliation for his having reported what he saw and for cooperating with the OAG.

17. Mr. McQueary is entitled to the damages permitted pursuant to the Whistleblower law.

Based on the foregoing, I now address the issue of damages.

DAMAGES

Section 5 of the Whistleblower Law provides that:

> [a] court...shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, *actual damages* or any combination of these remedies. A court shall also award the complainant all or a portion of the costs of litigation,

[9] If Mr. McQueary was in fact an employee and not *de facto* fired as of November 13, 2011, he should have received the pay increase all Penn State employees received on January 1, 2012. *See* Findings of Fact #63.

> including reasonable attorney fees and witness fees, if the complainant prevails in the civil action.

43 P.S. §1425 (emphasis added)

First, I will address Mr. McQueary's economic damages.

THE ECONOMIC EXPERTS

Plaintiff called James Stavros as his economic expert. Exhibit P-81 sets forth his calculations of economic loss.

Penn State called Samuel Kursh as its economic expert. Exhibit D-111 sets forth his calculations of economic loss.

I find both experts to be equally qualified. However, I find Mr. Kursh's analysis to be flawed and not supported by the objective evidence.

THE KURSH APPROACH

Mr. Kursh looks at what he refers to as a person's career path. Findings of Fact #258. He determined that since Mr. McQueary did not have a network outside of Penn State, his coaching career was essentially over when he lost his Penn State position. *See* Findings of Fact #265. He also determined that an "average head football coach" holds his position for 6.4 years and that therefore an associate coach would have a similar tenure. *See* Findings of Fact #259. He believes that any calculation based on more than 6.4 years would be speculative. *See* Findings of Fact #261.

Penn State called Mr. Roussel as its expert on coaching changes. He held coaching positions at four (4) different schools (*See* Findings of Fact #246) before deciding to get out of coaching for personal reasons. Penn State witness Coach O'Brien has been a coach for twenty-five (25) years (*See* Findings of Fact #269) and has coached for five (5) colleges and two (2) professional teams. *See* Findings of Fact #270. Coach Wilson has been coaching since 1992 (*See*

Findings of Fact #123) and has coached at fifteen (15) different schools (*See* Findings of Fact #127). Penn State witness, Matt Rhule has coached at five (5) different schools. *See* Findings of Fact #276. None of these men had a cloud hanging over their head as did Mr. McQueary. Coach Bradley who had been at Penn State for thirty-three (33) years (*See* Findings of Fact #129) found employment with UCLA after his contract was not renewed. Of course, he was not directly linked to the "Sandusky Matter" and does not have the cloud over him that Mr. McQueary has. I conclude based on the foregoing that Mr. McQueary's career in football is over not because of his lack of a network but because of the cloud over his involvement in the "Sandusky Matter." A cloud created and reinforced by Penn State's public actions taken against him which made him *persona non grata* in the football world. *See* Findings of Fact #211. But for his involvement in the "Sandusky Matter" his career would easily have been coextensive with that of Coaches Bradley, O'Brien and Wilson. Thus, the fundamental premise of Mr. Kursh's analysis is flawed and his calculations based on 6.4 years is rejected as contrary to the objective evidence.

THE STAVROS APPROACH

Mr. Stavros assumed that Mr. McQueary would have continued to coach and calculated his work life expectancy to be to age 62.76. *See* Findings of Fact #218. He used that age even though Mr. McQueary expressed the intent to work to age sixty-seven (67) to seventy (70).

The objective evidence suggests that but for his involvement in the "Sandusky Matter" Mr. McQueary would have coached to at least age sixty-two (62). Pre-Presentment he had successfully transitioned from graduate assistant to assistant coach at a perennial top twenty-five (25) football school. He consistently received high performance ratings, coached individuals who had gone onto professional careers and was recruiting coordinator for Penn State. There

was every reason to believe that he would have gone on to be an offensive coordinator or head coach. *See* Findings of Fact #208.

Accordingly, Mr. Stavros calculations through age sixty-two (62), plus are supported by the record and are not speculative.

Mr. Stavros calculated eight (8) different scenarios of wage loss. In my view, scenario #6 is the appropriate calculation as it is based on the salary of wide receiver coaches. While I believe the objective evidence supports the conclusion that Mr. McQueary would have become an offensive coordinator or head coach at a Division 1 football program, he would most certainly have continued as a wide receiver coach at any of the schools Mr. Stavros used in his analysis.

Mr. Stavros also calculated the tax penalties Mr. McQueary incurred when he cashed in his retirement plan when he did not timely receive the severance benefits called for in Exhibit P-20. Given his family responsibilities and the delayed response by Penn State as to whether it would make the payments, his decision was appropriate. The loss he incurred is directly attributable to Penn State and is compensable to him.

Accordingly, I award the sum of three million, nine hundred seventy-four thousand, forty-eight dollars ($3,974,048.00) as and for past and future lost wages, and for the tax penalty incurred.

I also find that but for his improper termination, he would have received his share of the Ticket City Bowl bonus. Defendant shall, within fifteen (15) days of the filing of this Opinion, certify the average bonus paid to the assistant football coaches for the Ticket City Bowl, which sum I award to him, plus interest, from January 31, 2012.

NON-ECONOMIC DAMAGES

I find persuasive the reasoning of The Honorable Rochelle S. Friedman in Bailets v. Pennsylvania Turnpike Commission, No. 265 MD 2009 (Pa. Cmwlth. Oct. 6. 2016) that non-economic damages are recoverable in a Whistleblower case. While the legislature did not define the term actual damages, our Supreme Court has. In Joseph v. Scranton Times, L.P., 129 A.3d 404, 429 (Pa. 2005), the Supreme Court made clear that "actual damages" include non-economic injuries such as "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." Such an award furthers the goal that a whistleblower, "be put in no worse a position for having exposed the wrongdoing." O'Rourke, 778 A.2d at 1202.

Penn State addressed in its brief the issue of a potential double recovery as, "a jury has already awarded these damages [on the defamation and misrepresentation claims]."

On the defamation count, the jury was permitted to award damages for:

FIRST, the actual harm to the plaintiff's reputation that you find resulted from the defendant's conduct;

SECOND, the emotional distress, mental anguish, and humiliation that you find the plaintiff suffered as a result of the defendant's conduct;

THIRD, any other special injuries that you find the plaintiff suffered as a result of the defendant's act.

As Penn State did not ask that the damages award be broken out by category, I have no way of knowing what category of damages the jury's award addressed. They may have intended their award to cover all compensable items or just one. It is too late to inquire of the jury as to what category they allocated damages to. As Penn State could have avoided this issue by use of

a simple jury interrogatory, their argument against a potential double recovery is deemed to be waived.

As to the misrepresentation count, my analysis is the same as in the defamation count delineated above.

REPUTATION

"A good reputation is more valuable than money."

Maxim 108
Publius Syrus

Prior to November 5, 2011, Mr. McQueary was well respected in the community and had a good reputation. I infer this from the lack of any evidence to the contrary and in light of the prominent position he held as one of only nine assistant coaches on the Penn State football team.

Once the presentment was officially released, many persons faulted Mr. McQueary for failing to notify the police. When Mr. McQueary contacted the OAG for support in the form of a positive statement on his behalf it was not forthcoming. In fact, it was suggested that he not respond to the things being said about him (*See* Findings of Fact #12), advice he followed. However, at all times material, Penn State KNEW that he had acted in accordance with its then policy by reporting what he saw to Coach Paterno. Penn State was under no OAG instruction not to respond to the misinformation about what Mr. McQueary did regarding reporting. A reasonable inference arising from Penn State's failure to correct the misinformation is that if it did so, it would have had to explain why it had not referred the information to its or any other police agency.

A person whose job was to recruit and interact with young men on a very personal basis could hardly be expected to be able to do so when the public perception was that he saw inappropriate conduct and failed to report it to the proper authorities. Having been silenced by

the OAG and Penn State having decided not to set the record straight, Mr. McQueary's reputation clearly has suffered. As I note below, Penn State to this date has failed to acknowledge Mr. McQueary's compliance with its then reporting requirements. Such an acknowledgement would have gone a long way in limiting the harm to his reputation.

Accordingly, an award of damages for loss of reputation is appropriate.

HUMILIATION

The following objective evidence supports Mr. McQueary's claim of humiliation:

1. Dr. Spanier's and Mr. Garban's unconditional support for Messrs. Curley and Schultz as announced on Penn State Live on November 5, 2011 with no mention of support for the graduate assistant who followed the established Penn State procedure in reporting what he saw.
2. Dr. Spanier's convening of all head coaches and athletic staff on November 7, 2011 to announce his support for Mr. Curley and advising them that they should feel free to reach out to him and give him personal support. *See* Findings of Fact #115. No mention of similar support for Mr. McQueary was made. *See also* my comments at P. 47, which are incorporated herein by reference thereto.
3. Dr. Erickson's unilateral decision that Mr. McQueary would not coach in the Nebraska game, a decision publicly announced after Coach Bradley had announced he would coach.
4. The meeting of November 13, 2011 where General Counsel's script, Exhibit P-47, was read to Mr. McQueary under circumstances that made clear nothing he might say would change the "script's" preordained outcome.
5. Being denied the right to go to his office for his personal effects.

6. Being banned from the athletic facilities that had been his home since 1993 when he began his football career at Penn State effectively cutting him off from his expected support network and friends of almost twenty (20) years. This was the equivalent of banishment.
7. Being told to clean out his office in the presence of Penn State personnel, an action that suggests he had done something wrong and was not to be trusted.
8. Being the only assistant coach not placed on the list of persons to be considered by incoming head Coach O'Brien. This act reinforced the message that he was not to be supported.
9. Not being invited to Mr. Caldwell's retirement party when all other "lettermen" were invited.
10. Being rejected for a position at Elizabeth City State University, a non-Division 1 football program and being told the reason was the notoriety attached to him.
11. Being unable to secure a position as a cashier in a Rite-Aid Store in his local community.
12. Being subject to news articles, e-mails, etc. which likened him to Jerry Sandusky and Jerry Sandusky's actions.

The fact that five (5) years post-Presentment, Mr. McQueary could not be employed as a cashier in a local drug store shows, to this writer, the extent to which he has been ostracized in the Penn State community. Certainly this has to be humiliating to one who was the quarterback of the Penn State football team and a respected coach. I could go on to list many more examples but am satisfied that these are sufficient to support an award of damages for humiliation.

On the issue of humiliation, I have also considered that Penn State has never publicly acknowledged that Mr. McQueary acted in accordance with University policy. Such recognition

would have gone a long way toward reducing the opprobrium visited upon him (*See* Findings of Fact #125) and the resulting humiliation he suffered.

Assuming that the jury award of compensatory damages on both the defamation and misrepresentation counts were intended solely to compensate Mr. McQueary for the harm to his reputation and humiliation, I regard those sums as insufficient and not binding on me. Accordingly, I award one million dollars ($1,000,000.00) for his non-economic damages.

COUNSEL FEES

Plaintiff shall submit to defendant a detailed statement of the counsel fees, witness fees and costs of litigation it incurred and for which it seeks reimbursement. The statement is to be filed not later than fifteen (15) business days after this Opinion is filed. If Penn State asserts a fee, etc., is unreasonable, it shall identify the item and state why the charge is inappropriate. Penn State shall file any such objections within thirty (30) business days of this opinion.

Due to the fact that all counts in the complaint were interrelated, plaintiff shall not be required to allocate expenses by count. All reasonable expenses are deemed to be reimbursable.

If objections are filed, a hearing will be scheduled.

The request to file the fee bill under seal is **DENIED**.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

MICHAEL J. McQUEARY, Plaintiff vs. THE PENNSYLVANIA STATE UNIVERSITY, Defendant	:	No. 2012-1804 Type of Case: Whistleblower

Elliott A. Strokoff, Esq. and William T. Fleming, Esq., Attorneys for Plaintiff
Nancy Conrad, Esquire, Attorney for Defendant

ORDER

AND NOW, this 30 day of November, 2016, after trial of the above matter, I find in favor of Plaintiff and against Defendant and award Plaintiff the following damages:

1. Past and future economic loss $3,974,048.00
2. Past and future non-economic loss $1,000,000.00
3. Defendant shall, within 15 days of the filing of this Order, certify the average bonus paid to the assistant football coaches for the Ticket City Bowl, which sum I award Plaintiff plus interest from January 31, 2012.
4. Reasonable counsel fees, costs of litigation and witness fees to be determined in accordance with Section 5 of the Whistleblower Law.

The effective date of this Order for purposes of filing any post-trial motions, SHALL BE the date the award of counsel fees, etc. is filed of record.

BY THE COURT:

Thomas G. Gavin S.J.

EXHIBIT D

2/25/01

(3). Tell Chair* of Board of Second Mile.

(2). Report to Dept of Welfare.

(1). Tell G.S to avoid bringing children into Lasch Bldg.

*who is the chair??

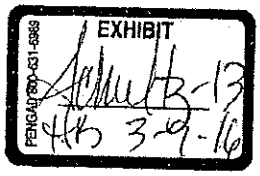


EXHIBIT "D"

EXHIBIT E

To: Tim Curley <tmc3@psu.edu>
From: Joan Coble <jlc9@psu.edu>
Subject: Re: Fwd: Confidential
Cc:
Bcc:
Attached:

Thx. Tim. Joan

At 10:48 AM 3/7/01 -0500, you wrote:

I just gave him the update.

At 08:54 AM 3/7/01 -0500, Joan Coble wrote:
Tim - Have you updated Gary lately? Before he left for FL, he asked me to ck. w/you re this.

Pls. know that he is doing e-mail, but will not be reading until Sun., 3/11. He is spending a few days with Dave Schuckers and you may either phone him on his cellphone at 777-7393 or @ Schuckers at 941/388-3034. Pls. know that the Schuckers live in a Condominium & you may have to go through some referrals to get to speak w/them, so be patient if you go that route.

Thx. Joan

X-Sender: gcs2@imap.cac.psu.edu
X-Mailer: QUALCOMM Windows Eudora Version 4.3.2
Date: Mon, 26 Feb 2001 08:57:16 -0500
X-PH: V4.1@f04n01
To: TMC3@psu.edu
From: "Gary C. Schultz" <gcs2@psu.edu>
Subject: Confidential
Cc: jlc9@psu.edu

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.
Gary C. Schultz
Senior Vice President for
Finance & Business/Treasurer
Penn State University
208 Old Main
University Park, PA 16802
814/865-6574
814/863-8685 (fax)

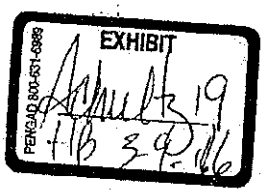


EXHIBIT "E"

http://www.psu.edu/dept/fab

Joan L. Coble
Administrative Assistant
Office of the Senior Vice President for
Finance & Business/Treasurer
208 Old Main
University Park, PA 16802
814/865-6574 (phone)
814/863-8685 (fax)
http://www.psu.edu/dept/fab

EXHIBIT F

Statement from President Spanier

Statement from President Spanier

Saturday, November 5, 2011

The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance.

With regard to the other presentments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee.

Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.

Graham Spanier

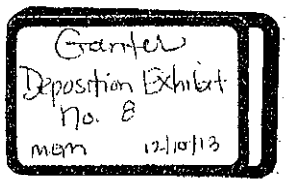


EXHIBIT "F"

EXHIBIT G

From:	Gary C. Schultz <gcs2@psu.edu>
Sent:	Wednesday, February 28, 2001 2:13 PM
To:	Graham Spanier; Tim Curley
Subject:	Re: Meeting

<html>
Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization.

 At 10:18 PM 2/27/01 -0500, Graham Spanier wrote:
 <blockquote type=cite cite>Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.

 At 08:10 PM 2/27/01 -0500, Tim Curley wrote:
 <blockquote type=cite cite>I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday– I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and and maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities.

 I need some help on this one. What do you think about this approach?</blockquote>
 ————————————————
Graham B. Spanier
President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

 Phone: 814-865-7611
 email: gspanier@psu.edu
 </blockquote></html>

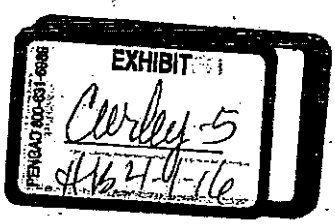


EXHIBIT "G"

EXHIBIT H

JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

CHILD PROTECTION IN PENNSYLVANIA:
PROPOSED RECOMMENDATIONS

REPORT OF THE TASK FORCE ON CHILD PROTECTION

November 2012

JOINT STATE GOVERNMENT COMMISSION
Serving the Pennsylvania General Assembly Since 1937

EXHIBIT "H"

This report may be downloaded from either of the following websites:

jsg.legis.state.pa.us/
childprotection.state.pa.us/

Because this report is quite lengthy, limited printing will be done. A short summary will be provided upon request and may also be found on the foregoing websites.

The Joint State Government Commission was created by the act of July 1, 1937 (P.L.2460, No.459), as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

Joint State Government Commission
Room 108 Finance Building
Harrisburg, PA 17120-0018

Telephone: 717-787-4397
Fax: 717-787-7020

E-mail: jntst02@legis.state.pa.us

Website: http://jsg.legis.state.pa.us

Project Staff: Yvonne Llewellyn Hursh, Assistant Counsel
Yelena Khanzhina, Public Policy Analyst
Stephen F. Rehrer, Counsel
Wendy L. Baker, Executive Assistant

JOINT STATE GOVERNMENT COMMISSION

OFFICERS

Representative Florindo J. Fabrizio, Chair
Senator John C. Rafferty, Jr., Vice Chair

EXECUTIVE COMMITTEE

Senate Members

Joseph B. Scarnati, III
President Pro Tempore

Dominic F. Pileggi
Majority Leader

Jay Costa
Minority Leader

Patrick M. Browne
Majority Whip

Anthony H. Williams
Minority Whip

Michael L. Waugh
Chair, Majority Caucus

Richard A. Kasunic
Chair, Minority Caucus

House Members

Samuel H. Smith
Speaker

Michael C. Turzai
Majority Leader

Frank J. Dermody
Minority Leader

Stan Saylor
Majority Whip

Michael K. Hanna
Minority Whip

Sandra J. Major
Chair, Majority Caucus

Dan B. Frankel
Chair, Minority Caucus

Member Ex-Officio

Representative Florindo J. Fabrizio, Commission Chair

Glenn J. Pasewicz, Executive Director

Stephen F. Rehrer, Counsel

TASK FORCE ON CHILD PROTECTION

The Honorable David W. Heckler
District Attorney, Bucks County
(Chairman)

Dr. Rachel P. Berger, MD, MPH
Child Protection Team, Child Advocacy Center,
Children's Hospital of Pittsburgh
University of Pittsburgh Medical Center

Jackie Atherton Bernard, Esq.
Chief Deputy District Attorney, Blair County

Dr. Cindy W. Christian, MD
Director, Safe Place: The Center for Child Protection and Health,
Children's Hospital of Philadelphia;
Medical Director, Department of Human Services, Philadelphia

The Honorable Arthur E. Grim
Senior Judge, Court of Common Pleas, Berks County

Carol Hobbs-Picciotto, MHS
Intake Social Worker, Philadelphia

Garrison Ipock, Jr.
Executive Director, The Glen Mills Schools

Jason P. Kutulakis, Esq.
Senior Partner, Abom & Kutulakis, LLP

Delilah Rumburg
Executive Director, Pennsylvania Coalition Against Rape
National Sexual Violence Resource Center

William Strickland
President and CEO, Manchester Bidwell Corporation

The Honorable Gary D. Alexander, ***Ex Officio***
Secretary, Pennsylvania Department of Public Welfare
Designee: The Honorable Beverly D. Mackereth
Deputy Secretary, Office of Children, Youth and Families,
Pennsylvania Department of Public Welfare

COMMENTS OF THE TASK FORCE CHAIRMAN

"First and most important, measure all of your decisions and suggestions for legislative reform against the questions of whether a change or changes will improve the protection offered to vulnerable and dependent children."

-- *Richard J. Gelles, Ph.D., Dean,*
School of Social Policy & Practice of the University of Pennsylvania

I am privileged to take this opportunity to offer some general thoughts on behalf of myself and the extraordinarily able colleagues who served as members of this task force. First, as you can tell from the quotations set forth in our report, the quality of the scores of persons who addressed our panel during the course of the 11 hearings which we held was such that, had we made no recommendations or proposed no draft legislation whatsoever, we would still have performed a great service for this Commonwealth and its children by gathering the collective wisdom, frustrations and advice of the able and dedicated witnesses who appeared at our hearings. We would earnestly urge that those who wish to take up our recommendations or who wish to evaluate their validity, take time to review the collective testimony of these experts. All of it is available either in written form or as live recordings. Taken together, this body of testimony is both inspiring and highly informative. No one who listens to and considers it can doubt that dramatic change is required in the way our governmental institutions work to protect children in Pennsylvania.

Early in our proceedings we heard the words inscribed above from Dr. Richard Gelles, Dean of the School of Social Policy & Practice of the University of Pennsylvania. We have done our best to make them the standard for the way in which we performed our duties. This report contains many, many recommendations – some broad and sweeping, others narrow and specific. While the process and its participants, chief among them the chair, may have regularly fallen short of the challenge, we have striven in our deliberations to recommend courses of action and legislative changes which will improve the protection of children in this Commonwealth, first and above all else.

I have quoted Dean Gelles' words not only because they clearly state our duty to put children first but also because they contain several cautionary notes. The first is that all mandates in the form of administrative regulation or legislative enactment are meaningless if they cannot be carried into effect. Our duties are now at an end. It was our responsibility to make one set of recommendations now and to make them as far reaching as possible, even though we recognize that the resources will not exist to accomplish them all immediately. In response to that mandate, we have tried to be as

exhaustive in our scope for the benefit of children as possible. However, as will be discussed hereinafter, reality must dictate that the changes we propose will take time to implement.

A second cautionary note implied by Dean Gelles' words is the fact that even if you get exactly what you say you want in terms of legislative enactment and adoption of administrative policies, the rule of unintended consequences is always in effect -- it is impossible to envision exactly how the best laid plans, no matter how sincerely conceived, will translate when confronted with reality. Accordingly, we have endeavored in our recommendations to give future life to this discourse which our creation by the Legislature has begun. We do so by the recommendation for the creation of three inter-related successor panels which can carry on this discussion and assure that it does not occur in a vacuum. Rather, we intend that those who know what they are talking about in terms of child protection will have reasonable access to policy makers in all three branches of government so that reform of child protection can be an ongoing process. In this regard, we recognize that the Sandusky and Philadelphia Archdiocese scandals have made child abuse prevention a hot topic for now. History tells us that once there has been a legislative response, there will be a tendency for the subject to then move to the back burner where it may languish for years. Children will be far better served if there is a continued attention and gradual evolution of our policies, and we hope that our proposals will make that more likely.

A third cautionary note implicit in Dean Gelles' charge to this task force is that even if you succeed in driving policy and statutes in the direction that you believe proper, any directive from above is only as good as the people – child protective service workers and administrators, police, prosecutors and judges, parents and foster parents – who will actually do the work. Any of these individuals can lack talent or proper training. All can be feckless in carrying out their duties and in our context, when that happens children suffer no matter what policy is announced in Harrisburg and no matter what statute is enacted.

Our Founding Fathers created a government based not upon a belief in man's goodness but rather upon an assumption that people in government will seek power and advantage and otherwise act badly. Thus, as they framed our government they put in place checks and balances aimed at restraining such bad conduct and we have prospered as a consequence. With that in mind, a number of our recommendations attempt to compensate for human frailty, balance responsibilities and build in means for holding the various players in this process accountable for the way in which they do their work. We also have sought the creation of mechanisms which will improve the quality of the system's personnel and require ever better continuing education of new trainees and veterans alike.

For many, particularly in the press, our work will be seen as a response to the Sandusky and Philadelphia Archdiocese cases. Long before I knew I would be involved with this process, I perceived that the choice by the General Assembly to assemble a task force to consider these questions was a wise approach aimed at avoiding knee-jerk

legislation driven by a desire to be "responsive" to these outrageous situations. Fortunately, our charge from the Legislature was far broader than merely addressing the conduct of a few wretched pedophiles and the failures of our institutions to protect children from them. However, to the extent that the Sandusky and Archdiocese cases tragically highlight many all too common elements seen in child sex abuse cases generally, it is appropriate to note the ways in which the implementation of our recommendations could be expected to prevent similar tragedies in the future. Some of those specific responses are:

(1) Elimination of separate standards for those who are educators or coaches, whether employed or volunteer, making all such persons mandated reporters with the legal responsibility to report directly to ChildLine or law enforcement whenever they are aware that a child is being abused, rather than up the line to administrators who may be motivated to hush things up. We also make clear that persons in Sandusky's position are recognized as "perpetrators" of child abuse under the Child Protective Services Law.

(2) This writer firmly believes that if there had been a multidisciplinary investigative team in place in Centre County at the time questions about Sandusky's behavior were first raised and that if a Child Advocacy Center (which is the logical outgrowth of such a team) had existed in Centre County at that time, Sandusky's crimes would have been brought to light at the beginning of this millennium, sparing his additional victims ten or twelve years of misery. We discuss hereinafter in greater detail our reasons for believing that a Child Advocacy Center should be reasonably accessible to every child in this Commonwealth. In the context of Sandusky, the strongest argument for the use of a multidisciplinary approach to these investigations is simply that it creates inescapable accountability for all players in the child protective system, requiring them to perform their duties in a timely and thorough way.

(3) Another set of proposals which would have impacted on the Sandusky situation is the requirement that all reports of suspected child abuse, whether founded by initial investigation or not, be retained by the Department of Public Welfare in a securely kept file available only to law enforcement and child protective services for intelligence purposes. Various aspects of this tragedy and the governmental response to it will continue to unfold in the future. However, it is not clear that at any time until the Attorney General's investigation in the Sandusky case there was any attempt to identify all the multiple victims and build cases which internally corroborated each other.

(4) We make clear that colleges and universities and their employees are just as responsible as secondary schools for reporting child abuse and that failure by their staff to do so is a crime.

As noted above, we are concerned that the perfect should not be allowed to be the enemy of the good. It must be recognized that in these times of government austerity, not all of our recommendations, assuming that the Legislature were to see fit to enact them all, may be able to be implemented at once. For instance, technological communication improvements as described in our legislative proposals will be central to what we believe will be more effective reporting of child abuse and quicker sharing of these reports once received either by ChildLine, Child Protective Services in the county or law enforcement. However, this kind of change will require expenditure of millions of dollars in information technology changes, both at ChildLine and in many of our counties. While we understand that the Department of Public Welfare is already working on technological enhancements for ChildLine, all of this will not be accomplished overnight.

Similarly, with the stroke of a pen we propose requiring background checks for many, including volunteers working with children, who are not presently required to receive such clearances. It is easy to overlook the fact that such an increase in demand will require dramatic increases in the capacity of the Pennsylvania State Police and the Department of Public Welfare to respond to requests for these record checks in a timely way. Assuming that the Legislature sees fit to adopt our recommendations, it is obviously important that state government be diligent in moving forward to protect children. However, we urge that those who monitor implementation of what we recommend recognize that what we call for is a process of improvement rather than a single flash in the pan, followed by a lapse in public attention.

A very important part of the process of improvement will be upgraded professional standards for those who work in child protection and ongoing improvement in training of all involved in the child protection system as well as the criminal justice system as it deals with child victims. For this reason we have recommended creation of an Academy made up of selected academicians with experience in the many fields relevant to child protection. One of their duties would be to approve the curricula used in the education of mandated reporters as well as the professional participants in the child protection system. In addition, it is hoped that such Academy members will conduct research going forward, so that better means for preventing child abuse and for dealing with it when it occurs can be discovered and demonstrated to be "evidence based." We further hope that these practitioners will have effective access to state government by way of the Advisory Council which we also propose, so that the system can improve gradually without the need for incidents which focus public outrage.

As a privilege of the chair, I wish to close with a personal note. The opportunity to serve with the outstanding and dedicated men and women who made up this task force and the superbly capable professionals who staffed our endeavors was inspiring. Our deliberations absorbed more time than most of us expected. It is impossible for me to adequately praise the commitment and diligence of the hard core of task force members

who participated in those deliberations, mostly in person but also by remote communication. Each of you will have the satisfaction of knowing how extensively you contributed your time to this effort, just as you have committed yourselves each day to making the lives of the most vulnerable of Pennsylvania's citizens better and safer through your work.

While our professional staff are state employees and thus in a sense compensated, all of them were volunteers. Supporting our efforts was simply a task added to the other duties required of them by the various agencies for whom they perform their "day jobs." I wish to express particular thanks to Mary Taylor, General Counsel for the Pennsylvania Commission on Crime and Delinquency, Jim Anderson, Executive Director of the Juvenile Court Judges Commission, and Trooper First Class Patrick Zirpoli for their intelligence, wisdom born of experience, and commitment to the task which were invaluable to this effort.

I also wish to thank Cathy Utz, Bureau Director in the Office of Children, Youth and Families of DPW; Heather Hallman, Chief of Staff of the Office of Children, Youth and Families of DPW; Vicki Wilken, Chief Counsel to Senator Kim L. Ward, Chair of the Senate Aging and Youth Committee; John Scarpato, Executive Director of the House of Representatives Children and Youth Committee; Yvonne Llewellyn Hursh, Assistant Counsel to the Pennsylvania Joint State Government Commission; and Stephen Rehrer, Counsel to the Pennsylvania Joint State Government Commission; and, as ever, my indispensable secretary, Beverly Spotts, for their patience, their skill and professionalism, and unfailing good humor without which we could not have accomplished our task.

David W. Heckler, Chairman
Task Force on Child Protection

BLANK

PAGE

ACKNOWLEDGMENTS

The Task Force on Child Protection would like to thank all the individuals who testified during the public hearing, as well as the following individuals and organizations that facilitated the deliberation process and made possible the publication of this report:

James E. Anderson, Executive Director, Pennsylvania Juvenile Court Judges' Commission

Gladys M. Brown, Deputy Chief Counsel, Democratic Caucus, Pennsylvania Senate

Kimberly Early, Legislative Specialist, Office of Legislative Affairs, Pennsylvania Department of Public Welfare

Heather Hallman, Chief of Staff, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare

Christa C. Kraber, Assistant Director, Democratic Legislative Policy and Research Office, Pennsylvania House of Representatives

Todd Lloyd, Child Welfare Director, Pennsylvania Partnerships for Children

Angela Logan, Director, Office of Policy Development, Pennsylvania Department of Public Welfare

Joyce Lukima, Deputy Director of Field Services, Pennsylvania Coalition Against Rape

The Honorable Beverly D. Mackereth, Deputy Secretary, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare

Jill McLure, Executive Assistant, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare

Jonathan McVey, Executive Policy Specialist, Office of Policy Development, Pennsylvania Department of Public Welfare

(continued)

Michele Messinger, Administrative Officer, Pennsylvania Department of Public Welfare

Lt. Gregg Mrochko, Bureau of Criminal Investigation, Pennsylvania State Police

Cpl. John O'Neill, Supervisor, Computer Crime Unit, Bureau of Criminal Investigation, Pennsylvania State Police

Cathleen Palm, Executive Director, Protect Our Children Committee

Roseann Perry, Director, Bureau of Children and Family Services, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare

Lisa R. Roscoe, Executive Secretary, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare

John E. Scarpato, Executive Director, Children and Youth Committee (Republican), Pennsylvania House of Representatives

Mary R. Taylor, Chief Counsel, Pennsylvania Commission on Crime and Delinquency

Cathy A. Utz, Director, Bureau of Policy, Programs and Operations, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare

Vicki J. Wilken, Chief Counsel to the Honorable Kim L. Ward (Pennsylvania Senator, 39th Senatorial District)

Trooper First Class Patrick Zirpoli, Pennsylvania State Police

The Staff of the Joint State Government Commission
Glenn J. Pasewicz, Executive Director
Stephen F. Rehrer, Counsel
Yvonne Llewellyn Hursh, Assistant Counsel
Yelena Khanzhina, Public Policy Analyst
Wendy L. Baker, Executive Assistant

The Task Force would also like to thank the following individuals and institutions for hosting several of its public hearings around the Commonwealth:

University of Pennsylvania Law School and **Michael A. Fitts**, Dean

The Field Center for Children's Policy, Practice and Research, Philadelphia

Children's Hospital of Pittsburgh, University of Pittsburgh Medical Center and **Dr. David H. Perlmutter**, Chairman of the Department of Pediatrics, University of Pittsburgh

The Pennsylvania Child Welfare Resource Center of the University of Pittsburgh School of Social Work

Finally, the Task Force would like to thank the following legislators for their attendance at the public hearings:

The Honorable Kim L. Ward
(Pennsylvania Senator, 39th Senatorial District)

The Honorable Wayne D. Fontana
(Pennsylvania Senator, 42nd Senatorial District)

BLANK

PAGE

CONTENTS

EXECUTIVE SUMMARY

In December 2011, the General Assembly established a Task Force on Child Protection to conduct a comprehensive review of the laws and procedures relating to the reporting of child abuse and the protection of the health and safety of children. The Task Force represented a broad cross-section of the Commonwealth, in terms of profession, experience, expertise, philosophy and geography. The Department of Public Welfare, the Joint State Government Commission and the Juvenile Court Judges' Commission provided administrative and technical assistance to the Task Force.

The Task Force conducted 17 public hearings and working sessions throughout the Commonwealth. More than 60 individuals presented testimony during the public hearings, on such topics as procedures regarding county children and youth social service agencies and the Department of Public Welfare, the definition of child abuse and child neglect, differential response, multidisciplinary teams, multidisciplinary investigative teams, law enforcement investigations and prosecutions, children's advocacy centers, mandated reporters of suspected child abuse, abuse in schools and of school-age children, the training of physicians and school personnel, the provisions of the Child Protective Services Law, child dependency and court procedures, ChildLine (the Statewide Child Abuse Hotline), county agency intake procedures, county agency assessments and investigations, data collection and confidentiality, administrative subpoenas, and Department of Public Welfare technology. In addition, numerous other individuals and organizations provided written testimony to the Task Force.

At the direction of the Task Force, the Joint State Government Commission conducted extensive research regarding how other states address the following topics in their statutory and regulatory law: the definition of child abuse and child neglect, perpetrators, voluntary and mandated reporters of suspected child abuse, procedures and standards for reporting child abuse, differential response, the investigation and disposition of reports of suspected child abuse, temporary or emergency custody without a court order, expungement of records, dependency proceedings, and confidentiality and the release of information. The Task Force also reviewed information regarding prevention efforts, partnerships with the courts, the Permanency Practice Initiative, child welfare, budgetary impacts, professional licensure, training, and the hiring and retention of caseworkers.

After considerable review and deliberation, the Task Force proposes a number of policy and statutory recommendations. For example, with respect to general recommendations, the Task Force recognizes the importance of children's advocacy centers (CACs) and multidisciplinary investigative teams (MDITs) and favors a dedicated funding source to establish new CACs and sustain existing CACs. The Task Force further recommends that (1) the Pennsylvania Commission on Crime and Delinquency

conduct a thorough study of the existing CACs and MDITs throughout the Commonwealth, (2) the Pennsylvania State Police and municipal police departments train troopers and police officers regarding the efficacy of forensic interviewing within the CAC setting in the investigation of child abuse and child sexual abuse and (3) the medical model employed by the Philadelphia Department of Human Services be reviewed and implemented.

The Task Force also recommends an analysis of Pennsylvania's statutes and regulations that require, or fail to require, the disclosure of a licensed professional's sexual misconduct, arrests, and convictions to the relevant licensing or certifying body. The goal should be uniformity in the information to be disclosed, procedures to assure the safety of children, and appropriate licensure or certification sanctions.

The Task Force favors several approaches to develop funding sources to support child protection efforts, such as the issuance of a special license plate by PennDOT at an increased fee and a check-off in connection with vehicle registration or income tax filings.

The Task Force supports the enactment of legislation to expand reporting requirements where allegations of sexual misconduct have been made. Such legislation should include barring school entities from entering into confidentiality agreements with educators accused of misconduct.

Given the importance of prevention efforts, the Task Force also believes that evidence-based prevention programs should be encouraged and financially supported where feasible.

After lengthy discussion, the Task Force believes that minimum experience and training requirements for caseworkers should be increased, and county agencies should be given greater flexibility to test a prospective caseworker's ability to assess needs and work with families. Therefore, the Task Force recommends that civil service requirements be reviewed, revised and updated to enable county agencies to recruit qualified applicants and applicants with appropriate degrees commensurate with the positions sought. The Task Force also favors consideration of methods aimed at lowering high staff turnover rates and retaining qualified caseworkers. Training should be approved for supervisors and caseworkers, the structure and characteristics of a county agency should be analyzed, and ChildLine staffing levels and retention issues should be addressed, including the use of part-time ChildLine workers.

The use of electronic transmittal and dissemination of information, set forth in the proposed legislation as the use of advanced communication technologies, is strongly encouraged to facilitate the process and save time.

In addition, attention should be given to the training of all jurists to ensure that proceedings involving children are as child-friendly as possible, with consideration given to using language that children will understand and procedures that account for the intellectual development of children.

The Task Force supports more vigorous enforcement of school attendance rules by school districts and the improvement of programs to specifically address truancy, perhaps in association with appropriate local nonprofit organizations to help alleviate the disproportionate consumption of protective services by children who are not at risk of abuse or neglect.

The Task Force spent a considerable amount of time discussing the need to simplify the current ChildLine telephone number, ultimately supporting a three-digit number such as 611 for use by persons reporting suspected child abuse.

With respect to the issue of child pornography, the Task Force recommends that the Commission on Sentencing review the United States Sentencing Commission 2012 Guidelines Manual, in particular the federal sentencing guidelines provisions that allow for upward departures from the guidelines for aggravating circumstances in child crimes and sexual offenses. Specifically, the Task Force believes that sentencing enhancements should be adopted in cases involving child pornography, based on such aggravating circumstances as the age of the child, the number of images possessed by the defendant, and the nature and character of the abuse depicted in the images.

After considerable review of statutory law and regulations, the Task Force proposes an extensive re-write and reorganization of the Child Protective Services Law to afford greater protection from abuse for children. The definition of child abuse is amended to include recent intentional or reckless acts, attempts to act, and failures to act that cause or create a reasonable likelihood of bodily injury or serious bodily injury. Certain conduct toward a child is considered per se child abuse. Therefore, the definition concerns both the outcome of an action against a child and the action itself. Under the definition, child abuse also includes (1) any act or series of acts (or failure to act) that causes or significantly contributes to a child's serious mental injury, (2) an intentional or reckless act (or failure to act) that causes sexual abuse or exploitation of a child and (3) serious physical neglect of a child. Excluded from child abuse are, among other things, certain disciplinary actions, participation in certain events involving physical contact, and peer-on-peer contact.

The Task Force also recommends the amendment, addition, or repeal of the following definitions: advanced communication technologies; bodily injury; certified medical practitioner; child; child care services; child protective services; cooperation with an investigation or assessment; county agency; expunge; family members; founded report; founded report for school employee; general protective services; indicated report; indicated report for school employee; individual residing in the same home as the child; mandated reporter; near fatality; nonaccidental; paramour; parent; perpetrator; person responsible for the child's welfare; program, activity or service; protective services;

recent acts or omissions; record; safety assessment; school; school employee; serious physical injury; serious physical neglect; sexual abuse or exploitation; Statewide database; student; and subject of a report.

Numerous individuals are added to the list of mandated reporters, including individuals who accept responsibility for a child in a program, activity or service; social service workers; law enforcement; attorneys; public librarians; EMS providers; film processors; information technology repair or service personnel; and employees or independent contractors of other mandated reporters. However, any individual may, and is encouraged to, report suspected child abuse whenever and wherever it occurs. A reporter of suspected child abuse does not need to attempt to identify the perpetrator, and knowledge of the perpetrator's identity is not necessary for a report to be made. Provisions are added to the Child Protective Services Law regarding those circumstances when a child makes a specific disclosure of abuse or an individual discloses that he or she committed child abuse. An individual in an institutional setting must report child abuse immediately to the Department of Public Welfare, as well as to his or her supervisor. Procedures regarding such reports are detailed in the proposed legislation. In addition, there is no distinction between a school employee committing child abuse against a student and another individual who commits child abuse.

The proposed legislation specifies how child abuse and neglect reports are made, reinforcing the "no wrong door" policy and reflecting the use of advance communication technologies, and how such reports are investigated. Investigations of child abuse by a perpetrator (as defined) are generally reserved for the appropriate county agency, child abuse by a perpetrator involving a crime against a child necessarily requires the involvement of law enforcement as well, and abuse by a "stranger" to the child will be the sole responsibility of law enforcement. A county agency is responsible for assessing the risk of harm and threat to safety of the child when the child is not being abused but is still in need of some form of protective services. Statutory provisions also account for (1) child abuse occurring in another state where the child is a resident of Pennsylvania, (2) a report of child abuse occurring in another state where the perpetrator is a Pennsylvania resident and (3) cross-reporting so that the Department of Public Welfare (through ChildLine), county agencies and law enforcement are appropriately informed about a report of suspected child abuse.

The proposed legislation strengthens and further develops the role of a multidisciplinary investigative team (MDIT) in investigating cases of child abuse involving criminal offenses against the child. Each county is mandated to establish an MDIT, whose membership will fluctuate depending on the type of case being investigated and the information available. Each MDIT is required to establish protocols for receiving and reviewing reports, coordinating investigations and developing a system for sharing information obtained in interviews, to minimize the trauma of multiple interviews of a child and to avoid duplication with other fact-finding efforts. The use of services provided by children's advocacy centers are encouraged where appropriate.

The Task Force favors new statutory provisions involving the maintenance and use of reports of child abuse or neglect, with the elimination of the pending complaint file, the unfounded report file, the founded and indicated report file, and the central registry, to be replaced by a Statewide database containing all the information regarding reports of child abuse (regardless of their outcome) and general protective services cases. The Statewide database would be maintained indefinitely, and the current expungement process would be eliminated. The Statewide database would be restricted and confidential, with access limited to authorized county agency personnel and law enforcement personnel for purposes of assessing and investigating allegations of child abuse and neglect. Access would be available on a 24-hour-a-day, 7-day-a-week basis. The statute would continue to provide for the disclosure of information for background clearances.

The Task Force supports the revision of the requirements regarding background clearances for persons having contact with children, in paid and unpaid positions (including for volunteers), with permanent or temporary bans on employment or volunteer activity depending on the information contained in the Statewide database. A permanent ban would occur if the individual was convicted of certain violent or sex crimes involving children, including endangering the welfare of children or the corruption of minors, or if the individual is identified as a perpetrator in a founded or indicated report of sexual abuse or exploitation. A temporary ban would occur for other specified offenses committed and other founded reports of child abuse.

The proposed legislation also provides a statutory framework for what happens when an investigation is complete: a report could be founded, indicated or unfounded, and a child may be accepted for protective services. Special provisions are made for the treatment of indicated reports. The revised Child Protective Services Law also provides for a detailed appeals process that is more "child-friendly" and incorporates several provisions from the Judicial Code.

Provisions regarding the review and oversight of child abuse and neglect investigations are moved into the same chapter. These provisions involve citizen review panels, multidisciplinary review teams, child fatality and near fatality review teams, departmental reviews and reports of child fatalities and near fatalities, county performance reviews, reports to the Governor and the General Assembly, and legislative oversight.

The Task Force also recommends detailed provisions in the Child Protective Services Law regarding the responsibilities of county agencies and the Department of Public Welfare, as well as enforcement provisions and how violations of the law are handled.

The recommendations also include provisions regarding the reporting of felony convictions of licensed health care professionals, education and training for mandated reporters of suspected child abuse and others responsible for administering the Child Protective Services Law, oaths to accompany professional licensure applications and renewals, confidential communications, and custody determinations.

To continue the focus on child protection efforts, the Task Force recommends the creation of three entities: a child protection advisory council, a children's justice task force, and a child protection policy academy. The advisory council would, among other things, examine and analyze the practices, processes and procedures relating to effective responses to child abuse and neglect; review and analyze law, procedures, practices and rules relating to the reporting of child abuse and neglect; and hold public hearings to take testimony and request documents. The task force would, among other things, provide technical assistance to persons providing education training programs or child protective services in Pennsylvania; review and evaluate investigative, administrative and civil and criminal judicial handling of cases of child abuse and neglect; and make policy recommendations. The academy would, among other things, review, approve and assist in developing training and curricula for specified persons and make policy recommendations.

Finally, the Task Force recommends the amendment of (1) the Crimes Code regarding simple assault, aggravated assault, the crime of endangering the welfare of children, administrative subpoenas, false reports of child abuse, and intimidation or retaliation in child abuse cases; (2) the Domestic Relations Code regarding factors to consider when awarding custody, consideration of child abuse and involvement with child welfare, and the commencement of proceedings and (3) the Judicial Code regarding courses of training and instruction, confidential communication between spouses and to attorneys and clergymen, and reports by district attorneys.

INTRODUCTION

The Joint State Government Commission

The Joint State Government Commission serves as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly. The Commission has the power to conduct investigations, study issues and gather information, as directed by resolution. In performing its duties, the Commission may call upon any department or agency of the Commonwealth of Pennsylvania for pertinent information and may designate individuals, other than members of the General Assembly, to act in advisory capacities. The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly.

Public Hearings on Child Protection

In outlining the need to review laws and procedures relating to the reporting of child abuse and the protection of the health and safety of children, the Honorable Kim L. Ward[1] stated that "[t]he Senate Committee on Aging and Youth has been examining Pennsylvania's definition of child abuse and mandating reporting of child abuse through public hearings, which were held in August and October [2011]."[2]

The August 2011 public hearing, held in Youngwood, focused on Senate Bill No. 753 of 2011,[3] of which the Honorable Patricia H. Vance[4] was the prime sponsor. The bill amended the definition of "child abuse" under § 6303(b) of the Domestic Relations Code to add the following paragraph:

> (1.1) It shall be considered child abuse if a child tests positive at birth for a controlled substance as defined in section 2 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, unless the child tests positive for a controlled substance as a result of the mother's lawful intake of the substance as prescribed.

---

[1] Pa. Sen., 39th Senatorial Dist. Senator Ward serves as the Chair of the Senate Aging and Youth Committee.

[2] S. Legis. J. (Dec. 13, 2011), at 1344.

[3] The bill was referred to the Senate Aging and Youth Committee on March 7, 2011, but no further legislative action was taken on the bill.

[4] Pa. Sen., 31st Senatorial Dist. Senator Vance serves as the Chair of the Senate Public Health and Welfare Committee.

Numerous individuals testified at the August 2011 public hearing,[5] including Jason P. Kutulakis, Esq., a future member of the Task Force on Child Protection.

The October 2011 public hearing, held at the Children's Hospital of Pittsburgh of the University of Pittsburgh Medical Center, addressed, among other things, the definition of child abuse, the Statewide Child Abuse Hotline, substantiation of child abuse, medical diagnoses and child protective services. Numerous individuals testified at this public hearing as well:[6] Dr. Rachel P. Berger, another future member of the Task Force on Child Protection, discussed physical abuse, the definition of "perpetrator," unknown perpetrators, child abuse statistics, the Statewide central register, the overly subjective standard of "severe pain," the need for data regarding the nature and extent (and success) of services provided, and the need for collaboration between medical professionals and county children and youth social service agencies.

To amplify the testimony provided at the August and October 2011 public hearings, Senator Ward observed the following:

> In 2010, Pennsylvania's child abuse hotline, ChildLine, received approximately 122,000 calls, including 40,000 referrals for general protective services. At least 344 Pennsylvania children died from abuse between 2002 and 2009, with many of them dying before their second birthday, and many of them from within families previously known to Children and Youth Services.[7]

Creation of the Task Force on Child Protection

In December 2011, both chambers of the Pennsylvania General Assembly introduced resolutions establishing the Task Force on Child Protection.[8]

---

[5] Also testifying were Marc Cherna (Director, Allegheny County Department of Human Services), Angela M. Liddle (Executive Director, Pennsylvania Family Support Alliance), Jenna Mehnert (Executive Director, National Association of Social Workers - Pennsylvania Chapter), Cathleen Palm (Executive Director, Protect Our Children Committee) and Francis Schultz (District Attorney, Crawford County). Written testimony was provided by the American Civil Liberties Union of Pennsylvania. Cherna and Liddle also presented formal testimony to the Task Force on Child Protection.

[6] Also testifying were Dr. Mary Carrasco, MD (Director, A Child's Place at Mercy, Pittsburgh Mercy Health System), Janet Endress Squires, MD (Chief, Child Advocacy Center, Children's Hospital of Pittsburgh of the University of Pittsburgh Medical Center) and Cathy A. Utz (Director, Bureau of Policy, Programs and Operations, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare). Carrasco and Utz also presented formal testimony to the Task Force on Child Protection.

[7] *Id.*

[8] H. Res. No. 522 (Pa. 2011), adopted Dec. 14, 2011; S. Res. No. 250 (Pa. 2011), adopted Dec. 13, 2011.

Senator Ward developed the rationale for such a task force on child protection:

> . . . the charges surrounding the reporting of child abuse at Penn State have elevated the issue's review by an interdisciplinary task force on child protection, which will make recommendations to improve and strengthen our State's laws. The allegations surrounding Penn State shake every decent person to the core. We need this top-to-bottom review of our laws to identify how they can be more effective.[9]

The Honorable Jay Costa[10] echoed this need:

> We know that there are a number of concerns about Child Protective Services and protecting our children. This commission [sic] is . . . an effective way to look at exactly what we do here in this Commonwealth, not only as it relates to our universities, but also to our various agencies of government - the Department of Public Welfare, adult services, juvenile services, our State Police, and the like.[11]

Finally, the Honorable Ronald S. Marsico[12] reiterated the need for and purpose of the Task Force on Child Protection:

> . . . recent events require a review of laws and procedures relating to the reporting of child abuse and protection of the health and safety of our children. . . . The task force will review laws and procedures that help ensure that the Commonwealth is able to adequately protect its children. After all, it is the responsibility of this Commonwealth and this legislature to protect its citizens, and particularly the children. With this in mind, I have sponsored this legislation along with Chairman Caltagirone[13] to establish a task force to conduct a thorough and comprehensive review to ascertain any inadequacies relating to the mandatory reporting of child abuse, and to restore public confidence in the ability of the Commonwealth to protect the victims of child abuse.[14]

Therefore, because "[r]ecent events require a review of laws and procedures relating to the reporting of child abuse and the protection of the health and safety of children[,]" the General Assembly established a Task Force on Child Protection to conduct a thorough and comprehensive review to determine any inadequacies regarding the mandatory reporting of child abuse and "restore public confidence in the ability of the Commonwealth to protect the victims of child abuse."[15] The Task Force was empowered

---

[9] *Id.*

[10] Pa. Sen., 43rd Senatorial Dist. Senator Costa serves as the Democratic Leader of the State Senate.

[11] S. Legis. J. (Dec. 13, 2011), at 1344.

[12] Pa. Rep., 105th Dist. Representative Marsico serves as the Chair of the House Judiciary Committee.

[13] The Honorable Thomas R. Caltagirone, Pa. Rep., 127th Dist. Representative Caltagirone serves as the Minority Chair of the House Judiciary Committee.

[14] H. Legis. J. (Dec. 14, 2011), at 2569.

[15] H. Res. No. 522, *supra* note 8, p.1 & S. Res. No. 250, *supra* note 8, p.1.

"[t]o examine and analyze the practices, processes and procedures relating to the response to child abuse" and "[t]o review and analyze law, procedures, practices and rules relating to the reporting of child abuse."[16] Following its review, the Task Force was instructed to issue a report with recommendations to (1) improve the reporting of child abuse; (2) implement any necessary changes in state statutes and practices, policies and procedures relating to child abuse and (3) train appropriate individuals in the reporting of child abuse.[17]

The Department of Public Welfare, the Joint State Government Commission and the Juvenile Courts Judges' Commission were directed to "cooperate to provide administrative or other assistance to the task force."[18]

Governor Thomas W. Corbett and legislative leaders of the Pennsylvania General Assembly appointed the 11 members of the Task Force. The Honorable David W. Heckler was appointed as the Chair of the Task Force.

The Task Force was created "in the wake of Jerry [Gerald A.] Sandusky's child sexual abuse allegations" at the Pennsylvania State University.[19] On November 4, 2011, Pennsylvania's Attorney General filed criminal charges against Sandusky, the former Defensive Coordinator for the Penn State football team. These charges "included multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, corruption of minors, unlawful contact with minors and endangering the welfare of minors."[20] On June 22, 2012, a Centre County jury found Sandusky guilty of 45 counts of the criminal charges against him.[21] Sandusky was subsequently "committed to the custody of the Pennsylvania Department of Corrections for an aggregate period of not less than thirty (30) years nor more than sixty (60) years."[22]

Also on November 4, 2011, Pennsylvania's Attorney General filed criminal charges against Timothy M. Curley, Penn State's Athletic Director, and Gary C. Schultz, Penn State's Senior Vice President for Finance and Business, "for failing to report allegations of child abuse against Sandusky to law enforcement or child protection authorities in 2002 [sic 2001] and for committing perjury during their testimony about the

---

[16] H. Res. No. 522, *supra* note 8, p. 4 & S. Res. No. 250, *supra* note 8, p. 8.

[17] H. Res. No. 522, *supra* note 8, p. 4 & S. Res. No. 250, *supra* note 8, p. 4.

[18] H. Res. No. 522, *supra* note 8, p. 3 & S. Res. No. 250, *supra* note 8, p. 3.

[19] Jan Murphy, *Beef Up Reporting of Abuse, Pennsylvania's Task Force on Child Protection Is Told*, The Patriot-News (May 14, 2012), *available at* http://www.pennlive.com/midstate/index.ssf/2012/05/beef_up_reporting_of_abuse_pen.html (last accessed May 16, 2012).

[20] Freeh Sporkin & Sullivan, LLP, Rep. of the Spec. Investigative Counsel Regarding the Actions of The Pa. State Univ. Related to the Child Sexual Abuse Committed by Gerald A. Sandusky 13 (July 12, 2012).

[21] *Id.*; *Jerry Sandusky verdict: Complete breakdown of charges*, The Patriot News (June 22, 2012), *available at* http://www.pennlive.com/midstate/index.ssf/2012/06/jerry_sandusky_verdict_complet.html (last accessed July 3, 2012). Sandusky faced 52 original counts of abuse, four of which were dismissed during trial. *Id.*

[22] Order of the Honorable John M. Cleland (Senior Judge, Specially Presiding), *Commonwealth v. Sandusky* (Ct. of C.P. of Centre County, Pa., Crim. Div., Oct. 9, 2012).

allegations to the Grand Jury in Dauphin County, Pennsylvania, in January 2011."[23] Curley and Schultz "are scheduled to stand trial in January in Harrisburg on the perjury and failure to report charges. Both men have denied the allegations against them."[24]

On November 1, 2012 former Penn State President Graham B. Spanier was charged with obstruction of law enforcement, endangering the welfare of children, perjury, criminal conspiracy and failure to report child abuse, all related to the Sandusky case.[25] In a lengthy statement, Spanier denied the allegations.[26] Curley and Schultz "both face additional charges, including felony obstruction, endangerment and conspiracy."[27]

Background Materials and Research

Throughout the Task Force's review process, the Joint State Government Commission researched a number of issues to facilitate deliberations and gathered additional information in response to testimony presented. The Commission prepared a 50-state survey of specific issues,[28] which included an analysis of the law of the other states relating to the definition of child abuse, the definition of perpetrator, mandated reporters and voluntary reporters of suspected child abuse or neglect, penalties and prohibitions for the failure to report suspected child abuse, where to report, the investigation of reports, investigative findings, the expungement of records, temporary or emergency custody for an at-risk child, and dependency proceedings. This research is summarized in this report.

---

[23] *Id.* (footnote omitted).

[24] *Penn St. Won't Renew Contract of Accused AD Curley*, *available at* http://www.pennlive.com/newsflash/index.ssf/story/penn-st-wont-renew-contract-of-accused/10b6c5434e1d47618c063f6377a32e23 (last accessed Oct. 17, 2012).

[25] Sara Ganim, *Ex-PSU President Graham Spanier Charged with Obstruction, Endangerment and Perjury; More Charges Filed Against Other Administrators*, The Patriot News (Nov. 1, 2012), *available at* http://www.pennlive.com/midstate/index.ssf/2012/11/spanier_charged_with_obstructi.html (last accessed Nov. 1, 2012); Jeff Frantz, *Graham Spanier: Jerry Sandusky Case Took Down Penn State President's Career*, The Patriot News (Nov. 1, 2012, update Nov. 2, 2012), *available at* http://www.pennlive.com/midstate/index.ssf/2012/11/graham_spanier_charged_jerry_s.html (last accessed Nov. 5, 2012).

[26] Frantz, *supra* note 25.

[27] Ganim, *supra* note 25.

[28] Although the Commission reviewed each state's laws governing child protection, abuse and neglect, the following documents were a valuable reference point:

> Nat'l Conf. of State Legis., *Child Abuse and Neglect Mandatory Reporting State Statute Overview*, *available at* www.ncsl.org/issues-research/human-services/child-abuse-and-neglect-reporting-state-statute-overview.aspx (last accessed June 4, 2012).
>
> U.S. Dep't of Health and Human Servs., Admin. on Children, Youth & Families, Admin. for Children & Families, Children's Bureau, *Making and Screening Reports of Child Abuse and Neglect* (current through January 2009), *Online Resources for State Child Welfare Law and Policy* (current through May 2011) & *Review and Expunction of Central Registries and Reporting Records* (current through June 2011).

During its deliberations, the Task Force reviewed the following, among other things:

- The Child Protective Services Law.[29]
- The Juvenile Act.[30]
- The Public Welfare Code.[31]
- The Crimes Code.[32]
- The Pennsylvania Department of Public Welfare's *Annual Child Abuse Report* for 2010 and 2011.[33]
- *The State of Child Welfare (2011).*[34]

Testimony and Public Hearings

Between January and November 2012, the Task Force met on 17 separate occasions and conducted public hearings (to gather information from numerous individuals who presented themed testimony across the Commonwealth) and working sessions (to make recommendations and review proposed statutory amendments to the Child Protective Services Law, the Crimes Code, the Domestic Relations Code, and the Judicial Code). More than 60 individuals presented testimony to the Task Force.

The following tables summarize the date and location of the Task Force public hearings and working sessions in 2012, along with the general topics discussed and the individuals who presented testimony.

---

[29] 23 Pa.C.S. Ch. 63 (§§ 6301-6386).

[30] 42 Pa.C.S. Ch. 63 (§§ 6301-6375).

[31] 55 Pa. Code Ch. 3490 (Protective Services), which constitutes §§ 3490.1-3490.401. The purposes of Subchapter A (Child Protective Services), which constitutes §§ 3490.1-3490.136, are to protect abused children from further abuse, preserve and stabilize families, implement the Child Protective Services Law, involve law enforcement agencies in responding to child abuse, prioritize the response and services to children most at risk, and encourage more complete reporting of suspected child abuse. 55 Pa. Code § 3490.2.

[32] 18 Pa.C.S. Specifically, the Task Force reviewed §§ 2501, 2701, 2702, 2709.1, 2901, 2902, 3121, 3122.1, 3123, 3124.1, 3125, 3126, 3127, 4302, 4303, 4304, 4305, 6301, 6312, 6318 & 6320.

[33] Pa. Dep't of Pub. Welfare, *2010 Annual Child Abuse Report* & *2011 Annual Child Abuse Report*. The data contained in the report are based on completed investigations during the 2010 and 2011 calendar years.

[34] Pa. P'ships for Children, The Porch Light Project, *The State of Child Welfare* (2011), *available at* http://www.porchlightproject.org/reports/socw11/2011_SOCW_state_report.pdf (accessed June 6, 2012).

January 26	**Harrisburg** Hearing Room No. 1, North Office Building, State Capitol Complex
Organizational Meeting	

March 8	**Harrisburg** Hearing Room No. 1, North Office Building, State Capitol Complex
General Topics	Procedures regarding county children and youth social service agencies and the Department of Public Welfare; general research and background information
Presenters	**Position/Affiliation**
Yvonne Llewellyn Hursh, Esq.	Assistant Counsel, Joint State Government Commission
Yelena Khanzhina	Public Policy Analyst, Joint State Government Commission
Laurie O'Connor	Director, Montgomery County Office of Children and Youth
Stephen F. Rehrer, Esq.	Counsel, Joint State Government Commission
David Sanders	Executive Vice President, Casey Family Programs
Cathy A. Utz	Director, Bureau of Policy, Programs and Operations, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare

April 18	**Philadelphia** University of Pennsylvania Law School
General Topic	Definition of child abuse
Presenters	**Position/Affiliation**
Anne Marie Ambrose	Commissioner, Philadelphia Department of Human Services
Frank P. Cervone, Esq.	Executive Director, Support Center for Child Advocates
Janet Ginzberg, Esq.	Senior Staff Attorney, Community Legal Services
Dr. Maria D. McColgan, MD	Director, Child Protection Program, St. Christopher's Hospital for Children
Dr. Philip V. Scribano, DO	Medical Director, Safe Place: The Center for Child Protection and Health, Children's Hospital of Philadelphia

May 3	**Harrisburg** Hearing Room No. 1, North Office Building, State Capitol Complex
General Topics	Differential response; interdisciplinary teams; abuse versus neglect; law enforcement investigations and prosecutions
Presenters	**Position/Affiliation**
Joan L. Benso	President and CEO, Pennsylvania Partnerships for Children

(continued)

May 3	**Harrisburg** Hearing Room No. 1, North Office Building, State Capitol Complex
General Topics	Differential response; interdisciplinary teams; abuse versus neglect; law enforcement investigations and prosecutions
Presenters	**Position/Affiliation**
Richard J. Gelles	Dean, School of Social Policy and Practice, University of Pennsylvania
Leslie M. Gomez, Esq.	Ballard Spahr, LLP
Robert Schwartz, Esq.	Executive Director, Juvenile Law Center
Gina Maisto Smith, Esq.	Ballard Spahr, LLP
Debra Schilling Wolfe	Executive Director, Field Center for Children's Policy, Practice and Research

May 14	**Harrisburg** Hearing Room No. 1, North Office Building, State Capitol Complex
General Topic	Children's advocacy centers
Presenters	**Position/Affiliation**
Kimberly Duffy	Director of Programs and Forensic Interview Specialist, Adams County Children's Advocacy Center
Travis N. Gery	Executive Deputy Chief Counsel, Office of General Counsel, on behalf of the Honorable Katie True, Commissioner, Bureau of Professional and Occupational Affairs
Mary Ann LaPorta	President, PA Chapter of Children's Advocacy Centers and Multidisciplinary Teams; Director, Children's Advocacy Center of Northeastern Pennsylvania
Edward McCann, Esq.	First Assistant District Attorney, Philadelphia County
Sean McCormack, Esq.	Chief Deputy District Attorney, Chief of the Child Abuse Prosecutions Unit, Dauphin County
Mandy Mundy	Director of Education and Training, Network of Victims Assistance
Leslie Slingsby	Director, Bucks County Children's Advocacy Center
Joddie Walker	Executive Director, Adams County Children's Advocacy Center

May 31	**Pittsburgh** Children's Hospital of Pittsburgh of the University of Pittsburgh Medical Center
General Topics	Mandated reporters; abuse in schools and of school-age children
Presenters	**Position/Affiliation**
Michael Byers	Assistant Director, Pennsylvania Child Welfare Program, University of Pittsburgh

(continued)

May 31	**Pittsburgh** Children's Hospital of Pittsburgh of the University of Pittsburgh Medical Center
General Topics	Mandated reporters; abuse in schools and of school-age children
Presenters	**Position/Affiliation**
Dr. Mary Carrasco, MD	Director, A Child's Place at Mercy, Pittsburgh Mercy Health System
Sharon England	Director, Curriculum Department, Pennsylvania Child Welfare Program, University of Pittsburgh
Michelle Gillespie	Parent
Scott Hollander	Executive Director, Kids Voice
Nancy J. Kaminski	Pennsylvania School Nurse Association
Angela M. Liddle	Executive Director, Pennsylvania Family Support Alliance
Dr. Sathya Lingaraju-Durkac	Pediatrician and Behavioral Health Specialist (retired)
Sallie Lynagh	Children's Project, Disability Rights Network
Maryrose McCarthy	Executive Director, Pennsylvania Child Welfare Program, University of Pittsburgh
Mandy Mundy	Director of Education and Training, Network of Victims Assistance
Dr. Amy Nevin, MD	Hilltop Community Health Center
Joanne Witkowski	Member, National Speakers Bureau, R.A.I.N.N. (Rape, Abuse and Incest National Network)

June 14	**Harrisburg** Hearing Room No. 1, North Office Building, State Capitol Complex
General Topics	The Child Protective Services Law; training of physicians, teachers and schools personnel; suggested reforms
Presenters	**Position/Affiliation**
Joyce Hatfield-Wise, Esq.	Solicitor, Washington County Children and Youth Services
Brad M. Jackman, Esq.	Solicitor, Bucks County Children and Youth Social Services Agency
Dolores McCracken	Pennsylvania State Education Association
Dr. David Turkewitz, MD	Chair, Department of Pediatrics, York Hospital

July 16	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
General Topic	Child dependency and court procedures; ChildLine, intake, investigations; data collection and confidentiality
Presenters	**Position/Affiliation**
Mary Anne Burger	Director, Blair County Children, Youth and Families
Marc Cherna	Director, Allegheny County Department of Human Services
Honorable Kathryn M. Hens-Greco	Administrative Judge, Family Division, Allegheny County Court of Common Pleas
Honorable Jolene G. Kopriva	President Judge, Blair County Court of Common Pleas
Honorable Joy Reynolds McCoy	Judge, Lycoming County Court of Common Pleas
Sandra Moore	Administrator, Office of Children and Families in the Courts, Administrative Office of Pennsylvania Courts
Richard Saylor	Director, Lycoming County Children and Youth
Working Session	

July 17	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
Working Session	

August 30	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
Working Session	

September 20	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
General Topics	ChildLine; Department of Public Welfare technology
Presenters	**Position/Affiliation**
Terry L. Clark	Director, Division of Operations, Bureau of Policy, Programs and Operations, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare
Phyllis Matthey-Johnson	Grandmother/adoptive parent

(continued)

September 20	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
General Topics	ChildLine; Department of Public Welfare technology
Presenters	**Position/Affiliation**
Susan Stockwell	Information technology supervisor, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare
Cathy A. Utz	Director, Bureau of Policy, Programs and Operations, Office of Children, Youth and Families, Pennsylvania Department of Public Welfare
Working Session	

September 21	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
General Topics	Multidisciplinary teams (protocol and experience); children's advocacy centers
Presenters	**Position/Affiliation**
Jarrad P. Berkihiser	Police Officer/Detective Lieutenant, Lancaster City Bureau of Police
Robin Boyer	Abuse Investigation Unit Supervisor, Lancaster County Children and Youth Agency
Jeffrey D. Burkett, Esq.	District Attorney, Jefferson County
Karen L. Mansfield, Esq.	Assistant District Attorney, Lancaster County
Kari Stanley	Program Supervisor, Lancaster County Children's Alliance
Sonia Stebbins	Detective Sergeant, Lancaster City Bureau of Police
Craig W. Stedman, Esq.	District Attorney, Lancaster County
Stephanie Wisler	Victim/Witness Advocate, Office of District Attorney, Lancaster County
Working Session	

October 3	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
General Topic	Administrative subpoenas
Presenters	**Position/Affiliation**
Lt. Gregg Mrochko	Bureau of Criminal Investigation, Pennsylvania State Police
Cpl. John O'Neill	Supervisor, Computer Crime Unit, Bureau of Criminal Investigation, Pennsylvania State Police
Working Session	

October 24	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
Working Session	

November 2	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
Working Session	

November 12-13	**Mechanicsburg** Child Welfare Resource Center of the University of Pittsburgh School of Social Work
Working Sessions	

The Task Force also acknowledges the written materials submitted by the following individuals, who did not testify in person at the foregoing public hearings:[35]

Carolyn Angelo, Executive Director and Legal Counsel, Professional Standards and Practices Commission

Detective Robert Erdely, Indiana County Internet Crimes Against Children (ICAC) Task Force and Retired Pennsylvania State Police Computer Crime Unit Supervisor

Michael Gillum, M.A., Psychologist

Samuel Knapp, Ed.D., ABPP, Director of Professional Affairs, The Pennsylvania Psychological Association

Major Marshall Martin, Pennsylvania State Police

Kimberly R. Myers

Cathleen Palm, Executive Director, Protect Our Children Committee

Lt. David C. Peifer, Pennsylvania - Internet Crimes Against Children (ICAC) Task Force Commander

The Pennsylvania Coalition Against Rape

The Pennsylvania State Senate Democratic Caucus Staff and the Honorable Jay Costa, Democratic Leader

The Southeastern Five-County Intake Subcommittee, consisting of Stephanie Ali (Philadelphia County), Delvia Berrian-Langa (Philadelphia County), Nancy Morgan (Bucks County), Debra Plummer (Delaware County), Elizabeth Socki, (Montgomery County) and Rosa M. Stokes (Chester County)

[35] In addition, the following individuals testified and provided additional written materials to the Task Force: Joyce Hatfield-Wise as the Immediate Past President of the Pennsylvania Children and Youth Solicitors Association, Lt. Gregg Mrochko of the Pennsylvania State Police, Cpl. John O'Neill of the Pennsylvania State Police and Cathy A. Utz of the Pennsylvania Department of Public Welfare.

Task Force Deliberations

Throughout the course of its deliberations, the Task Force addressed specific topic areas during its working sessions, including the definition of child abuse, the identity of the perpetrator of child abuse, mandatory reporting, school or institutional abuse, differential response, investigations, expungement of records, the provision of services to children and their families (as well as to the perpetrator), false reports of suspected child abuse, recantations regarding the reporting of suspected child abuse, training and education for caseworkers and staff, data collection and analysis, tracking cases (to follow both the child and the perpetrator), the interplay between child abuse and the Crimes Code, funding, the statute of limitations for civil suits involving child abuse, and the definition of child (including how the system treats teenagers, truancy, and the focus on younger children, who are at higher risk of morbidity and mortality).

Ultimately, the Task Force reached consensus[36] on the recommendations and proposed legislation.

Contents of Report

This report contains proposed legislation to amend, repeal or add numerous provisions in the Child Protective Services Law, the Crimes Code, the Domestic Relations Code, and the Judicial Code.[37] The proposed legislation contains official comments, which may be used in determining the intent of the General Assembly,[38] as well as explanatory notes. Transitional language (provisions regarding applicability and the effective dates of the proposed legislation) is not included in this report but will be developed prior to the introduction of legislation based on the recommendations of the Task Force.

---

[36] Consensus does not necessarily reflect unanimity among the Task Force members on each individual recommendation or proposed statutory provision. However, it does reflect the general sense of the Task Force, gained after lengthy review and discussion. In addition, although a Task Force member or other participant in the review and discussion process may represent a particular department, agency, association or group, such representation does not necessarily reflect the endorsement of the department, agency, association or group of all the findings and recommendations contained in this report.

[37] Proposed additions to the statutory language are underlined; proposed deletions are bracketed. In addition, "* * *" indicates current statutory language that is missing because there are no proposed additions or deletions to that statutory language.

[38] 1 Pa.C.S. § 1939 ("The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly").

This report also contains the following:

- A summary of the general recommendations.
- A summary of the proposed legislation.
- A disposition table regarding the current provisions of the Child Protective Services Law and the statutory amendments proposed by the Task Force.
- Background information on reports of child abuse, the Statewide Child Abuse Hotline, child welfare information technology, partnerships with courts, roundtables, the Permanency Practice Initiative, budgetary impacts, and testimony presented to the Task Force.
- A summary of the law in Pennsylvania and nationwide regarding the definition of child abuse and neglect, the definition of perpetrators, unidentified or multiple perpetrators, out-of-state incidents of child abuse and perpetrators, minors as perpetrators, mandated reporters, reporting child abuse, standards and penalties, general protective services, complaints and investigations, investigative findings, protective custody, temporary and emergency custody, disposition of reports, expungement, dependency proceedings, confidentiality and the release of information, children's advocacy centers, multidisciplinary investigative teams, and prevention efforts.
- Tables of legal citations nationwide, as well as a master table of citations.
- The current Child Protective Services Law.
- House Resolution No. 522 of 2011.
- Senate Resolution No. 250 of 2011.

SUMMARY OF GENERAL RECOMMENDATIONS

In addition to the proposed legislation contained in this report, the Task Force received numerous other suggestions and formulated other recommendations and observations that should be considered to improve the protection of children in this Commonwealth. These recommendations and observations are as follows:

Children's Advocacy Centers (CACs) and Multidisciplinary Investigative Teams (MDITs)

- The Governor and the General Assembly should statutorily establish a dedicated funding source (essentially an endowment) that would (1) provide seed money for the establishment of new CACs where they are needed in order to achieve the objective of a CAC within a two-hour drive of each child in this Commonwealth and (2) provide some assistance to sustain existing CACs. Since Pennsylvania CACs are nonprofit entities that have grown in different ways, deriving their principal support from different sources unique to the community in which they are located, it is appropriate that significant funding for their existence should come from the counties whose citizens derive benefit from their existence and that additional funds come from private charitable sources. Some of this county money is and should be reimbursed by way of the Department of Public Welfare's needs-based budget. However, a baseline of state funds would be appropriate for CACs, which serve as important tools for the protection of children and as critical elements of effective law enforcement throughout Pennsylvania.

- As noted previously, a CAC should be available to every child in the Commonwealth within a two-hour drive.

- The Pennsylvania Commission on Crime and Delinquency (PCCD) should conduct a thorough study of the existing CACs and MDITs throughout the Commonwealth. The study should include an analysis of structure and funding sources for CACs and identify those areas of the Commonwealth best suited for the establishment of additional CACs. Finally, the PCCD should make use of its

Criminal Justice Advisory Boards (CJABs)[39] and training capabilities to assist in the establishment and enhancement of CACs and MDITs.

- The Pennsylvania State Police and municipal police departments should train troopers and police officers regarding the efficacy of forensic interviewing within the CAC setting, where available, in the investigation of child abuse and child sexual abuse.

- The medical model employed by the Philadelphia Department of Human Services (DHS) should be reviewed and implemented where feasible. DHS's medical model includes a part-time medical director along with 8 FTE highly qualified nurses who provide expert advice to responding caseworkers regarding complex medical issues such as malnutrition and Type-1 diabetes. Although the cost of hiring nurses may be well beyond the budgets of many counties in the Commonwealth and may or may not be an appropriate part of needs-based budgeting process, medical outreach by local hospitals or other organizations could serve as an important resource.

Disclosures

- The Education Committee and the Professional Licensure Committee of the House of Representatives and the Education Committee and the Consumer Protection and Professional Licensure Committee of the Senate should analyze the various statutes and regulations that require, or fail to require, the disclosure of a licensed professional's sexual misconduct, arrests, and convictions to the relevant licensing or certifying body. The goal should be uniformity in (1) what information must be disclosed and when, (2) procedures to assure the safety of children who might be vulnerable to abuse by the professional and (3) appropriate licensure or certification sanctions.

---

[39] CJABs "are groups of top-level county officials which address criminal justice issues from a systemic and policy level perspective. CJABs study best practices in the administration and delivery of criminal justice and recommend ways in which public agencies can improve the effectiveness and efficiency of the criminal justice system within a county." Pa. Comm'n on Crime & Delinquency, *What is a County Criminal Justice Advisory Board (CJAB)?*, *available at* http://www.portal.state.pa.us/portal/server.pt?open=512&objID=5280&&PageID=493375&level=3&css=L3&mode=2 (last accessed Nov. 8, 2012). Membership "is comprised of individuals with the authority and credibility to effect the delivery of criminal justice/public safety and service on the county and local levels" and "should include top-level representatives of the courts, corrections, law enforcement, community-based organizations, executive branch of government, health and human service agencies, victims' services agencies, and the business and faith communities." *Id.* They "are frequently designated as the primary point of contact with the commonwealth and the federal government for criminal justice matters." *Id.* CJABs exist in 65 of Pennsylvania's 67 counties.

Funding Sources

- PennDOT should develop a license plate in support of child protection, not unlike the several already issued at an increased fee for the purpose of subsidizing various funds (*e.g.*, protecting wildlife or promoting Pennsylvania's historical heritage). This proposal could serve as a reminder to the public that preventing child abuse and responding vigorously to its occurrence is and will be a very real and pressing need.

- The possibility of a check-off in connection with vehicle registration or income tax filings should be explored, to permit a voluntary contribution of one or two dollars by Pennsylvania residents to a fund that would support specific child protection efforts or efforts generally.

The issue of funding sources was raised by Sean McCormack, Esq. (May 14, 2012) and could be a method of dealing with the shortage of available public funds resulting from current economic conditions. Creation and maintenance of CACs throughout Pennsylvania could be a good target for these funds.

Pennsylvania's child protective service system is centrally funded but locally administered on a county-by-county basis. The federal government provides some funding for the Department of Public Welfare to be distributed to counties for child protective services; additional funds are derived from state revenues. Both revenue sources are shrinking, and counties are seeing a reduction in resources for child protection at the same time implementation of legislation of the type proposed in this report may place significant additional demands on county agencies. The Task Force recognizes the problem with such unfunded mandates upon counties which rely upon an extremely inelastic tax base to obtain revenues. Nevertheless, the Task Force envisioned the perfect scenario for child protective services. Implementation dates for legislation and other recommendations call for additional discussion; proposals must be prioritized.

One of the proposals having great promise for the reduction in overall governmental child protective service costs while actually improving the quality of services rendered is the establishment of "differential response" to reports of child maltreatment. The use of child protective services in some cases and general protective services in others is a beginning in that direction. In most differential response systems, the next step would be the establishment of an intake process which does not require a full evaluation of every case and which might entail the earlier referral to an appropriate community nonprofit organization for the rendition of appropriate services. Some of the language in the recommended legislation should facilitate the gradual adoption of differential response as resources permit.

Oversight of Professional Educators

- Legislation should be enacted similar to the legislative proposals that the Professional Standards and Practices Commission developed to amend the act of December 12, 1973 (P.L.397, No.141), known as the Professional Educator Discipline Act to expand reporting requirements where allegations of misconduct, including sexual misconduct, have been made. The proposal includes banning school entities from entering into confidentiality agreements with educators accused of misconduct.

The issue of education and oversight was raised in written materials by Carolyn Angelo. With regard to Pennsylvania's teachers, she stated the following: "While misconduct under the Act runs the gamut from incompetency to immorality, approximately 60-70% of the cases adjudicated involved sexual misconduct. Over the past several years, cases involving educator misconduct generally has increased exponentially. Currently, the Department of Education, which serves as the prosecutor, has over 500 open cases of which approximately 144 involve sexual misconduct or physical abuse." The Professional Standards and Practices Commission of the Commonwealth has developed a set of legislative proposals for amending the Professional Educator Discipline Act which are aimed at increasing reporting requirements where allegations of sexual misconduct have been made. The Task Force believes that passage of such proposals would be consistent with the statutory amendments contained in this report.

In addition, the Task Force recognizes the excellent legislation sponsored by the Honorable Patricia H. Vance and recently enacted as an amendment to the Public School Code of 1949, requiring training for school employees and independent contractors in the area of recognition of child abuse and mandated reporting duties. See Act No. 126 of 2012.

The Task Force also reviewed Senate Bill No. 1381 sponsored by the Honorable Anthony H. Williams and recognized the very serious issue, particularly in the field of professional education, of "passing the trash." In these cases, rather than report possible sexual abuse by teachers upon students to appropriate authorities, school administrators could permit an abusive teacher to resign, receive a reference which does not make clear the reasons for separation and ultimately obtain new teaching employment where the teacher can find new victims. While it is the hope of the Task Force that a number of the changes recommended in this report will make it more difficult for school administrators and other employers to avoid reporting suspected child abusers, the Task Force supports efforts to break this practice which enables a pedophile to continue the victimization of children even after the pedophile is identified as such.

Prevention

- Evidence-based prevention programs should be encouraged and financially supported where feasible. There are numerous models of successful prevention programs throughout the Commonwealth and nationwide, and these should be more fully considered to determine whether they are adaptable to diverse communities throughout the Commonwealth.

Staff and Training

- Minimum experience and training requirements for children and youth caseworkers should be increased to adequately reflect the skills that are necessary to perform the functions and duties of the position, given that caseworkers need to be able to engage families to identify their needs and assist in providing the appropriate services to meet those needs. Caseworkers often go into hostile, chaotic environments where they need to ameliorate the emergent circumstances before they can focus on the root cause of the problem.

- County agencies should be given greater flexibility to test a prospective caseworker's ability to assess needs and work with families. In that regard, civil service requirements should also be reviewed, revised and updated to enable county agencies to recruit qualified applicants and applicants with appropriate degrees commensurate with the position that they are seeking.

- Efforts should be made to decrease high staff turnover rates and retain qualified caseworkers.

- Training should be improved for supervisors of children and youth caseworkers.

- The structure and characteristics of a county agency should be analyzed, with consideration given to demographics and caseload.

- ChildLine staffing level and retention issues should be addressed, including the use of part-time ChildLine workers. The Task Force applauds the level of care and commitment on the part of the employees who staff the ChildLine centralized reporting system. At a time when public employees are frequently viewed as wishing to promote their own economic interests at the expense of the taxpayers

and with indifference to the purposes of their employment, the Task Force found it refreshing to receive recommendations from the Service Employees International Union 668, which appear to be aimed at increasing the efficiency and effectiveness of ChildLine through such techniques as the hiring of part-time case workers and an increase in the flexibility in the way ChildLine reports are received and then disseminated. It is the understanding of the task Force that such changes in existing contracts and statutes are also a subject of interest to the Department of Public Welfare. Accordingly, the Task Force supports the three recommendations contained in the SEIU 668 letter of August 31, 2012 and hope that ChildLine will be made more effective, the lot of the workers who staff ChildLine will be improved, and ultimately that the safety of children throughout the state will be better protected. The recommendations are included in the proposed legislation and concern oral and electronic transmittal of reports, the electronic dissemination of general reports to the counties immediately without the need to "orally" transmit the entire contents of these reports and hire part-time caseworkers immediately to help cover the weekends. In the past, ChildLine was able to hire part-time caseworkers. Currently, ChildLine is forced to hire only full time positions because of the process in which positions are counted. Changing policy to allow ChildLine to hire part-time weekend caseworkers would help fill the chronic staffing needs of ChildLine.

In general, training by Child First and others emphasizes the cognitive differences between children and adults and the difficulty which children have in conforming themselves to the requirements of adult legal proceedings. In addition to being certain that all proceedings in which children may be compelled to participate be made as child-friendly as possible, the Supreme Court and its educational committees should include in the education of all jurists a firm grounding on the scientific underpinnings for the difference between children and adults as witnesses. While these matters are within the discretion of the court and not subject to legislation, and while the Task Force believes that some steps have already been undertaken, it is the belief of the Task Force that the validity of any truth-finding process which involves the testimony of children is dependent upon the use of language they will understand and procedures which take into account the state of their intellectual development.

Truancy

- In response to assertions that a large volume of resources of county agencies and juvenile courts are devoted to providing services regarding teenage students who are truants, school districts should be encouraged to more vigorously enforce school attendance rules,

coupled with programs targeted specifically at truancy. School districts could develop such programs in association with appropriate local nonprofit organizations, which can help alleviate the disproportionate consumption of protective services by children who are not at risk of abuse or neglect.

Statewide Child Abuse Hotline

- The ChildLine telephone number should be simplified from 1-800-932-0313 to a three-digit number -- a service access code (SAC) or N11 number -- akin to 311 (non-emergency fire and police) and 911 (emergency services). Although the Task Force suggests 611, it recognizes that N11 numbers are a finite resource and must be approved by the Federal Communications Commission.

Child Pornography

Child pornography is addressed in the Crimes Code at 18 Pa.C.S. § 6312 (sexual abuse of children). The Task Force received testimony to the effect that individuals committing this type of child abuse are subject to a wide range of sentencing. In some instances, sentences of probation are received, despite the horrific mistreatment of children depicted in the offending images. The Pennsylvania Commission on Sentencing is charged with making recommendations to the General Assembly regarding sentencing policy.

- The Commission on Sentencing should review the United States Sentencing Commission 2012 Guidelines Manual (effective November 1, 2012), *available at* http://www.ussc.gov/Guidelines/2012_Guidelines/index.cfm, in particular the federal sentencing guidelines provisions that allow for upward departures from the guidelines for aggravating circumstances in child crimes and sexual offenses. *See* Manual § 5K2.0(a) and 18 U.S.C. § 3553(b)(2)(A)(i).

- Sentencing enhancements should be adopted in cases involving child pornography, based on such aggravating circumstances as the age of the child, the number of images possessed by the defendant, and the nature and character of the abuse depicted in the images.

Issues Considered But No Recommendation Made

The Task Force also considered several other proposals and determined that recommendations are not appropriate at this time. Two proposals in particular merit acknowledgment: the creation of an office of child advocate or ombudsman and amending the statute of limitations for civil actions regarding child abuse. Although an office of child advocate or ombudsman has been viewed as an important tool to protect children, given Pennsylvania's state-supervised, county-administered system, the Task Force opined that the office may be an unnecessary and extra layer of bureaucracy, and resources could be better spent elsewhere.

With respect to the statute of limitations, the Task Force recognizes that Pennsylvania currently permits the commencement of a criminal prosecution for a sexual offense committed against a minor at any time before that the minor reaches 50 years of age. If the perpetrator's identity is unknown by the minor and is later determined by DNA match, a criminal action may be commenced within one year after the discovery of the DNA match, no matter how many years have passed since the alleged abuse occurred. Civil actions may be commenced within 12 years after the minor has attained the age of 18 years (thus until the victimized minor reaches the age of 30 years). Therefore, the Task Force believes that the current statute of limitations is adequate, given that Pennsylvania is one of the most "generous" states in terms of the length of time within which an action may be commenced.

In addition, the Task Force acknowledges that some adults who were abused as minors are not able to commence an action because the statute of limitations has expired in their cases. These adults justifiably want to revive their claims but are barred from doing so. The Task Force declined to recommend a "revival" statute because of the potential for staleness of evidence and possible constitutional concerns.

SUMMARY OF PROPOSED LEGISLATION

The Task Force on Child Protection has proposed extensive revisions to the Child Protective Services Law and related statutes. The primary and driving principle of these amendments is to afford children greater protection from abuse. To accomplish this, the Task Force has attempted to make the law "child-centered" in the sense of recognizing child abuse in all contexts. Greater protection can be provided by expanding the definition of what constitutes child abuse, who should be considered a perpetrator of child abuse, and who is responsible for reporting suspected child abuse. The revisions add individuals to the list of persons who must submit to background checks before engaging in activities involving regular, direct contact with children. The amendments streamline the reporting process, clarify the responsibilities of those reporting child abuse in institutional settings and strengthen penalties for failure to report and for filing false reports. Communication among the Department of Public Welfare (DPW), county children and youth social service agencies and law enforcement authorities is simplified and clarified to ensure that reports are promptly investigated and that all parties responsible for ensuring the welfare of the child have all necessary information to investigate allegations of abuse and neglect. One central database is established to track information regarding both child abuse cases and general protective services, with protections included to control the use and disclosure of information in reports. These substantive amendments are described in more detail below, arranged topically.

What Constitutes Child Abuse?

- "Child abuse" is defined in § 6303 to include recent (within two years) intentional or reckless acts, attempts to act and failures to act that cause or create a reasonable likelihood of "bodily injury" or "serious bodily injury" to a child. Bodily injury includes impairment of the child's physical functioning or substantial pain, whereas "serious bodily injury" is defined as bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ. The definitions mirror the criminal law definitions of simple assault and aggravated assault.

- Certain recent intentional or reckless conduct toward a child is considered *per se* child abuse, regardless of the level of injury inflicted. These include kicking, burning, biting, stabbing, cutting or throwing a child, unreasonably confining or restraining a child, forcibly shaking or slapping a child under one year of age and intentionally interfering with a child's breathing. Also defined as child abuse are causing a child to be present at

a methamphetamine lab or wherever violations involving illegal drugs are occurring, or operating a vehicle while under the influence of drugs or alcohol when a child is a passenger.

- Any act, series of acts or failure to act that causes or significantly contributes to a child's serious mental injury is child abuse.

- A reckless or intentional act or failure to act causing sexual abuse or exploitation of the child is child abuse.

- Sexual abuse or exploitation has been redefined to include further elaboration of what constitutes exploitation based on DPW regulations and the provisions of the Crimes Code. The list of crimes that constitute sexual abuse and exploitation is extended to include statutory sexual assault, but a limited exception to this inclusion is made in § 6311(g) dealing with consensual sex between teenagers. Rape crisis counselors have concerns that inclusion of statutory sexual assault as between teenagers as a form of reportable child abuse may have a chilling effect on young women who might otherwise seek counseling.

- Causing serious physical neglect of a child is child abuse.

- The term "nonaccidental" is repealed, in light of the new definition of child abuse, which provides for intentional and reckless behavior in its place.

- In recognition of situations where a person responsible for a child's welfare may need to use force to prevent a child from harming themselves or others, the use of force for disciplinary actions is excluded from the definition of child abuse by § 6304(b).

- Section 6304(e) provides that participation in events that involve physical contact with a child does not, in itself, constitute child abuse.

- Section 6304(f) provides that a fracas between two children does not in itself constitute child abuse.

The mere existence of drug or alcohol abuse by a pregnant woman is not considered child abuse. However, consistent with federal law, when an infant is born and identified as being affected by illegal substance abuse by the mother, or presents withdrawal symptoms of prenatal drug exposure or fetal alcohol spectrum disorder, a health care provider involved in the delivery of the child must report it. The report triggers a safety assessment, risk assessment or both by the county agency. The county agency must see the infant within 48 hours of receipt of the report and must determine if the child needs a safety plan, medical services or other protective services. (§ 6317.1)

In addition to broadening the scope of the definition of physical abuse to encompass bodily injury, the Task Force recommends strengthening the criminal assault provisions of the law to increase the penalties for injuring young children. The offense of aggravated assault under 18 Pa.C.S. § 2702 is amended to include (1) causing bodily injury to a child under the age of 4 as a felony of the third degree, (2) causing serious bodily injury to a child under the age of 12 as a felony of the second degree and (3) causing serious bodily injury to a child under the age of 4 as a felony of the first degree. Additionally, the definition of simple assault in 18 Pa.C.S. § 2701 is revised. Currently, simple assault is a misdemeanor of the second degree, unless it involves injury to a child under the age of 12 by an adult over the age of 21, in which case it is a misdemeanor of the first degree. This has been revised to assault by a person over the age of 18.

Who Must Report Child Abuse?

Mandated Reporters

While any individual may, and is encouraged to, report child abuse whenever and wherever it occurs (§ 6312), certain persons, by virtue of their role in a child's life, are required to report child abuse. Under current law, a person who has reasonable cause to suspect child abuse and who has certain contacts or connections with children must report suspected child abuse. (§ 6311) Section 6311(a)(2) clarifies that the child need not come in person before the mandated reporter for a report to be made. Additionally, § 6311(a)(3) provides that no attempt at identifying the perpetrator need be made by the reporter and that knowledge of the identity of the perpetrator is not necessary for filing a report.

In addition to those persons currently required to report child abuse, the following individuals have been added:

- Individuals who accept responsibility for a child in a program, activity or service (§ 6311(a)(7))
- Social service workers (§ 6311(a)(8))
- Law enforcement (§ 6311(a)(9))
- Attorneys (§ 6311(a)(10))
- Public librarians (§ 6311(a)(11))
- EMS providers (§ 6311(a)(12))
- Film processors (§ 6311(a)(13))
- Information technology repair or service personnel (§ 6311(a)(14))
- Employees or independent contractors of other mandated reporters (§ 6311(a)(15) and (16))

If a child makes a specific disclosure that they have been the subject of child abuse, or is aware of another child who is the subject of child abuse to a mandated reporter, § 6311(c) requires the mandated reporter to report that information, if he has reasonable cause to believe that the alleged abuse has occurred. Similarly, a mandated reporter is required to report disclosures of child abuse by persons who have committed the abuse. (§ 6311(d))

Mandatory Reporting in Institutional Settings

Under current law, if child abuse occurs in an institutional setting, reports are permitted to be passed "up the chain of command," with the assumption that the top of the chain will file a report. This has been changed in these amendments to require the person who discovers the abuse to report it immediately to DPW. Notification to the individual reporter's supervisor or other person in charge of the institution is also required under § 6311(e)(1). Treatment of these reports is further detailed:

- The supervisor or person in charge may not restrain a person from reporting child abuse, modify, edit or change the report, or obstruct, prevent or delay the report. (§ 6311(e)(2))

- Notice to the supervisor or person in charge does not relieve the person who discovered the abuse from the primary responsibility to report it to DPW immediately. § 6311(e)(3). However, one report is sufficient, and multiple persons need not report the same case of abuse, once confirmation of the report is received from DPW. (§ 6311(e)(5))

- The supervisor or person in charge who is designated to receive notice of suspected child abuse is responsible for ensuring the cooperation of the institution with the child abuse investigation. (§ 6311(e)(4))

Role of School Employees

Under existing law, school employees committing child abuse against their students are subject to special rules, definitions and reporting procedures. The Task Force has recommended eliminating that distinction and to treat school employees in the same manner as any other person involved with children.

Definitions to be repealed or amended relating to school employees in §6303 include:

- Repeal the definition of "founded report for school employee."
- Repeal the definition of "indicated report for school employee."
- Amend the definition of "school employee" to encompass volunteers providing services at schools.

- Redefine "school" to extend the term to include public and private colleges and universities, community colleges and other post-secondary institutions where children may be involved in programs, activities or services.

Professional Licensees

42 Pa.C.S. § 9561 provides that district attorneys shall report felony convictions of licensed health care practitioners to their respective licensing boards. This provision has been amended to update the list within the statute of licensing boards currently in existence and to provide for future creation of additional boards.

Education and Training

Education and training standards are set forth in § 6383. Amendments are proposed to that section that would add training requirements for mandated reporters as well as other persons responsible for administering the CPSL and provides for the payment of fees to obtain training (to be determined by the department and are earmarked for use in defraying the costs of child abuse prevention).

School employees not covered by the training standards of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, added by the act of July 5, 2012 (P.L.1084, No.126), would also be subject to these provisions.

Training and instruction regarding identification of child abuse and court proceedings involving children are added to the training requirements for magisterial district judges under 42 Pa.C.S. § 3113.

Oath

Persons subject to mandatory training under the CPSL will be required, upon completion of their training, to affirm an oath regarding their responsibilities under the law in § 6383.1.

Confidential Communications

Use of confidential communication privileges is restricted in § 6311(f). Conforming amendments to these provisions are made in § 6381(c) and 42 Pa.C.S. §§ 5914, 5916, 5923, 5928, and 5943.

Custody Determinations

Proposed amendments are offered to the child custody law to ensure that judges and masters hearing custody matters are fully apprised of any history of child abuse or neglect involving the family. § 5328(a) is amended to add the existence of a founded or indicated report by a party or a member of the party's household to the factors to consider in determining custody. § 5329.1 is new, and requires consideration of child abuse and involvement in child welfare when make custody decisions.

How Are Child Abuse and Neglect Reports Made?

Under existing law, child abuse reports may be received by the DPW through ChildLine, by the county agency or law enforcement. Any of the three entities may receive reports and all three are required to communicate with one another, but the process is disjointed and at times duplicative and at cross-purposes. Section 6323 attempts to provide a "no wrong door" means for persons to get reports of suspected child abuse to the proper authorities.

Currently, oral reports of child abuse are made and followed up through written reports. Sections 6313 and 6314 are re-written to permit the use of advanced communication technologies as DPW further develops them under § 6305.

How Are Reports Investigated?

Who Is Responsible for the Investigation?

There are two groups in Pennsylvania charged with investigating reports of child abuse and neglect, the county children and youth agencies, and local law enforcement personnel. Communication between these two entities is not always timely, investigative styles differ, and opportunities for coordination and cooperation are frequently missed, which hamper efforts to identify and stop perpetrators and serve and protect abused children. Subchapter B.1 attempts to reconcile these problems, by creating a coordinated system of investigation of reports of abuse and neglect, dependent upon the nature of the harm to the child.

- Investigations of child abuse committed by a perpetrator against a child in the child's home, which usually involves a violation of the child in their home and by persons with whom they have established a trusting relationship, are generally reserved to the county children and youth agencies. These agencies are best positioned to provide services to the child and the child's family. (§ 6321(1)) Procedures for these investigations are set forth in § 6325, which reflects current law.

- Child abuse by a perpetrator involving crimes against a child necessarily requires the involvement of law enforcement as well, and § 6321(2) requires coordinated, joint investigations by law enforcement and the county children and youth agency through the multidisciplinary investigative team process. This process is detailed more fully in § 6326, discussed further below.

- If a child is abused by a "stranger" (a non-perpetrator), law enforcement will be solely responsible for investigation these incidents under § 6321(3).

- If a child is not being abused, but needs some form of protective services, the county children and youth agency is responsible for assessing the risk of harm and threat to safety of the child. These kinds of cases frequently involve lack of supervision, environmental concerns or simple medical neglect, such as failure to follow medical instructions for children with chronic diseases and disorders, such as diabetes, epilepsy or asthma. (§ 6321(4)) Serious physical neglect, which includes severe medical neglect, continues to be defined as a form of child abuse and would be investigated as such by the county agency or the multidisciplinary investigative team (MDIT), as appropriate.

Section 6324 addresses (1) reports of child abuse involving children who are residents of Pennsylvania, but the abuse occurred in another state and (2) reports of child abuse that occurred in another state involving a perpetrator who is a Pennsylvania resident. This section authorizes "courtesy" referrals, which should assist in the investigation of child abuse that crosses state lines.

Initial reports can be received by DPW (through ChildLine), county children and youth agencies or law enforcement. Section 6323 sets up a cross-reporting system that is designed to ensure that reports are immediately directed to the appropriate investigative authority.

While current law provides for MDITs, these amendments strengthen and further develop their role in investigating cases of child abuse involving criminal offenses against the child. Section 6326 mandates that each county establish an MDIT. The membership of the MDIT will fluctuate, dependent upon the type of case being investigated and the information available. Each MDIT is required to establish protocols for receiving and reviewing reports, coordinating investigations and developing a system for sharing information obtained in interviews, with a view toward minimizing the trauma of multiple interviews of a child and duplication of other fact-finding efforts. The services of children's advocacy centers (CACs) are encouraged where appropriate. To aid MDITs in developing protocols that are consistent from county to county, a statewide MDIT Advisory Committee is established to develop model Statewide standards and procedures protocols. A triennial review process is also mandated.

To further encourage coordinated cross-agency investigations, § 6327 expands on the requirements of existing § 6346 and includes more persons who are required to cooperate in investigations and increases the penalty for a willful failure to cooperate. Parental consent is not a pre-requisite to conducting an interview. (§ 6327(b)(2))

Who Is a Perpetrator?

Under the existing CPSL, behavior is only child abuse if it is committed by a parent, the parent's paramour, an individual over the age of 14 residing in the same home as the child or a "person responsible for the welfare of a child." This term has been interpreted to be restricted to persons having permanent or temporary care, supervision, mental health diagnosis or treatment training or control of a child *in lieu of* parental care, supervision and control. In many cases, a child is denied child protective services not because there was no child abuse, but because the person committing the abuse did not meet this narrow definition.

The definition of perpetrator set for in § 6303 adds spouse and former spouse of parent, former paramours, extended family not living in the home (persons related to the child within the fifth degree of consanguinity or affinity) and persons over the age of 14 years who are present in the child's residence at the time the abuse occurred. The Task Force felt the addition of the "visitors" to the child's residence is important to ensure that children feel safe in their homes at all times. Further, residence is intended to cover more that the individual house or apartment, and includes the curtilage – the outbuildings and common areas associated with the real property of the home.

The term "person responsible for the welfare of a child" in § 6303 has been broadened to include any person who, through a profession, employment or volunteer activity has access to children on a regular basis and is in a relationship of trust as a coach, instructor, leader, mentor, chaperone or other role in a "program, activity or service" in which children participate. A program, activity or service includes public and private educational or athletic pursuits. Examples include youth camps or programs, recreational camps or programs, sports or athletic programs, outreach programs, enrichment programs and troops and clubs.

Exemptions for school employees are deleted, as part of the desire to treat school employees in the same manner as any other individual.

What Information Can Investigators Access and How Do They Do So?

Subchapter C addresses the maintenance and use of reports of child abuse or neglect. In recognition of the fact that modern technology has reduced the need for separate physical files of information, these amendments eliminate the pending complaint file, the unfounded report file, the founded and indicated report file and the Central Registry. In their place is one Statewide database, to include all information regarding

reports of child abuse, regardless of their outcome, as well as all general protective services cases. § 6331(a). These amendments are drafted to provide that information in the database is restricted and confidential, with access only available to certain authorized persons for investigative purposes.

Including all child abuse and general protective services cases in the Statewide database has several purposes, all designed to ensure that all cases of suspected child abuse are fully investigated and all information regarding prior involvement of the child or other subjects of the report with the protective services system is accessible. (§ 6335.1) Testimony at the hearings indicated that the lack of access to prior reports and the expungement process serve to handicap investigators. Investigators need as much information as possible to determine whether the specific circumstances of a child constitute child abuse or neglect. A review of prior reports can reveal a pattern of behavior or an escalation in actions against the child, that in light of the current report, can help in making a determination that abuse is actively occurring. Conversely, a review of prior reports could reveal a pattern of false reports based on custody disputes or other malicious behavior that would help investigators rule out false allegations of child abuse.

Throughout the statute, the expungement process has been eliminated. Reports will be kept indefinitely, with their access limited to authorized county children and youth agency personnel and law enforcement personnel for purposes of assessing and investigating allegations of child abuse and neglect.

The information in the Statewide database includes the information required under § 6313 (reporting procedures) and in the Central Registry under current law. Additionally, new § 6375.1 specifically authorizes county children and youth agencies to share general protective services reports and referrals with the department, as well as updates and information on dispositions.

Information on all dispositions of all child abuse and neglect cases is included in the Statewide database, including information as to whether a report was accepted for services, and if not, the reasons why and any community referrals made to the family instead. If unfounded reports are later proven to be false reports, an annotation to that effect is to be included in the database as well. (§ 6331(b))

Access to the Statewide database is available on a 24 hour a day, 7 day a week basis. In order to be certain the database is not accessed inappropriately, the identity and authority of the person requesting information must be verified under § 6322(1) and the department is authorized to develop verification procedures for requests received via advanced communication technologies under § 6322(2). Permitted uses of the database are detailed in § 6335.1.

When and How Can Information in the Statewide Database Be Disclosed?

Generally, the provisions of §§ 6339 and 6340, allowing disclosures of information in the database are not substantively changed, other than to conform with the investigative uses discussed above. Section 6340(c) allows law enforcement to access the names of reporters when investigating allegations of false reports.

Section 6340.1 is added to permit certain medical practitioners involved with a child who is the suspected victim of child abuse or neglect to be able to exchange information about the child and other children in the child's home, again to better ensure that investigators have a complete picture of the child's situation and to allow these health care providers to better care for these children.

Section 6340.1 also specifically authorizes physicians to report children believed to be in need of general protective services without parental consent under the exclusion found in the federal Health Insurance Portability and Accountability Act (HIPAA), at 45 C.F.R. § 164.512(c). Under HIPAA, written authorization is not required when reporting child abuse to an appropriate government authority authorized by law to receive reports of child abuse and neglect. (45 C.F.R. § 164.512(b)(1)(ii)) Lack of parental consent is seen as a bar to physicians attempting to report children in need of general protective services (GPS), because they are not identified as child abuse cases. However, § 6373(a)(2) specifically cites as one of the goals of general protective services the prevention of abuse, neglect or exploitation. HIPAA permits disclosure when the physician reasonably believes a person is a victim of abuse, neglect or domestic violence, to a government authority, including a social service or protective services agency authorized by law to receive reports of such abuse, neglect or domestic violence to the extent the disclosure complies with and is limited to the relevant requirements of the law. The disclosure must be expressly authorized by statute or regulation, and the physician, in the exercise of professional judgment, must believe the disclosure is necessary to prevent serious harm to the individual (in GPS cases, the child). Generally, the physician is required to notify the individual of the report (or the individual's personal representative, *i.e.*, the parent of a child) UNLESS the physician believes that the personal representative (*e.g.*, the parent) is responsible for the abuse, neglect or domestic violence and that informing such person, in the physician's professional judgment, would not be in the best interests of the individual. Further, notice to the individual (child) is not required if notifying the individual will place the individual at risk of serious harm. (45 C.F.R. § 164.512(c))

A vital disclosure of information in the Statewide database relates to the provision of background clearances for persons who are working or otherwise involved with children in a manner that provides them with access and opportunity to abuse children. Under current law, background clearances are required for child-care personnel and other persons having contact with children. (§§ 6344, 6344.1 and 6344.2)

Section 6344.2 expands the provision governing persons having contact with children to include any person applying for a paid or unpaid position as a person responsible for the welfare of a child. Persons in these circumstances who meet the definition of the term "perpetrator" must obtain background clearances before working or volunteering with children, and certain information found in these background checks can result in permanent or temporary bans from employment or volunteer activities with children.

Because of the anticipated increase in the volume of certification requests that these amendments will generate, the amount of time that DPW has to respond to certification requests is increased from 14 days to 28 days. (§ 6344(i))

Section 6344.3 provides the grounds for denying employment or participation in volunteer activities. Section 6344.3(a) imposes a permanent ban of persons convicted of violent crimes, sex crimes and other crimes negatively impacting children, such as endangering the welfare of children or corruption of minors. This ban includes persons verified in the Statewide database as the perpetrator of a founded or indicated report of child sexual abuse or exploitation.

Section 6344.3(b) imposes a 10-year ban for felony offenses committed against a child that do not fall under the list of crimes described in the permanent ban provisions, as well as felony offenses under the drug laws.

Section 6344.3(c) imposes a 5-year ban for first degree misdemeanor offenses committed against a child that are not otherwise listed in the permanent ban provisions, and for founded child abuse reports not involving child sexual abuse or exploitation.

These bans are based on, and are consistent with, the restrictions imposed on school employees in § 111 of the Public School Code of 1949, as amended by the act of June 30, 2011 (P.L. 112, No.24). Also borrowed from these Public School Code amendments is a requirement that persons subject to background checks report new arrests or convictions (§ 6344.3(h)) and provides penalties for non-compliance (§ 6344.3(i))

Child-care personnel and other persons having contact with children under § 6344 and 6344.2 are required to obtain new certifications every 24 months. This provision previously only applied to foster parents.

Consistent with the Public School Code of 1949 amendments discussed above and the amendments set forth in the proposed legislation, Subchapters C.1 (Students in Public and Private Schools) and (C.2 Background Checks for Employment in Schools) are repealed. School employees who commit child abuse are subject to the same reporting and investigation procedures as any other person. Background checks for school employees are now governed by the Public School Code of 1949.

What Happens When the Investigation Is Complete?

Upon completion of an investigation, a report is determined to be founded, indicated or unfounded, and a child may be accepted for protective services. (§ 6328(a)) Because indicated reports are not subject to a judicial review, special provisions are made for their treatment. Indicated reports cannot be identified as such without review and approval by the county children and youth agency solicitor and the county administrator or his designee. Additionally, the final determination of an indicated report can be appealed under § 6329. The burden of proof in these cases remains "substantial evidence" and the Task Force's reasoning for retaining this burden of proof and rejecting the Commonwealth Court's recent decisions reviewing this standard is set forth in the Comment to § 6329 in the proposed legislation. An appeal process for general protective services is also included at § 6330, but this provision does not change existing law.

The appeals process in § 6329 is designed to be more child-friendly and incorporates several provisions from criminal judicial procedure law under 42 Pa.C.S. involving testimony by children. These include the use of contemporaneous closed-circuit video and out-of-court statements. (§ 6329(d) and (e))

Additionally, the definitions of "founded report" and "indicated report" have been revised:

- The definition of the term "founded report" is amended to add the equivalent of guilty pleas and convictions in juvenile proceedings to the term judicial adjudication, and further allows for a founded report to be based on a defendant's admission to an accelerated rehabilitative disposition program and a final protection from abuse order. Additionally, an amendment to 23 Pa.C.S. § 6106 is proposed that requires disclosure of pending child abuse investigations when petitioning for a protection from abuse order.

- The definition of the term "indicated report" is amended to clarify that more than one perpetrator can be indicated in a report of child abuse. This is intended to overrule the holding in *B.B. v. Pa. Dep't of Pub. Welfare,* 17 A.3d 995 (Pa. Commw. Ct., Apr. 13, 2011) and is also addressed in proposed §§ 6329(c)(5) and 6381(d). Additionally, a report may be indicated, thus qualifying the child for child protective services, even if a specific perpetrator is not identified.

Who Supervises the Implementation of the Child Protective Services Law?

Provisions regarding the review and oversight of child abuse and neglect investigations are currently scattered throughout Chapter 63, and are frequently buried deep inside sections dealing with additional matters. These include citizen review panels

(§ 6359), multidisciplinary review teams (§ 6359.1), child fatality and near fatality review teams (§ 6359.2), DPW reviews and reports of child fatalities and near fatalities (§ 6359.3), investigating performance of counties (§ 6359.4), reports to the Governor and the General Assembly (§ 6359.5) and legislative oversight (§ 6359.6). The proposed legislation moves them all into one subchapter. Changes to existing law are as noted below.

- Child fatality and near fatality review teams are charged with conducting a systemic review of instances involving the death or near death of a child that may have been the result of child abuse. Concerns were raised that the current definition of "near fatality" is confusing, and it is amended in these proposals to clarify that only children who are the suspected victims of child abuse are to be certified as near fatalities in § 6303.

- Formerly referred to as "multidisciplinary teams" or "MDTs," these county entities have been renamed as multidisciplinary review teams to better declare their function and to distinguish them from MDITs. (§ 6359.1)

- Amendments have been made to the county child fatality and near fatality review teams to clarify that county administrators may release limited information in response to inquiries during the pendency of a review and to strengthen the ability of the district attorney to block releases of information about child fatality and near fatality review teams when the release of information may interfere with or jeopardize a criminal investigation. (§ 6359.2) Releases of information about child fatalities and near fatalities reviews and reports conducted by DPW are likewise subject to restriction by the district attorney. (§ 6359.3)

What Services Are Provided, and How?

Protective services can take several forms.

- "Protective services" in § 6303 are designed to address the prevention or reoccurrence of child abuse, amelioration of the effects of child abuse on children, and alleviation of the circumstances that may create a need for general protective services, which usually involves neglect, rather than abuse.

- The definition of "child protective services" in § 6303 is amended to include not only children who are the victim of abuse by an identifiable perpetrator, but also children who have suffered child abuse in circumstances where there are multiple potential perpetrators and the

specific individual responsible for the abuse cannot be identified as well as those cases where the identity of any perpetrator is simply unknown.

- "Risk assessments" are currently part of the group of tools available to child protective services to determine the needs of a child; "safety assessments" are added to this toolkit in § 6303.

The responsibilities of county children and youth agencies for child protective services are set forth in Subchapter D. Amendments are proposed to make these responsibilities consistent with participation in MDITs. (§ 6362(a)) Many of the provisions found in this chapter under current law have been relocated to other chapters and sections where their purpose and function are more clearly identified. *See* the Disposition Table following the proposed legislation to determine where the content of these provisions can be found.

According to Pennsylvania Department of Education statistics, over 22,000 students are homeschooled in Pennsylvania, and over 32,000 students attend cyber charter schools. The common thread between the two is that most of these students are educated in the home. The Task Force received testimony from prosecutors and physicians regarding specific instances of child abuse and neglect occurring in homeschool settings where families have had prior involvement in the child welfare system, which suggests that there may be instances where it would be prudent for additional safeguards to be put in place to ensure the health and safety of these children.

Section 6362.1 provides for risk and safety assessments for children who are removed from school and enrolled in a home school program or cyber charter school, who are truant, or who are not registered for school upon reaching the age of compulsory education. An initial assessment is to be performed, followed by two more assessments at six month intervals. If no risk of abuse is discovered during those assessments, no further assessments are required unless a report of suspected child abuse or neglect is received.

Subchapter D.1 sets forth the responsibilities of county children and youth agencies for general protective services. Section 6373(c.1) specifically allows county agencies to make referrals to community agencies if protective services are not required. This is a component of DPW's differential response initiative. Sections 6375(d) and 6378 are amended to permit delegation of assessments of general protective service complaints to other agencies.

How Are Violations of the CPSL Handled?

Subchapter D.2 addresses issues of immunity and liability. Several of theses sections were relocated for clarity's sake and were not substantively amended. These include § 6379, civil and criminal immunity from liability for mandated reporters, §

6379.3, unauthorized release of information, § 6379.4, failure to amend information, and § 6379.5, non-compliance with regulations.

Section 6379.1 protects employees from discrimination based on the fact that they made a good faith report of suspected child abuse. This protection is expanded to include permissive reporters as well as mandatory reporters.

Failure to report child abuse by a mandatory reporter is provided for in current § 6319. This provision is relocated to section 6372.2(a) and the penalty is increased to a misdemeanor of the second degree. Subsections (b), (c) and (d) enhance this penalty: subsection (b) makes interfering with the making of a report or referral a first degree misdemeanor, subsection (c) makes it a third degree felony to conceal child abuse in order to protect another person or entity and subsection (d) adds that a willful failure to report under subsection (a) when the person knows or has reasonable cause to believe that the abuse is part of a continuing cause of action resulting in the child being actively abused as a third degree felony.

New § 6379.6 serves to alert persons subject to the CPSL that other criminal provisions relating to child abuse exist in the Crimes Code. The following provisions are cross-referenced.

- 18 Pa.C.S. § 4304 (endangering welfare of children) is amended to add intentionally or knowingly preventing or interfering with the making of a child abuse report or intentionally or knowingly preventing the discovery of an abused or neglected child to the definition of the offense. Additionally, any adult residing in the home of the child or paramour of the parent of the child who has knowledge or reason to believe the child is being endangered and fails to report the endangerment also violates this provision.

- 18 Pa.C.S. § 4306.1 is a new provision that provides penalties for filing false reports of child abuse.

- 18 Pa.C.S. § 4958 is a new provision that addresses intimidation or retaliation in child abuse cases.

Technology

Section 6305 is added to authorize DPW to develop and utilize advance communication technologies to receive reports from mandated reporters and share information with county children and youth agencies and law enforcement. The term "advanced communication technologies" is defined in § 6303.

18 Pa.C.S. § 5743.1 is added to assist law enforcement in its investigations of sexual abuse of children by permitting the use of administrative subpoenas to obtain information from providers of electronic communication services or remote computing services.

Miscellaneous Amendments

Several definitions and sections were re-written to clarify the existing language, make technical amendments to modernize the style of the law or reconcile the statutory language with the regulations under the act, without substantively changing their meaning. They include:

- Definition of "child care services" in § 6303.
- Definition of "cooperation with an investigation or assessment."
- Definition of "county agency."
- Definition of "family members."
- Definition of "general protective services."
- Definition of "near fatality."

Other definitions were added to provide greater clarity in references. They include:

- Definition of "certified medical practitioner."
- Definition of "mandated reporter."
- Definition of "paramour."
- Definition of "parent."

In some cases, sections of existing law were renumbered and relocated to improve the overall readability and clarity of the law, but were not substantively amended. A disposition table is included in this report to aid in locating those sections. Additionally, notes are provided in the legislation after each section to further identify the original source of the statutory language.

Chapter 63 of Title 23 of the Pennsylvania Consolidated Statutes (the Domestic Relations Code) is amended as follows:

CHAPTER 63

CHILD PROTECTIVE SERVICES

Subchapter

A. Preliminary Provisions

B. Provisions and Responsibilities for Reporting Suspected Child Abuse

B.1 Investigations of Reports of Abuse or Neglect

C. [Powers and Duties of Department] Maintenance and Use of Reports of Abuse or Neglect

[C.1. Students in Public and Private Schools

C.2. Background Checks for Employment in Schools]

C.3 Reviews and Oversight

D. Organization and Responsibilities of Child Protective Service

D.1. Organization and Responsibilities of General Protective Service

D.2. Immunity and Liability

E. Miscellaneous Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

* * *

§ 6302. Findings and purpose of chapter.

* * *

[(c) Effect on rights of parents.--This chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children.]

Note

The substance of repealed subsection (c) is relocated to proposed § 6304(d).

§ 6303. Definitions.

[(a) General rule.--]The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Advanced communication technologies." The transfer of information in whole or in part by technology having electrical, digital, magnetic, wireless, optical, electromagnetic, photo-electronic or photo-optical systems or similar capabilities. The term includes, but is not limited to, e-mail, Internet communication or other means of electronic transmission.

"Bodily injury." Impairment of physical condition or substantial pain.

Note

The definition of "bodily injury" is the same as the definition under 18 Pa.C.S. § 2301.

"Certified medical practitioner." A physician, osteopathic physician, physician's assistant or certified registered nurse practitioner.

"Child." [Includes a newborn] An individual under 18 years of age.

Note

The definition of "child" is amended to conform to the definition found in the regulations at 55 Pa. Code § 3490.4. The reference to "a newborn" is deleted as unnecessary.

"Child abuse." Except as otherwise provided in section 6304 (relating to exclusions from child abuse), any of the following with respect to a child:

(1) A reckless or intentional act against the child that has occurred within two years of the date of the report to the department or county agency and that:

(i) causes bodily injury or serious bodily injury to the child; or

(ii) creates a reasonable likelihood of bodily injury or serious bodily injury to the child.

(2) Recklessly or intentionally engaging in any of the following conduct that has occurred within two years of the date of the report to the department or county agency:

(i) Kicking, burning, biting, stabbing, cutting or throwing the child in a manner that may endanger the child.

(ii) Unreasonably confining or restraining the child, based upon consideration of the method, location or the duration of the confinement or restraint.

(iii) Forcefully shaking the child if the child is under the age of one year.

(iv) Forcefully slapping the child if the child is under the age of one year.

(v) Interfering with the breathing of the child.

(vi) Causing the child to be present at a location where any of the following is occurring:

(A) A violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory).

(B) A felony violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetics Act.

(viii) Operating a vehicle in which the child is a passenger while a violation of 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) is occurring.

(ix) Leaving the child alone with an individual who is 14 years of age or older and subject to registration under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenses).

(3) An act or series of acts that causes or significantly contributes to serious mental injury to the child.

(4) A reckless or intentional act against the child that causes sexual abuse or exploitation of the child.

(5) Causing serious physical neglect of the child.

(6) An attempt to engage in any conduct under paragraph (1), (2), (3) or (4).

(7) A failure to act that:

(i) has occurred within two years of the date of the report to the department or county agency; and

(ii) causes any harm or injury, or creates a reasonable likelihood of any harm or injury, as set forth in paragraph (1) or (2).

(8) A failure to act that causes any harm or injury as set forth in paragraph (3) or (4).

(9) A reckless or intentional act against the child that results in the death of the child.

"Child-care services." [Child day-care centers, group and family day-care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, early intervention and drug and alcohol services for children; and other child-care services which are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be

offered by public and private schools, intermediate units or area vocational-technical schools]. Includes any of the following:

(1) Child day-care centers.

(2) Group day-care homes.

(3) Family day-care homes.

(4) Foster homes.

(5) Adoptive parents.

(6) Boarding homes for children.

(7) Juvenile detention center services or programs for delinquent or dependent children

(8) Mental health services for children.

(9) Services for children with intellectual disabilities.

(10) Early intervention services for children.

(11) Drug and alcohol services for children.

(12) Day-care services or programs that are offered by a school.

(13) Other comparable services that are provided by or subject to approval, licensure, registration or certification by the department or a county social services agency or that are provided pursuant to a contract with the department or a county social services agency.

Note

The definition of "child-care services" is revised to (1) provide better readability; (2) include school day-care services or programs such as before-school and after-school child-care, homework clubs and the like and (3) modernize the language of the definition by replacing the term "mental retardation" with "intellectual disability," consistent with 2011 amendments to the act of October 20, 1966, Sp.

Sess. No. 3 (P.L.96, No.6), known as the Mental Health and Intellectual Disability Act of 1966.

"Child protective services." Those services and activities provided by the [Department of Public Welfare] department and each county agency for [child abuse cases] a child in need of protective services under any of the following circumstances:

(1) The child is believed to be the victim of child abuse by a perpetrator.

(2) The child is believed to be the victim of child abuse but there are multiple alleged perpetrators who may have committed the child abuse and the identity of the specific individual responsible for the child abuse cannot be ascertained.

(3) The identity of any individual responsible for the injury or sexual abuse or exploitation of the child is unknown.

* * *

"Cooperation with an investigation or assessment." Includes, but is not limited to, a school or school district which permits authorized personnel from the [Department of Public Welfare] department or county agency to interview a student while the student is in attendance at school.

"County agency." The county children and youth social service agency established pursuant to section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the [Department of Public Welfare] department under [Article] Articles VII and IX of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

Note

Article VII of the Public Welfare Code concerns children and youth, while Article IX concerns departmental powers and duties as to supervision. Current regulations simply reference Article VII.

* * *

["Expunge." To strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise.]

"Family members." Spouses, parents and children or other persons related by consanguinity or affinity. The term does not include foster parents, foster children and paramours.

Note

The definition of "family members" is based on the definition under 55 Pa. Code § 3490.4.

"Founded report." [A child abuse report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.] A child abuse report involving a perpetrator that is made pursuant to this chapter, if any of the following applies:

(1) There has been a judicial adjudication based on a finding that a child who is a subject of the report has been abused and the adjudication involves the same factual circumstances involved in the allegation of child abuse. The judicial adjudication may include any of the following:

(i) The entry of a plea of guilty or nolo contendere.

(ii) A finding of guilt to a criminal charge.

(iii) A finding of dependency or delinquency under 42 Pa.C.S. § 6341 (relating to adjudication).

(2) There has been an acceptance into an accelerated rehabilitative disposition program and the reason for the acceptance involves the same factual circumstances involved in the allegation of child abuse.

(3) There has been a consent decree entered in a juvenile proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) and the decree involves the same factual circumstances involved in the allegation of child abuse.

(4) A final protection from abuse order has been granted under section 6108 (relating to relief), when the child who is a subject of the report is also one of the individuals protected under the protection from abuse order and:

(i) only one individual is charged with the abuse in the protection from abuse action;.

(ii) only that individual defends against the charge; and

(iii) the protection from abuse adjudication finds that the abuse occurred and prohibits further contact between the individual and the child.

Note

Procedures governing accelerated rehabilitative dispositions are governed by Chapter 3 of the Pa. Rules of Criminal Procedure.

["Founded report for school employee." A report under Subchapter C.1 (relating to students in public and private schools) if there has been any judicial adjudication based on a finding that the victim has suffered serious bodily injury or sexual abuse or exploitation, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegations of the report.]

"General protective services." Those services and activities provided by each county agency for [nonabuse] cases requiring protective services, as defined by the [Department of Public Welfare] department in regulations.

"Indicated report." [A child abuse report made pursuant to this chapter if an investigation by the county agency or the Department of Public Welfare determines that substantial evidence of the alleged abuse exists based on any of the following:

(1) Available medical evidence.

(2) The child protective service investigation.

(3) An admission of the acts of abuse by the perpetrator.]

(1) Subject to paragraph (2), a report of child abuse made pursuant to this chapter if an investigation by the department or county agency determines that substantial evidence of the alleged abuse by a perpetrator exists based on any of the following:

(i) Available medical evidence.

(ii) The child protective service investigation.

(iii) An admission of the acts of abuse by the perpetrator.

(2) A report may be indicated under paragraph (1)(i) or (ii) for any child in need of child protective services, regardless of the number of alleged perpetrators or the inability to identify the specific perpetrator among two or more alleged perpetrators.

["Indicated report for school employee." A report made under Subchapter C.1 (relating to students in public and private schools) if an investigation by the county agency determines that substantial evidence of serious bodily injury or sexual abuse or exploitation exists based on any of the following:

(1) Available medical evidence.

(2) The county agency's investigation.

(3) An admission of the acts of abuse by the school employee.

"Individual residing in the same home as the child." An individual who is 14 years of age or older and who resides in the same home as the child.]

Note

The term "individual residing in the same home as the child" is not used elsewhere in this amended chapter and its concept is included in the definition of "perpetrator."

"Mandated reporter." A person required to report suspected child abuse under section 6311 (relating to persons required to report suspected child abuse).

"Near fatality." [An act that, as certified by a physician, places a child in serious or critical condition.] A child's serious or critical condition, as certified by a physician, where that child is a subject of the report of child abuse.

Note

The repealed definition of "near fatality" mirrored the language of the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. Ch. 67.

The definition of "near fatality" is revised to clarify that only children who are the suspected victims of child abuse are to be certified as near fatalities under this chapter. Under § 6365.2, a child fatality or near-fatality review team is only convened when death or near death occurs as a result of child abuse.

***See* the U.S. Dep't of Health & Human Servs., Admin. for Children & Families, Children's Bureau Child Welfare Policy Manual (Sept. 26, 2012), *available at* http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp.**

* * *

Note Regarding the Term "Newborn"

The term "newborn" -- defined as "as defined in section 6502 (relating to definitions)" -- is used in this chapter solely in the context of newborn abandonment. Under Chapter 65 (newborn protection),

the term is defined as "as a child less than 28 days of age as reasonably determined by a physician." Specific cross-references to Chapter 65 are found in §§ 6315(a)(3), 6315(c)(2), 6316(a.1) and 6316(b), and in reference to newborn abandonment in general in §§ 6365 and 6383(a). Additionally, 18 Pa.C.S. § 4306 (newborn protection) also defines "newborn" by reference to Chapter 65.

["Nonaccidental." An injury that is the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk.]

Note

The definition of "non-accidental injury" is unnecessary in light of the references in the definition of "child abuse" to a reckless or intentional act, an attempt to engage in the specified conduct or the failure to act.

"Paramour." An individual who is engaged in an ongoing intimate relationship with a parent of the child but is not married to and does not necessarily reside with the child's parent.

Note

The definition of "paramour" is based on the definition under 55 Pa. Code § 3490.4.

"Parent." A biological parent, adoptive parent or legal guardian.

Note

The definition of "parent" is based on the definition under 55 Pa. Code § 3490.4.

"Perpetrator." A person who has committed child abuse [and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent]. The term includes only the following:

(1) A parent of the child.

(2) A spouse or former spouse of a parent of the child.

(3) A paramour or former paramour.

(4) An individual who is 14 years of age or older and:

(i) resides in the same household as the child;

(ii) is present in the child's residence when the alleged child abuse occurred; or

(iii) is related to the child within the fifth degree of consanguinity or affinity but does not reside in the same household as the child.

Note

The Task Force acknowledges the concern that paragraph (4)(ii) may result in certain individuals being classified as a perpetrator who, but for their mere presence at a particular location at a particular time, would not otherwise be classified as a perpetrator.

(5) A person responsible for the child's welfare.

"Person responsible for the child's welfare." A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [The term does not include a person who is employed by or provides services or programs in any public or private school, intermediate unit or area vocational-technical school.] The term includes the following:

(1) An individual who has direct and regular contact with a child through any program, activity or service sponsored by a school, for-profit organization or religious or other not-for-profit organization, regardless of where the child abuse occurs.

(2) An employee, independent contractor or volunteer affiliated with the entity under paragraph (1).

* * *

"Program, activity or service." A public or private educational, athletic or other pursuit in which children participate. The term includes, but is not limited to, the following:

(1) A youth camp or program.

(2) A recreational camp or program.

(3) A sports or athletic program.

(4) An outreach program.

(5) An enrichment program.

(6) A troop, club or similar organization.

An individual participating in a program, activity or service may bear any title, including that of counselor, chaperone, coach, instructor, leader, mentor or other comparable title.

"Protective services." Those services and activities provided by the [Department of Public Welfare] department and each county agency [for children who are abused or are alleged to be in need of protection under this chapter] that are designed to address one or more of the following:

(1) Prevent the occurrence or reoccurrence of child abuse.

(2) Ameliorate the effects of child abuse on a child who has been the victim of child abuse.

(3) Alleviate circumstances that create a need for general protective services.

["Recent acts or omissions." Acts or omissions committed within two years of the date of the report to the Department of Public Welfare or county agency.]

"Record." Information that is inscribed on a tangible medium or is stored in an electronic or other medium and which is retrievable in perceivable form.

* * *

"Safety assessment." A Commonwealth-approved systematic process that assesses a child's need for protection or services based on the threat to the safety of the child.

"School." A facility providing elementary, secondary or post-secondary educational services. The term includes every public, nonpublic, private and parochial school, including each of the following:

(1) A school or a class within a school under the supervision of the Department of Education of the Commonwealth.

(2) A State-related and State-owned college or university.

(3) A public or private college or university.

(4) A community college.

(5) A vocational-technical school.

(6) An intermediate unit.

(7) A charter or regional-charter school.

(8) A private school licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act.

(9) A nonprofit school located in this Commonwealth, other than a public school, wherein a resident of this Commonwealth may legally fulfill the compulsory school attendance requirements of the act of March 10, 1949 (P.L.30, No.11), known as the Public School Code of 1949, and which meets the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000 et seq.

"School employee." An individual who is employed by a [public or private school, intermediate unit or area vocational-technical] school or who provides a program, activity

or service in a school. The term includes an independent contractor that provides a program, activity or service in a school and the employees of that independent contractor. [The term excludes an individual who has no direct contact with students.]

* * *

Note Regarding the Term "Serious Bodily Injury"

The definition of "serious bodily injury" ("Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ") is the same as the definition under 18 Pa.C.S. § 2301.

["Serious physical injury." An injury that:

(1) causes a child severe pain; or

(2) significantly impairs a child's physical functioning, either temporarily or permanently.]

"Serious physical neglect." Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(1) A repeated, prolonged or egregious failure to supervise a child, in a manner that is appropriate considering the child's developmental age and abilities.

(2) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Note

The definition of "serious physical neglect" is based on repealed § 6303(b)(1)(iv). The only case law speaking directly to the definition of prolonged or repeated lack of supervision is *C.F. v. Pa. Dep't of Pub. Welfare*, 804 A.2d 755 (Pa. Commw. Ct. 2002) which concluded "to constitute a repeated lack of supervision under the Law, the perpetrator must leave the child unsupervised more than once." The

Commonwealth Court further held that "prolonged" needed to be determined on a case-by-case, "facts and circumstances" basis.

"Sexual abuse or exploitation." Any of the following:

(1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct[.], which includes, but is not limited to, the following:

(i) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device.

(iii) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(iv) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

[(2) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in simulation of sexually explicit conduct for the purpose of producing visual depiction, including photographing, videotaping, computer depicting and filming.

(3) Any of the following offenses committed against a child:

(i) Rape.

(ii) Sexual assault.

(iii) Involuntary deviate sexual intercourse.

(iv) Aggravated indecent assault.

(v) Molestation.

(vi) Incest.

(vii) Indecent exposure.

(viii) Prostitution.

(ix) Sexual abuse.

(x) Sexual exploitation.]

(2) Any of the following offenses committed against a child:

(i) Rape, as defined in 18 Pa.C.S. § 3121 (relating to rape).

(ii) Statutory sexual assault, as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(iii) Involuntary deviate sexual intercourse, as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(iv) Sexual assault, as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(v) Institutional sexual assault, as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(vi) Aggravated indecent assault, as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(vii) Indecent assault, as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(viii) Indecent exposure, as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(ix) Incest, as defined in 18 Pa.C.S. § 4302 (relating to incest).

(x) Prostitution, as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(xi) Sexual abuse, as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(xii) Unlawful contact with a minor, as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(xiii) Sexual exploitation, as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

Note

The definition of "sexual abuse or exploitation" blends the current definition," the definition of "sexual exploitation" in 55 Pa. Code § 3490.4, and the definition "sexual exploitation" in 18 Pa.C.S. § 6320. Although 18 Pa.C.S. § 6320 limits the crime of sexual exploitation of children to the procurement of a child for purposes of sexual exploitation *by another person*, sexual exploitation in the child abuse context under this section is intended to cover any person who commits the enumerated actions against a child and not just the procurer.

The reference to 18 Pa.C.S. § 3124.2 in paragraph (2)(v) is included because of the broadening of the definition of "perpetrator." An individual who commits an offense under § 3124.2 may meet the amended definition of "perpetrator."

The term "molestation," used in the repealed definition of "sexual abuse or exploitation" is not included in paragraph (2). The concepts embedded in that term are replaced, in part, by the addition of the offenses found in 18 Pa.C.S. §§ 3126 and 6318, under paragraph (2)(vii) and (xii).

Statutory sexual assault is added in paragraph (2)(ii), but an exception is created in § 6311 that exempts consensual sex between teenagers from the mandatory reporting requirements imposed on rape crisis counselors.

"Statewide database." The Statewide database of protective services cases established under section 6331 (relating to establishment of Statewide database of protective services cases).

"Student." [An individual enrolled in a public or private school, intermediate unit, or area vocational-technical school who is under 18 years of age] A child who is enrolled in a school or participating in a program, activity or service at a school.

"Subject of the report." Any [child, parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator or school employee named in a report made to the Department of Public Welfare department or a county agency under this chapter] of the following individuals named in a report alleging child abuse or a need for general protective services that is made to the department or a county agency under this chapter:

(1) A child.

(2) A parent or other individual responsible for the child's welfare.

(3) An alleged or actual perpetrator.

* * *

[(b) Child abuse.--

(1) The term "child abuse" shall mean any of the following:

(i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

(3) If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate.]

Note

The provisions of repealed subsection (b)(2) and (3) are relocated to proposed § 6304(a) and (b).

Comment to § 6303

With respect to the definition of "child abuse," paragraph (1) references bodily injury and serious bodily injury, which could include harming a vital structure of the child's body (such as the head, neck, chest, abdomen or genitalia) or functionally impairing the child's body, so that internal bleeding, a bone fracture, internal trauma to any organ or body system or any other internal injury occurs. Paragraph (1)(ii) is designed to encompass the concept of imminent risk of harm to a child. Similarly, many of the actions set forth in paragraph (2) may be considered as creating imminent risk of harm to a child. While paragraph (1) concerns the outcome of an action against a child, paragraph (2) concerns the action itself. Paragraph (7) concerns the medical neglect of a child, with the child suffering current or likely injuries resulting from such conditions as seizures, untreated diabetes, asthma or harmful ingestions.

With respect to the definition of "child-care services," school day-care services or programs under paragraph (12) would include, but not be limited to, before-school and after-school child-care and homework clubs.

The definition of "child protective services" is expanded to include services for victims of child abuse where there are multiple perpetrators who had access to the child and the opportunity to have committed the abuse, but the individual personally responsible for the abuse cannot be singled out. This situation should not preclude a child from receiving child protective services in such circumstances. Similar logic applies in cases where the person responsible for the injury to the child cannot be ascertained. Similar amendments are made to the definition of "indicated report." *See* the comment to § 6334.3.

With respect to the definition of "founded report," paragraph (4) codifies the Commonwealth Court's holding in *Philadelphia Cnty. Dep't of Human Servs. v. Dep't of Pub. Welfare*, 953 A.2d 860 (Pa. Commw. Ct. 2008): a protection from abuse order is an adjudication containing a sufficient definitive finding upon which to base a founded report when (1) only one person is charged with abuse in the PFA action, (2) only that person defends against the charge and (3) the PFA adjudication finds that the abuse occurred and prohibits further contact between the child and the person.

The terms "serious" and "critical" in the definition of "near fatality" are intended to reflect the classification of the child's injuries by medical personnel for purposes such as updating hospital records.

The definition of "perpetrator" is amended to include any individual in a relationship of authority and trust with a child who may cause harm to the child. The inclusion of this type of individual serves multiple purposes: to make more children eligible for child

protective services and to include more individuals on the Statewide central register of child abuse, thereby barring such individuals from employment opportunities and otherwise restricting their access to other children. The reference to the child's residence in paragraph (4)(ii) includes such locations as the common areas of an apartment building and outbuildings on the property.

With respect to the definition of "subject of the report," a parent or other individual responsible for the child's welfare who is not an alleged perpetrator can be named in the report to ensure that the child's family is included in any child protective services that the child may need.

§ 6304. Exclusions from child abuse.

(a) Environmental factors.--No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

(b) Practice of religious beliefs.--If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. In such cases the following shall apply:

(1) The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health.

(2) All correspondence with a subject of the report and the records of the department and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition.

(3) The family shall be referred for general protective services, if appropriate.

Note

Subsections (a) and (b) are based on repealed § 6303(b)(2) and (3).

(c) Use of force for disciplinary purposes.--Subject to subsection (d), the use of reasonable force under the circumstances against a child by a person responsible for a child's welfare shall not be considered child abuse if any of the following conditions apply:

(1) The use of reasonable force constitutes incidental, minor or reasonable physical contact with the child or other actions that are designed to maintain order and control.

(2) The use of reasonable force is necessary:

(i) to quell a disturbance or remove the child from the scene of a disturbance that threatens physical injury to persons or damage to property;

(ii) to prevent the child from self-inflicted physical harm;

(iii) for self-defense or the defense of another individual; or

(iv) to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are on the child or within the control of the child.

(d) Effect on rights of parents.--Notwithstanding subsection (c), this chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children, subject to the provisions of 18 Pa.C.S. § 509 (relating to use of force by persons with special responsibility for care, discipline or safety of others).

Note

Subsection (d) is derived from repealed § 6302(c), with the addition of the cross-reference to the provisions of the Crimes Code that permit the use of justified force.

(e) Participation in events that involve physical contact with child.--An individual participating in a practice or competition in an interscholastic sport, physical education or an extracurricular activity that involves physical contact with a child does not, in itself, constitute contact that is subject to the reporting requirements of this chapter.

(f) Peer-on-peer contact.--No child shall be deemed to be physically or mentally abused based on injuries that result solely from a fight or scuffle mutually entered into by mutual consent.

Note

Subsection (f) is based on language from 18 Pa.C.S. § 2701(b)(1), concerning simple assault under the Crimes Code.

Comment to § 6304

The exemption is subsection (a) is limited to the parent or guardian of the child. The poverty of the persons providing the child with shelter and other basis necessities of life should not, by itself, be grounds for a finding of child abuse.

The provisions of subsection (e) are intended to permit teachers and staff in institutional settings to maintain the safety of all children under their care.

Subsection (f) involves peer-on-peer fights and scuffles, both in school and out of school.

§ 6305. Advanced communication technologies.

(a) Departmental procedures.--The department shall establish procedures for the secure and confidential use of advanced communication technologies for the transmission of information under this chapter, including:

(1) the filing of reports and other required records; and

(2) the verification of records and signatures on forms.

Note

The Task Force on Child Protection agreed that subsection (a) should take effect in one year, to allow adequate time for implementation by the Department of Public Welfare.

(b) Confirmation of reports.--A confirmation by the department of the receipt of a report of suspected child abuse submitted by advanced communication technologies shall relieve the person making the report of making an additional oral or written report of suspected child abuse.

(c) Effect on other law.--

(1) Nothing in this chapter shall be construed to supersede the provisions of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

(2) Any procedures developed by the department under this section shall comply with all applicable Federal and State laws regarding the confidentiality of personally identifiable information.

Comment to § 6305

The expectation and goal of this section is to require the department to develop a state-operated, web-based system to allow the secure submission of reports of child abuse and the electronic transmission of such reports to the appropriate entity for assessment and investigation, in order to expedite the identification of, and response to, child abuse. The department may provide for web-based or other electronic reporting methods based on advanced communication technologies for any communication under this chapter.

§ 6306. Regulations.

The department shall promulgate regulations necessary to implement this chapter.

Note

This section is based on repealed § 6348.

Comment to § 6306

This section is intended to direct the department to promulgate regulations regarding, among other things, how the department and county agency should approach cases depending on the circumstances of the alleged child abuse and the nature of the perpetrator.

SUBCHAPTER B

PROVISIONS AND RESPONSIBILITIES FOR

REPORTING SUSPECTED CHILD ABUSE

Sec.

§ 6311. Persons required to report suspected child abuse.

[(a) General rule.--A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when the

person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator. Except with respect to confidential communications made to a member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), and except with respect to confidential communications made to an attorney which are protected by 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or 5928 (relating to confidential communications to attorney), the privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

(b) Enumeration of persons required to report.--Persons required to report under subsection (a) include, but are not limited to, any licensed physician, osteopath, medical examiner, coroner, funeral director, dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, Christian Science practitioner, member of the clergy, school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker, mental health professional, peace officer or law enforcement official.

(c) Staff members of institutions, etc.--Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or

private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.

(d) Civil action for discrimination against person filing report.--Any person who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, makes or causes the report to be made and, as a result thereof, is discharged from his employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, may commence an action in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred for appropriate relief. If the court finds that the person is an individual who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, made or caused to be made a report of suspected child abuse and, as a result thereof, was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, it may issue an order granting appropriate relief, including, but not limited to, reinstatement with back pay. The department may intervene in any action commenced under this subsection.]

(a) Basis to report.--

(1) Subject to paragraphs (2) and (3) and subsection (b), a person under subsection (b) shall make a report of suspected child abuse, or cause a report of

suspected child abuse to be made, under this chapter if the person has reasonable cause to suspect that the child is a victim child abuse and:

(i) in the course of employment, occupation, or practice of a profession, the person comes in contact with the child; or

(ii) the person is affiliated with an agency, institution, organization or other entity, including a school or regularly established religious organization that is directly responsible for the care, supervision, guidance or training of the child.

(2) The child need not come before the person in order for the person to make a report of suspected child abuse or cause a report of suspected child abuse to be made.

(3) The identity of the perpetrator of child abuse need not be known by the person required to make a report of suspected child abuse or cause a report of suspected child abuse to be made. The person shall not be required to attempt to identify the perpetrator prior to making the report or causing the report to be made.

(b) Enumerated mandated reporters.--Subject to subsection (a), the following persons shall make a report of suspected child abuse, or cause a report of suspected child abuse to be made, under this chapter:

(1) A person licensed to practice in any health-related field under the jurisdiction of the Department of State of the Commonwealth.

(2) A medical examiner, coroner or funeral director.

(3) A health care facility or provider licensed by the Department of Health of the Commonwealth and its employees engaged in the admission, examination, care or treatment of individuals.

(4) A school administrator, teacher, nurse, guidance counselor, coach or other school employee.

(5) A child-care services provider.

(6) A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization.

(7) An individual, paid or unpaid, who, on the basis of the individual's role as an integral part of a regularly scheduled program, activity or service, accepts responsibility for a child.

(8) A social services worker.

(9) A peace officer or law enforcement official.

(10) An attorney.

(11) A librarian at a public library.

(12) An emergency medical services provider certified by the Department of Health of this Commonwealth.

Note

Pennsylvania defines an emergency medical services provider in 35 Pa.C.S. § 8103 as an emergency medical responder, emergency medical technician, advanced emergency medical technician, paramedic, prehospital registered nurse, prehospital physician extender, prehospital emergency medical services physician, or individual prescribed by regulation of the Department of Health to provide specialized emergency medical services.

(13) A commercial film or photographic print processor who discovers any depiction of child abuse in material presented for processing.

(14) A person who repairs or services computer, electronic or other information technology equipment and devices and discovers any depiction of child abuse during the provision of those repairs or services.

(15) An employee of any person listed under paragraphs (1) through (14).

(16) An independent contractor of any person listed under paragraphs (1) through (14).

(c) Disclosure of child abuse by child.--Notwithstanding subsection (a)(1)(i) and (ii), a mandated reporter shall make a report of suspected child abuse or cause a report of suspected child abuse to be made if:

(1) a child makes a specific disclosure to the mandated reporter that the child or a relative or friend of the child is the victim of child abuse; and

(2) the mandated reporter has reasonable cause to suspect that the child abuse has occurred.

(d) Disclosure of child abuse by individual.--Subject to subsection (f), a mandated reporter shall make a report of suspected child abuse or cause a report of suspected child abuse to be made if:

(1) an individual who is 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse; and

(2) the mandated reporter has reasonable cause to suspect that the child abuse has occurred.

(e) Reports by employees, independent contractors and staff members.--

(1) If a person is required to report under subsection (a)(15) or (16) or as a staff member of a medical or other public or private institution, school, facility or agency,

that person shall immediately report the suspected child abuse directly to the department by telephone or advanced communications technologies and:

(i) In the case of an employee or independent contractor of a mandated reporter, notify the person directly responsible for supervising the employee or independent contractor on behalf of the mandated reporter.

(ii) In the case of a staff member of an institution, school, facility or agency, notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(2) The person notified under paragraph (1)(i) or (ii) may not:

(i) control or restrain another person from making a report of suspected child abuse or causing a report of suspected child abuse to be made;

(ii) modify, edit or otherwise change the substance of a report of suspected child abuse; or

(iii) obstruct, prevent or delay the forwarding of a report of suspected child abuse.

(3) Notice to a person under paragraph (1)(i) or (ii) shall not relieve the employee, independent contractor or staff member of the obligation as a mandated reporter to make a report of suspected child abuse or cause a report of suspected child abuse to be made.

(4) A person receiving notice under paragraphs (1)(i) or (ii) shall facilitate the cooperation of the person's institution, school, facility or agency with the child abuse investigation.

(5) Confirmation from the department that a report of suspected child abuse has been filed shall relieve other employees, independent contractors and staff members of the obligation to make a report of suspected child abuse or cause a report of suspected child abuse to be made.

(f) Privileged communications.--

(1) Subject to paragraphs (2), (3) and (4), the privileged communication between a mandated reporter and a patient or client of the mandated reporter shall not:

(i) apply to a situation involving child abuse; and

(ii) constitute grounds for failure to make a report of suspected child abuse or cause a report of suspected child abuse to be made.

(2) Confidential communications made to a member of the clergy are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), but only to the extent that the member of the clergy is authorized to hear the communications under the disciplines, tenets or traditions of the religion of the member of the clergy.

(3) Confidential communications made to an attorney are protected under 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or 5928 (relating to confidential communications to attorney), but only to the extent that such communications are protected under the rules of professional conduct for attorneys.

(4) Confidential communications between spouses shall not be privileged under this chapter notwithstanding any grant of privilege under 42 Pa.C.S. § 5914 (relating to confidential communications between spouses) or 5923 (relating to confidential communications between spouses).

(g) Limited exemption for certain reporters.--A sexual assault counselor at a rape crisis center, as defined under 42 Pa.C.S. § 5945.1(a) (relating to confidential communications with sexual assault counselors), shall not be required to report a violation of 18 Pa.C.S. § 3122.1(a)(1) (relating to statutory sexual assault) as child abuse under this chapter when the child who would otherwise be the subject of a report of suspected child abuse is 14 years of age or older.

Comment to § 6311

Under the former provisions of § 6311(b), the following health care professionals were mandated reporters: licensed physicians, dentists, optometrists, osteopaths, chiropractors, psychologists, podiatrists, interns, registered nurses, licensed practical nurses, mental health professionals and hospital personnel engaged in the admission, examination, care or treatment of persons. Paragraph (b)(1) is designed to eliminate the need to specifically list all health care-related professionals as mandated reporters. However, it does encompass those healthcare providers previously enumerated, plus such licensed professionals as massage therapists, occupational therapists, physical therapists, pharmacists, speech-language and hearing examiners, dietician-nutritionists, physician assistants, radiology technicians, respiratory therapists, nurse-midwives, acupuncturists, practitioners of Oriental medicine, perfusionists, behavioral specialists, athletic trainers, social workers, marriage and family therapists and professional counselors.

For reporting purposes, employees and independent contractors of mandated reporters are treated in the same manner as staff members of institutions. In certain cases, employees and independent contractors could meet the definition of institutional staff members.

Though not an "institution," a sole practitioner or sole proprietorship should want or need to know whether an employee or independent contractor has discovered child abuse occurring in the business. The sole practitioner or sole proprietorship should ensure that the child abuse is reported.

With respect to subsection (e)(5), completion of the Pennsylvania CY-47 form signifies that a report of suspected child abuse has been made. The statute does not require duplicative reports of suspected child abuse to be made, in the case of multiple persons who are required to make a report of suspected child abuse or cause a report of suspected child abuse to be made.

Under subsection (f)(2) and (3), the "but only to the extent" provisions are added to narrow the scope of privilege regarding confidential communications made to a member of the clergy or to an attorney.

Subsection (g) is added to address concerns that the inclusion of statutory sexual assault as child abuse may discourage teenagers who engage in consensual sex from seeking counseling services.

§ 6312. Persons [permitted] encouraged to report suspected child abuse.

[In addition to those persons and officials required to report suspected child abuse, any] Any person may make [such] a report of suspected child abuse, or cause a report of suspected child abuse to be made, if that person has reasonable cause to suspect that a child is an abused child.

§ 6313. Reporting procedure.

[(a) General rule.--Reports from persons required to report under section 6311 (relating to persons required to report suspected child abuse) shall be made immediately by telephone and in writing within 48 hours after the oral report.

(b) Oral reports.--Oral reports shall be made to the department pursuant to Subchapter C (relating to powers and duties of department) and may be made to the appropriate county agency. When oral reports of suspected child abuse are initially received at the county agency, the protective services staff shall, after seeing to the immediate safety of the child and other children in the home, immediately notify the department of the receipt of the report, which is to be held in the pending complaint file as provided in Subchapter C. The initial child abuse report summary shall be supplemented with a written report when a determination is made as to whether a report of suspected child abuse is a founded report, an unfounded report or an indicated report.

(c) Written reports.--Written reports from persons required to report under section 6311 shall be made to the appropriate county agency in a manner and on forms the department prescribes by regulation. The written reports shall include the following information if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the person or persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by that person or persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Any other information which the department may require by regulation.

(d) Failure to confirm oral report.--The failure of a person reporting cases of suspected child abuse to confirm an oral report in writing within 48 hours shall not

relieve the county agency from any duties prescribed by this chapter. In such event, the county agency shall proceed as if a written report were actually made.]

(a) Report by mandated reporter.--

(1) A report of suspected child abuse by or on behalf of a mandated reporter shall be made immediately to the department by telephone or advanced communication technologies.

(2) A mandated reporter making an oral report of suspected child abuse shall also make a report in writing or by advanced communication technologies within 48 hours to the county agency assigned to the case in a manner and format that the department prescribes by regulation.

(3) The failure of the mandated reporter to file the report in writing or by advanced communication technologies as set forth in paragraph (2) shall not relieve the county agency from any duty under this chapter, and the county agency shall proceed as though the mandated reporter complied with paragraph (2).

(b) Permissive report.--A report of suspected child abuse by a person under section 6312 (relating to persons encouraged to report suspected child abuse) may be made orally or by advanced communication technologies to the department or county agency or to law enforcement.

(c) Contents of report.--A report of suspected child abuse that is made in writing or by advanced communication technologies shall include the following information, if known:

(1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(2) Where the suspected abuse occurred.

(3) The age and sex of each subject of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each such individual.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the person making the report, including those actions taken under section 6314 (relating to photographs, medical tests and X-rays of child subject to report), 6315 (relating to taking child into protective custody), 6316 (relating to admission to private and public hospitals) or 6317 (relating to mandatory reporting and postmortem investigation of deaths).

(10) Any other information that the department requires by regulation.

§ 6314. Photographs, medical tests and X-rays of child subject to report.

A person or official required to report cases of suspected child abuse may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county agency at the time the written report is sent or within 48 hours after a report is made by advanced communication technologies or as

soon thereafter as possible. The county agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 6315. Taking child into protective custody.

(a) General rule.--A child may be taken into protective custody:

(1) As provided by 42 Pa.C.S. § 6324 (relating to taking into custody).

(2) By a physician examining or treating the child or by the director, or a person specifically designated in writing by the director, of any hospital or other medical institution where the child is being treated if protective custody is immediately necessary to protect the child under this chapter.

(3) By a physician or the director, or a person specifically designated by the director, of a hospital pursuant to Chapter 65 (relating to newborn protection) if the child is a newborn.

(4) Subject to this section and after receipt of a court order, the county agency shall take a child into protective custody for protection from abuse. No county agency worker may take custody of the child without judicial authorization based on the merits of the situation.

Note

Paragraph (4) is based on repealed § 6369.

* * *

§ 6317. Mandatory reporting and postmortem investigation of deaths.

A person or official required to report cases of suspected child abuse, including employees of a county agency, who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner or medical

examiner. The coroner or medical examiner shall accept the report for investigation and shall report his finding to the police, the district attorney, the appropriate county agency and, if the report is made by a hospital, the hospital.

§ 6317.1 Mandatory reporting of certain infants.

(a) When report to be made.--A health care provider shall immediately make a report or cause a report to be made to the appropriate county agency if the provider is involved in the delivery or care of an infant who is born and identified as being affected by any of the following:

(1) Illegal substance abuse by the infant's mother.

(2) Withdrawal symptoms resulting from prenatal drug exposure.

(3) A Fetal Alcohol Spectrum Disorder.

(b) Safety or risk assessment.--The county agency shall perform a safety assessment or risk assessment, or both, for the infant and determine whether child protective services or general protective services are warranted.

(c) County agency duties.--Upon receipt of a report under this section, the county agency for the county where the child resides shall:

(1) Contact the parents of the infant within 24 hours of receipt of the report.

(2) Physically see the infant within 48 hours of receipt of the report.

(3) If needed, develop a safety plan with the parents of the infant to ensure the immediate safety of the infant and the receipt of appropriate medical services by the infant.

(4) Provide or arrange reasonable services to ensure the infant is provided with proper parental care, control and supervision.

Note

Subsections (a) and (b) are based on repealed § 6386. The provisions were relocated to this section to include them with other provisions regarding mandatory reports.

Comment to § 6317.1

This section is intended to be consistent with the assurance and requirements provisions for state statutes under § 106 (b)(2)(B)(ii) of the federal Child Abuse Prevention and Treatment Act, known as CAPTA (42 U.S.C. § 5101 et seq.).

[§ 6318. Immunity from liability.

(a) General rule.--A person, hospital, institution, school, facility, agency or agency employee that participates in good faith in the making of a report, whether required or not, cooperating with an investigation, including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse, the taking of photographs or the removal or keeping of a child pursuant to section 6315 (relating to taking child into protective custody), and any official or employee of a county agency who refers a report of suspected abuse to law enforcement authorities or provides services under this chapter, shall have immunity from civil and criminal liability that might otherwise result by reason of those actions.

(b) Presumption of good faith.--For the purpose of any civil or criminal proceeding, the good faith of a person required to report pursuant to section 6311 (relating to persons required to report suspected child abuse) and of any person required to make a referral to law enforcement officers under this chapter shall be presumed.

§ 6319. Penalties for failure to report or to refer.

A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities who willfully fails to do so commits a

misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation.]

Note

The provisions of repealed §§ 6318 and 6319 are now found in proposed §§ 6379 and 6379.2.

SUBCHAPTER B.1

INVESTIGATIONS OF REPORTS OF ABUSE OR NEGLECT

Sec.

§ 6321. Responsibility for investigation.

The department shall establish procedures regarding the following different responses to address suspected child abuse and protective services depending on the person allegedly committing the suspected child abuse or causing a child to be in need of protective services:

(1) If the suspected child abuse is alleged to have been committed by a perpetrator, the appropriate county agency shall investigate the allegation as provided in this chapter.

(2) If the suspected child abuse is alleged to have been committed by a perpetrator and the behavior constituting the suspected child abuse may include a violation of a criminal offense, the appropriate county agency and local law enforcement shall jointly investigate the allegation through the multidisciplinary investigative team established in section 6326 (relating to investigation by multidisciplinary investigative team) and as further provided in this chapter.

(3) If the suspected child abuse is alleged to have been committed by a person who is not a perpetrator, local law enforcement and the district attorney of county where the suspected child abuse is alleged to have occurred shall be solely responsible for investigating the allegation.

(4) If a child is alleged to be in need of other protective services, the appropriate county agency shall assess the needs of the child as provided in this chapter.

Note

This provision is new.

Comment to § 6321

It is the intent of this chapter to ensure that all cases of child abuse and neglect are reported and investigated. This provision is designed to specifically identify which governmental agencies are responsible for assessing and investigating reports of child abuse and neglect, based upon the nature of the harm or injury to the child and the child's relationship to the person believed to be responsible for the abuse or neglect.

§ 6322. Availability to receive reports.

(a) Statewide toll-free number.--The department shall establish a single Statewide toll-free number that all persons may use to report cases of suspected child abuse or children in need of protective services.

(b) Continuous access and monitoring by department.--On a 24 hours a day, seven days a week basis, the department shall be capable of the following:

(1) Receiving reports and referrals of suspected child abuse and children in need of protective services.

(2) Responding to requests for information from county agencies and law enforcement personnel under section 6335.1 (relating to access to information in Statewide database).

(3) Monitoring the provision of protective services.

(c) Continuous availability to receive reports by county agency.--On a 24 hours a day, seven days a week basis, each county agency shall receive reports of suspected child abuse from the department pursuant to section 6323(b) (relating to disposition of initial reports) or the general public in accordance with this chapter, the county plan for the provision of child protective services and the regulations of the department.

(d) Response to inquiries.--Subject to subsection (e), county agency and law enforcement personnel shall use the Statewide toll-free number or advanced communication technologies to obtain information authorized to be released to county agencies and law enforcement personnel pursuant to section 6335.1.

(e) Verification of need.--Information may be released pursuant to section 6335.1 under the following conditions:

(1) If the request for information in made using the Statewide toll-free number and the department has:

(i) positively identified the representative of the county agency or law enforcement agency requesting the information; and

(ii) inquired into whether, and is satisfied that, the representative has a legitimate need to obtain the information, within the scope of official duties and the provisions of section 6335.1.

(2) If the request for information is made using advanced information technologies and the department has established procedures for:

(i) notice to the requester that access and dissemination of the information is restricted as provided by this chapter;

(ii) electronic verification of the identity of the requester; and

(iii) an affirmation by the requester that the request is within the scope of that person's official duties and the provisions of section 6335.1.

Note

Subsections (a) and (d) are based on repealed § 6332(a). Subsection (b) is based on repealed § 6333. Subsection (c) is based on repealed § 6366. Subsection (e)(1) is based on repealed § 6336(c). Subsection (e)(2) is new.

§ 6323. Disposition of initial reports.

(a) Receipt of reports by county agencies and law enforcement.--After ensuring the immediate safety of the child and any other child in the child's home, a county agency or law enforcement agency that receives a report of suspected child abuse shall immediately notify the department of the report. If the report is an oral report by telephone, the county agency or law enforcement agency shall attempt to collect as much of the information

listed in § 6313(c) (relating to reporting procedure) as possible, and submit the information to the department within 48 hours through a report in writing or by advanced communication technologies.

(b) Receipt of reports by department; referral to county agency.--The department shall immediately transmit an oral notice or a notice by advanced communication technologies to the county agency of the county where the suspected child abuse is alleged to have occurred. The notice shall contain the following information:

(1) That a complaint of suspected child abuse by a perpetrator has been received.

(2) The substance of the complaint.

(3) The existence in the Statewide database of a prior report or a current investigation concerning a subject of the report.

(c) Receipt of reports by department; referral to law enforcement.--If the department receives a report of suspected child abuse that also alleges that a criminal offense has been committed against the child, the department shall immediately transmit an oral notice or notice by advanced communication technologies to law enforcement personnel in the county where the suspected child abuse is alleged to have occurred. The notice shall contain the following information, consistent with section 6340(a)(9) and (10) (relating to release of information in confidential reports):

(1) That a complaint of suspected child abuse has been received.

(2) The substance of the complaint.

(3) The existence in the Statewide database under section 6331 of a prior report or a current investigation concerning a subject of the report.

(d) Notice of joint referrals.--When a report is referred to the county agency under subsection (b) and is also referred to law enforcement personnel under subsection (c), the notice shall also include information as to the name and contact information of any persons receiving the referral.

(e) Ability of law enforcement to receive reports.--The district attorney of the county where the suspected child abuse is alleged to have occurred shall designate three recipients to receive reports under paragraph (c) and shall provide contact information for each recipient to the department for that purpose.

(f) Jurisdictional overlap.--If the residency of any subject of a report is a factor that requires the cooperation of more than one county agency, the department shall develop regulations to ensure the cooperation of those agencies in carrying out the requirements of this chapter.

(g) Referral for services or investigation.--If the complaint received does not suggest a need for protective services but does suggest a need for social services or other services or investigation, the department shall transmit the information to the county agency or other public agency for appropriate action. The information shall not be considered a child abuse report unless the agency to which the information was referred has reasonable cause to suspect after investigation that abuse occurred. If the agency has reasonable cause to suspect that abuse occurred, the agency shall notify the department, and the initial complaint shall be considered to have been a child abuse report.

Note

Subsection (a) is based on repealed § 6313(b). Subsection (b) is based on the first three sentences of repealed § 6334(a). Subsections (c), (d) and (e) are new. Subsection (f) is based on the last sentence of repealed § 6334(a). Subsection (g) is based on repealed § 6334(b).

Comment

This section and § 6322 establish a cross-reporting system, to ensure that protective services and law enforcement are informed in a timely manner of allegations of child abuse that are relevant to their respective responsibilities. In any situation where there is imminent danger to the child, persons should immediately call 911.

§ 6324. Disposition of reports; incidents occurring outside Commonwealth.

(a) Child abuse in another state where child is resident of Commonwealth.--A report of suspected child abuse by a perpetrator occurring in another state shall be referred to the county of the child's residence in this Commonwealth or other county as determined by the department and shall be investigated as any other report of suspected child abuse by a perpetrator if:

(1) the child victim is identified as a resident of this Commonwealth; and

(2) the other state child protective services agency cannot investigate the report because of statutory or policy limitations.

(b) Child abuse in another state where alleged perpetrator is resident of Commonwealth.--

(1) If the suspected child abuse occurs in a jurisdiction other than this Commonwealth and the alleged perpetrator is identified as a resident of this Commonwealth, the report or complaint of suspected child abuse shall be referred to the county agency in the county of this Commonwealth where the alleged perpetrator resides.

(2) The county agency shall:

(i) contact the children and youth social service agency of the jurisdiction in which the suspected child abuse occurred; and

(ii) investigate the suspected child abuse, either alone or in concert with the other agency.

(c) Copies of report.--In addition to complying with the other requirements of this chapter and applicable regulations, a copy of the report of suspected child abuse shall be provided to the other state's child protective services agency and, when applicable under the laws of this Commonwealth, to law enforcement personnel in the county where the incident occurred.

(d) Communication with other jurisdiction.--Reports and information under this subsection shall be provided within seven calendar days of completion of the investigation.

Note

Subsection (a) is based on repealed § 6334(d)(1). Subsection (b) is new. Subsections (c) and (d) are based on repealed § 6334(d)(2) and (3) respectively.

§ 6325. Investigation by county agency.

(a) Response to direct reports.--Upon receipt of a report of suspected child abuse by a perpetrator from an individual, the county agency shall ensure the safety of the child and immediately contact the department in accordance with the provisions of section 6323 (relating to disposition of initial reports).

(b) Response to reports referred to county agency by department.--Upon receipt of a report of suspected child abuse from the department, the county agency shall immediately commence an investigation and see the child within the following time frames:

(1) Immediately, if:

(i) emergency protective custody is required, has been or will be taken; or

(ii) it cannot be determined from the report whether emergency protective custody is needed.

(2) Within 24 hours of receipt of the report in all other cases.

(c) Investigation.--An investigation under this section shall include the following:

(1) A determination of the safety of, or risk of harm to, the child or any other child if each child continues to remain in the existing home environment.

(2) A determination of the nature, extent and cause of any condition listed in the report.

(3) Any action necessary to provide for the safety of the child or any other child in the child's household.

(4) The taking of photographic identification of the child or any other child in the child's household, which shall be maintained in the case file.

(5) Communication with the department's service under section 6322 (relating to availability to receive reports).

(d) Investigative actions.--During the investigation:

(1) The county agency shall provide or arrange for services necessary to protect the child while the agency is making a determination pursuant to this section.

(2) The county agency may require that a medical examination by a certified medical practitioner be performed on the child or any other child in the child's household when deemed necessary because of information discovered during the course of the investigation.

(3) Where there is reasonable cause to suspect that there is a history of prior or current abuse or neglect, further medical tests may be arranged by the certified medical practitioner or requested by the county agency.

(e) Investigation concerning child-care personnel.--

(1) Upon notification that an investigation involves suspected child abuse by child-care service personnel, including a child-care service employee, service provider or employee, the child-care service shall immediately implement a plan or supervision or alternative arrangement for the individual under investigation to ensure the safety of the child and other children who are in the care of the child-care service.

(2) The plan of supervision or alternative arrangement shall be approved by the county agency and kept on file with the agency until the investigation is completed.

(f) Referral for investigation.--If the complaint of suspected abuse is determined to be one that cannot be investigated under this chapter because the person accused of the abuse is not a perpetrator within the meaning of section 6303 (relating to definitions) but does suggest the need for investigation, the county agency shall immediately transmit the information to the appropriate authorities, including the district attorney, the district attorney's designee or other law enforcement official, in accordance with the county protocols for multidisciplinary investigative teams required by section 6326 (relating to investigation by multidisciplinary investigative team).

(g) Need for social services.--If the investigation determines that the child is being harmed by factors beyond the control of the parent or other person responsible for the child's welfare, the county agency shall promptly take all steps available to remedy and

correct these conditions, including the coordination of social services for the child and the family or referral of the family to appropriate agencies for the provision of services.

(h) Notice of investigation.--

(1) Prior to interviewing a subject of a report, the county agency shall orally notify the subject who is about to be interviewed of the following information:

(i) The existence of the report.

(ii) The subject's rights under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to basic other rights).

(iii) The subject's rights section 6328(g), (h) and (i) (relating to disposition of reports upon completion of assessment or investigation).

(2) Written notice shall be given to the subject within 72 hours following oral notification, unless delayed as provided in subsection (i).

(i) Delay of notification.--The notice under subsection (h) may be reasonably delayed subject to the following:

(1) If the notification is likely to:

(i) threaten the safety of a victim, a subject of the report who is not a perpetrator or the investigation social worker;

(ii) cause the perpetrator to abscond; or

(iii) significantly interfere with the conduct of a criminal investigation.

(2) The written notice shall be provided to all subjects of the report prior to the county agency reaching a finding on the validity of the report.

(j) Completion of investigation.--Investigations shall be completed in accordance with the following:

(1) Investigations to determine whether to accept the family for service and whether a report is founded, indicated or unfounded shall be completed within 60 days in all cases.

(2) If, due to the particular circumstances of the case, the county agency cannot complete the investigation within 30 days, the particular reasons for the delay shall be described in the child protective service record and made available to the department for purposes of determining whether either of the following occurred:

(i) The county agency strictly followed the provisions of this chapter.

(ii) The county agency is subject to action as authorized by section 6343 (relating to investigating performance of county agency).

(3) Where a petition has been filed under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) alleging that a child is a dependent child, the county agency shall make all reasonable efforts to complete the investigation to enable the hearing on the petition to be held as required by 42 Pa.C.S. § 6335 (relating to release or holding of hearing).

Note

Subsection (a) is new. Subsections (b), (c), (d), (h) and (i) are based on repealed § 6368(a). Subsections (e), (f), (g) and (j) are based on repealed § 6368(a.1), (d), (b) and (c), respectively.

§ 6326. Investigation by multidisciplinary investigative team.

(a) Purpose.--A multidisciplinary investigative team shall be used to coordinate child abuse investigations between county agencies and law enforcement in those cases described in section 6321(2) (relating to responsibility for investigation).

(b) Composition.--Each county shall establish a multidisciplinary investigative team, consisting of the following individuals:

(1) The district attorney for the county or a designee of the district attorney.

(2) The county agency representative or department representative assigned to investigate the alleged child abuse and when appropriate, any other county agency or department personnel with information or skills relevant to the investigation.

(3) A local law enforcement official.

(4) Any other individual that the district attorney or the designee of the district attorney determines has information or skills relevant to the investigation.

(c) Cases to be investigated.--The multidisciplinary investigative team shall investigate each report of suspected child abuse by a perpetrator that also alleges that a criminal offense has been committed against the child, consistent with section 6340(a)(9) and (10) (relating to release of information in confidential reports).

(d) Protocols.--The multidisciplinary investigative team shall establish protocols consistent with the statewide investigative team protocols established by the multidisciplinary investigative team advisory committee, as directed in subsection (h). At a minimum the protocols under this paragraph shall include the following:

(1) Standards and procedures to be used in:

(i) receiving and referring reports;

(ii) coordinating investigations of reported cases of child abuse; and

(iii) developing a system for sharing the information obtained as a result of any interview.

(2) Any other standards and procedures to avoid duplication of fact-finding efforts and interviews to minimize the trauma to the child.

(e) Failure to comply.--The department shall withhold reimbursement for all or part of the activities of the county agency in a county that fails to establish a multidisciplinary investigation team with approved protocols by (the Legislative Reference Bureau shall insert here the date that is one year after the effective date of subsection (h)).

(f) Children's advocacy centers.--The multidisciplinary investigative team shall utilize the resources of a regional hospital or community-based children's advocacy center for the county or region that it serves, whenever appropriate.

(g) Effect on criminal prosecutions.--The provisions of this section shall be construed to assist in the improvement of services designed to identify and prevent child abuse. The procedures authorized shall not be allowed to impede or interfere with criminal investigations or prosecutions of persons who have committed child abuse.

(h) Multidisciplinary investigative team advisory committee.--In consultation with the department, the Pennsylvania Commission on Crime and Delinquency shall appoint a multidisciplinary investigative team advisory committee, subject to the following:

(1) The advisory committee shall consist of 15 members, as follows:

(i) Two district attorneys or assistant district attorneys.

(ii) Two county agency administrators.

(iii) Two county agency solicitors.

(iv) Two municipal police officers.

(v) Two health care providers with experience in child abuse investigations.

(vi) Two representatives of children's advocacy centers.

(vii) Two victim service professionals with experience in child abuse investigations and evidence-based therapeutic services to child victims.

(viii) A representative of the Pennsylvania State Police.

(2) The department shall convene the meetings of the advisory committee and provide administrative support to the advisory committee.

(3) The advisory committee shall develop model Statewide protocols for the operation of county multidisciplinary investigative teams established under this section.

(4) At a minimum, the model Statewide protocols shall include standards and procedures to be used in:

(i) receiving and referring reports;

(ii) coordinating investigations of reported cases of child abuse;

(iii) developing a system for sharing the information obtained as a result of any interview.

(iv) avoiding duplication of fact-finding efforts and interviews to minimize the trauma to the child.

(5) The advisory committee shall convene its first meeting by (the Legislative Reference Bureau shall insert here the date that is six months after the effective date of this section) and shall release the protocols through the department within six months of the date of its first meeting.

(i) Review of protocols.--In consultation with the department, the Pennsylvania Commission on Crime and Delinquency shall facilitate a review of the model Statewide protocols every three years.

(j) Regulations.--The department shall establish regulations or other guidance as to the procedures to be followed for the conduct of, and the release and dissemination of any reports resulting from, reviews conducted under subsection (i).

Note

Subsections (a), (e), (f), (h), (i) and (j) are new. Subsections (b), (c) and (d) are based on repealed § 6365(c). Subsection (g) is based on repealed § 6365(f).

§ 6327. Cooperation of with county agency.

(a) General rule.--The secretary may request and shall receive from Commonwealth agencies, political subdivisions, an authorized agency or any other agency providing services under the county plan for protective services under section 6363 (relating to county plan for protective services) any assistance and data that will enable the department and the county agency to fulfill their responsibilities properly, including from law enforcement personnel when assistance is needed in conducting an investigation or assessing risk to the child. School districts shall cooperate with the department and the county agency by providing information to them upon request, consistent with the laws of this Commonwealth.

(b) Willful failure to cooperative.--

(1) Upon the request of the department or county to provide information relating to an investigation of suspected child abuse or a safety assessment or risk assessment of a child, an individual, agency, school, hospital or other health care provider shall immediately provide the information to the department or county agency, without limitation.

(2) No individual, except the district attorney or law enforcement personnel, may prohibit the department or county agency from interviewing the child who is the subject of suspected child abuse. Parental consent is not required prior to the subject child being interviewed by the department or county agency.

(3) The following offenses shall apply:

(i) Any person failing to timely produce the requested information under this section commits a misdemeanor of the third degree.

(ii) An person barring, inhibiting or precluding sufficient access to the subject child commits a misdemeanor of the first degree.

(c) Cooperation of county agency and law enforcement agencies.--Consistent with the provisions of this chapter, the county agency and law enforcement agencies shall cooperate and coordinate, to the fullest extent possible, their efforts to respond to and investigate reports of suspected child abuse.

(d) Advice to county agency.--Whenever a report of suspected child abuse is referred from a county agency to a law enforcement agency pursuant to section 6340(a)(9) and (10) (relating to release of information in confidential reports), as soon as possible, and without jeopardizing the criminal investigation or prosecution, the law enforcement agency shall advise the county agency as to whether a criminal investigation has been undertaken and the results of the investigation and of any criminal prosecution. The county agency shall ensure that the information is referred to the Statewide database.

Note

This section is based on repealed § 6346.

Comment to § 6327

Under repealed § 6346, the requirement to provide information only applied to agencies, school districts and facilities and persons acting on their behalf. Subsection (b)(1) broadens the scope to individuals and health care providers. Subsection (b)(3) creates specific offenses and generally raises the penalty for willful failure to cooperate.

§ 6328. Disposition of reports upon completion of assessment or investigation.

(a) Final determination.--Upon completion of an assessment or investigation by a county agency, the county agency shall inform the department that:

(1) the child abuse report or complaint has been determined to be unfounded, indicated or founded; and

(2) whether there is any acceptance for services. If there is no acceptance for services, the county agency shall state whether the family was referred for other community services.

Each case shall bear a notation as to the effect of its outcome.

(b) Review of indicated reports.--A final determination that a report of suspected child abuse is indicated shall be made by the county agency solicitor and the county administrator or the designee of the administrator.

(c) Failure to make determination.--

(1) Subject to paragraph (2), a report of suspected child abuse shall be considered to be an unfounded report if within 60 days of the date of the initial report an investigation of the report by the county agency does not determine that the report is a founded report, indicated report or unfounded report.

(2) If court action has been initiated but the court has not determined that the report is a founded report, and the lack of such a determination results in the county

agency not being able to make its determination under paragraph (1), the report shall be identified in the Statewide database as pending and the status of the report shall be updated in the Statewide database following the court determination.

(d) Notification of court action.--The county agency shall advise the department that court action or an arrest has been initiated so that the database is kept current regarding the status of all legal proceedings.

(e) Notice of final determination.--Within 24 business hours of the conclusion of the child abuse investigation, the investigator shall send notice of the final determination to the subjects of the report and the mandated reporter if a report was made under section 6313 (relating to reporting procedure). The notice shall include in following information:

(1) The status of the report.

(2) The perpetrator's right to request the secretary to amend the report.

(3) The right of the subjects of the report to services from the county agency.

(4) The effect of the report upon future employment opportunities involving children.

(5) The fact that the name of the perpetrator, the nature of the abuse and the final status of the report will be kept on file indefinitely.

(6) The perpetrator's right to appeal an indicated finding of abuse within 45 days of the conclusion of the investigation that determined the report to be indicated.

(7) The perpetrator's right to a fair hearing on the merits on an appeal of an indicated report.

(8) The burden on the investigative agency to prove its case by substantial evidence in an appeal of an indicated report.

(f) Reasonable efforts to provide notice.--If the investigative agency is unable to provide notice as required in this subsection (e), it shall notify the department in writing of the efforts made. If the department concludes that due diligence was made to provide notice, no further efforts to provide notice shall be required.

(g) Amendment by secretary.--At any time, the secretary may amend any record under this chapter upon good cause shown and notice to the appropriate subjects of the report and the county agency having jurisdiction over the report.

(h) Request by perpetrator.--Any person named as a perpetrator in an indicated report may request the secretary to amend the report on the grounds that it is inaccurate or is being maintained in a manner inconsistent with this chapter. The request shall be filed within 45 days of the date of the notice of the final determination that the report is indicated.

(i) Appeal.--Subject to the provisions of section 6329 (relating to appeals of indicated reports), the perpetrator may appeal a denial of the request under subsection (h), and the county may appeal the granting of the request.

(j) Order.--The secretary or designated agent may make any appropriate order respecting the amendment of an indicated report to make it accurate or consistent with the requirements of this chapter.

Note

Subsection (a) is based, in part, on repealed §§ 6313(b) and 6368(c). Subsection (b) is new. Subsections (c) and (d) are based on repealed § 6337(b). The introductory language of subsection (e) is based on the second sentence of repealed § 6338(a). Subsection (c)(1), (6) and (7) is based on the third sentence of repealed § 6338(a). Subsection (e)(2), (3), (4) and (5) is based on the second sentence of repealed § 6338(a). Subsections (g), (h), (i) and (j) are based on repealed § 6341(a)(1), (b), (c) and (e), respectively.

§ 6329. Appeals of indicated reports.

(a) Time to appeal.--Appeals made under section 6328(i) (relating to disposition of reports upon completion of assessment or investigation) must be received by the secretary within 45 days of the conclusion of the investigation determining that the report of suspected child abuse is an indicated report. Failure to timely file an appeal shall preclude any appeal of the indicated finding of child abuse.

(b) Stay of proceedings.--An administrative appeal proceeding under this section shall be automatically stayed upon notice to the department by either of the parties when there is a pending criminal proceeding or a dependency or delinquency proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters), including any appeal thereof, involving the same factual circumstances as the administrative appeal.

(c) Hearing.--The appeal hearing shall be scheduled according to the following procedures:

(1) Within 10 days of receipt of an appeal pursuant to this section, the department shall schedule a hearing on the merits of the appeal.

(2) The department shall make reasonable efforts to coordinate the hearing date with both the appellee and appellant.

(3) Proceedings before the Bureau of Appeals shall commence within 45 days of the date the scheduling order is entered. Proceedings and hearings shall be scheduled to be heard on consecutive days whenever possible but, if not on consecutive days, then the proceeding or hearing shall be concluded not later than 30 days from commencement.

(4) The investigative agency shall bear the burden of proving by substantial evidence that the report should remain categorized as an indicated report.

(5) Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the act or failure to act of the alleged perpetrator shall be prima facie evidence of child abuse by either or both of the parents or any other person responsible for the child's welfare. Once the investigative agency has established that prima facie evidence of child abuse exists, the burden shall shift to the appellee to establish that the appellee was not the individual responsible for the welfare of the child or that the child was not the victim of child abuse by a perpetrator.

(d) Testimony by closed-circuit television.--At the request of the investigative agency, the administrative law judge or hearing officer shall order that the testimony of the child victim or child material witness be taken under oath or affirmation in a room other than the hearing room and televised by close-circuit equipment to be viewed by the tribunal. Only the attorneys for the appellant and appellee, the court reporter, the administrative law judge or hearing officer, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. The administrative law judge or hearing officer shall permit the appellee to observe and hear the testimony of the child but shall ensure that the child cannot hear or see the appellee. The administrative law judge or hearing officer shall make certain that the appellee has adequate opportunity to communicate with counsel for the purposes of providing an effective examination.

(e) Admissibility of certain statements.--An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible in evidence in a proceeding under this section if the following apply:

(1) The statement was made by a child under the age of ten years or by a child ten years of age or older who is intellectually disabled.

(2) The statement alleges, explains, denies, or describes any of the following:

(i) An act of sexual penetration or contact performed with or on the child.

(ii) An act of sexual penetration or contact with or on another child observed by the child making the statement.

(iii) An act involving bodily injury or serious physical neglect of the child by another.

(iv) An act involving bodily injury or serious physical neglect of another child observed by the child making the statement.

(3) The administrative law judge or hearing officer finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability.

(4) The proponent of the statement notifies other parties of an intent to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence, to provide the parties with a fair opportunity to meet the statement.

For purposes of this section, an out-of-court statement includes a video, audio or other recorded statement.

(f) Prompt decision.--The administrative law judge or hearing officer's decision shall be entered, filed and served upon the parties within 15 days of the date upon which the proceeding or hearing is concluded unless, within that time, the tribunal extends the date for such decision by order entered of record showing good cause for the extension. In no event shall an extension delay the entry of the decision more than 30 days after the conclusion of the proceeding or hearing.

(g) Reconsideration and appeal.--Parties to a proceeding or hearing held under this section have 15 calendar days from the mailing date of the final order of the Bureau of Hearings and Appeals to request the secretary to reconsider the decision or appeal to Commonwealth Court. Parties to a proceeding or hearing held under this section have 30 calendar days from the mailing date of the final order of the Bureau of Hearings and Appeals to perfect an appeal to the Commonwealth Court. The filing for reconsideration shall not toll the 30 days provided.

(h) Notice of decision.--Notice of the decision shall be made to the Statewide database, the appropriate county agency, any appropriate law enforcement officials and all subjects of the report.

Note

Subsection (a) is based on repealed §§ 6338(a) and 6341(a)(2). Subsections (b) and (c) are based on repealed § 6341(d) and (b), respectively. Subsections (d), (e) and (f) are new. Subsection (g) is based on repealed § 6341(c). Subsection (h) is based on repealed § 6341(b).

Comment to § 6329

Subsection (b)(4) is intended to make it clear that the burden of proof to indicate a report of child abuse is substantial evidence; it specifically rejects the holdings in two Commonwealth Court decisions issued in the summer of 2012. In *G.V. v Pa. Dep't of Pub.*

Welfare, 52 A.3d 434 (Pa. Commw. Ct., July12, 2012), the court held that two standards of proof apply in child abuse investigations involving indicated reports depending upon the use of the report: (1) substantial evidence that the child was abused and eligible for services and (2) clear and convincing evidence that the perpetrator committed the abuse and thus should be identified as such on the central registry. The Commonwealth Court held that although substantial evidence is sufficient to determine that a report of child abuse is indicated, in order for an indicated report to be maintained on the Statewide central register, it must be supported by clear and convincing evidence. The day after the opinion was issued in *G.V.*, Commonwealth Court remanded another expungement case, with the instruction for the lower court to apply the holding in *G.V.* to the case. *T.T. v Pa. Dep't of Pub. Welfare,* 48 A3d 562 (Pa. Commw. Ct., July 13, 2012). On review, the court, in an unreported opinion further declared that under then § 6338(c), the department could only keep a perpetrator's name, date of birth and Social Security number in its files after the victim attained age 23. *T.T. v. Pa. Dep't of Pub. Welfare*, 449 M.D. 2012 (Pa. Commw. Ct., Nov. 2, 2012.)

The Task Force on Child Protection agrees with the interpretation set forth in the dissent to *G.V.* by Judge Robert "Robin" Simpson. In determining if sufficient due process is accorded an individual in a CPSL case, he stated that the review should address the following: "[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements will entail."

> Further, I agree with the majority that G.V.'s private interest in his reputation deserves careful consideration. However, my evaluation of the impact of official action is closer to the evaluation made by our Supreme Court in *[R. v. Department of Public Welfare, 535 Pa. 440, 636 A.2d 142 (1994)]*: any adverse effects on his reputation occasioned by the existence of the indicated report on the ChildLine Registry are very limited because of the numerous "legislatively imposed controls" in the Child Protective Services Law.
>
> I conclude that the substantial evidence standard is designed to serve the state's interest. Reports of suspected child abuse which meet this standard are made available on the ChildLine Registry for a specified period. Information on the ChildLine Registry is shared "only with persons and agencies performing investigative and child protective functions." R., 535 Pa. at 459, 636 A.2d at 151. Thus, the General Assembly

"has circumscribed access to [information on the registry] to such an extent that no one other than those persons in a position to serve the government's interest" is authorized to learn of G.V.'s identity. See id. at 459–60, 636 A.2d at 51–52. These considerations, together with the very limited risk of erroneous deprivation of G.V.'s reputational interest, lead me to conclude that G.V. received all the process that was due.

The Task Force on Child Protection has strengthened the limits on access and use of the Statewide database established in § 6331 that are found in this chapter to protect the privacy and reputation of the individual named as a perpetrator where appropriate, while ensuring that the governmental interest of protecting children from abuse and neglect is served.

The provisions of subsection (c)(5) are specifically intended to reverse the holding in *B.B. v. Pa. Dep't of Pub. Welfare*, 17 A.3d 995, (Pa. Commw. Ct., Apr. 13, 2011). The court in *B.B.* construed § 6381(d) to prohibit the finding of multiple perpetrators in an indicated report of child abuse. The intent of this section and the definitions of "child protective services" and "indicated report" are intended to make it clear that multiple persons may be found to be a perpetrator of child abuse in the same case.

§ 6330. Appeals with respect to general protective services.

(a) Right to appeal.--A custodial parent or person who has primary responsibility for the welfare of a child may appeal the county agency's decision to accept the family for general protective services. Written notice of this right, along with an explanation of the agency's decision, shall be given to the family within seven days of the decision to accept for service. The department has no authority to modify an order of a court of common pleas.

(b) Receipt and grounds of appeal.--Appeals must be received by the county agency within 45 days of the date when the notice was mailed to the custodial parent or person who has primary responsibility for the welfare of a child. Requests must be made on the grounds that the child is or is not at risk of abuse or neglect.

(c) Review and decision and request for hearing.--The county agency shall review the request and issue a written decision within 45 days of receipt of the appeal. If the agency denies the request, the custodial parent or person who has primary responsibility for the welfare of a child may request a hearing before the department. The request must be made within 45 days of the date of the county agency's decision.

(d) Hearing.--If a hearing is requested, the secretary or the secretary's designee shall schedule a hearing pursuant to Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, and applicable department regulations. The burden of proof in the hearing shall be on the county agency. The department shall assist the county agency as necessary.

(e) Order.--The department is authorized and empowered to make any appropriate order regarding records to make them accurate or consistent with the requirements of this chapter.

(f) Other appeals.--Action by a custodial parent or person who has primary responsibility for the welfare of a child under this section does not preclude the right to exercise other appeals available through departmental regulations or the courts.

Note

This section is based on repealed § 6376 and is placed here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6376.

SUBCHAPTER C

[POWERS AND DUTIES OF DEPARTMENT]

MAINTENANCE AND USE OF REPORTS OF ABUSE OR NEGLECT

Sec.

6344.2. Information relating to other persons having contact with children.

6344.3 Grounds for denying employment or participation in program, activity or service.

6344.4 Certification compliance.

[6345. Audits by Attorney General.

6346. Cooperation of other agencies.

6347. Reports to Governor and General Assembly.

6348. Regulations.

6349. Penalties.]

§ 6331. Establishment of [pending complaint file, Statewide central register and file of unfounded reports] Statewide database of protective services cases.

[There shall be established in the department:

(1) A pending complaint file of child abuse reports under investigation and a file of reports under investigation pursuant to Subchapter C.1 (relating to students in public and private schools).

(2) A Statewide central register of child abuse which shall consist of founded and indicated reports.

(3) A file of unfounded reports awaiting expunction.]

(a) Establishment; purpose.--The department shall establish and maintain a secure Statewide database system to permit the department to supervise and track protective services cases involving reports of child abuse and reports of children in need of general protective services.

(b) Information authorized.--Information in the Statewide database shall include and be limited to the following information:

(1) The names, Social Security numbers, age and sex of the subjects of the reports.

(2) The date, nature and extent of each alleged instance that created the need for protective services.

(3) The home addresses of the subjects of the report.

(4) The county in which each alleged instances that created the need for protective services occurred.

(5) Family composition.

(6) The name and relationship to the child in question of other persons named in the report.

(7) Factors contributing to the need for protective services.

(8) The source of the report.

(9) Services planned or provided.

(10) If a report alleges child abuse, whether the report was determined to be founded, indicated or unfounded.

(11) If the report was accepted for services and the reasons for acceptance.

(12) If the report was not accepted for services, the reason the report was not accepted and whether the family was referred for other community services.

(13) Information obtained by the department in relation to a perpetrator's request to release or amend information retained by the department or county agency.

(14) The progress of any legal proceedings brought on the basis of the report.

(15) Whether a criminal investigation has been undertaken and the result of the investigation and of any criminal prosecution.

(16) In the case of an unfounded report, if it is later determined that the initial report was a false report, a notation to that effect regarding the status of the report.

(17) Any additional information provided in section 6313(c) (relating to reporting procedure).

(18) Any additional demographic information that the department requires to comply with section 6342 (relating to studies of data in records).

(19) With respect to cases that are not accepted for child abuse investigation or general protective services assessment or are referred for community services:

(i) The reasons the report was not accepted.

(ii) Any information provided to the referral source or the family related to other services or options available to address the report or complaint.

Note

Subsection (a) is new. Subsection (b) is based on repealed §§ 6313(c) and 6336(a).

[§ 6332. Establishment of Statewide toll-free telephone number.

(a) General rule.--The department shall establish a single Statewide toll-free telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse. A county agency shall use the Statewide toll-free telephone number for determining the existence of prior founded or indicated reports of child abuse in the Statewide central register or reports under investigation in the pending complaint file.

(b) Limitation on use.--A county agency may only request and receive information pursuant to this subsection either on its own behalf because it has received a report of suspected child abuse or on behalf of a physician examining or treating a child or on

behalf of the director or a person specifically designated in writing by the director of any hospital or other medical institution where a child is being treated, where the physician or the director or a person specifically designated in writing by the director suspects the child of being an abused child.

§ 6333. Continuous availability of department.

The department shall be capable of receiving oral reports of child abuse made pursuant to this chapter, reports under section 6353.2 (relating to responsibilities of county agency) and report summaries of child abuse from county agencies and shall be capable of immediately identifying prior reports of child abuse and prior reports of abuse or injury under Subchapter C.1 (relating to students in public and private schools) in the Statewide central register and reports under investigation in the pending complaint file and of monitoring the provision of child protective services 24 hours a day, seven days a week.

§ 6334. Disposition of complaints received.

(a) Notice to county agency.--Upon receipt of a complaint of suspected child abuse, the department shall immediately transmit orally to the appropriate county agency notice that the complaint of suspected child abuse has been received and the substance of the complaint. If the Statewide central register or the pending complaint file contains information indicating a prior report or a current investigation concerning a subject of the report, the department shall immediately notify the appropriate county agency of this fact. The appropriate county agency shall mean the agency in the county where the suspected child abuse occurred. If the residency of the subjects is a factor that requires the

cooperation of more than one county agency, the department shall develop regulations to ensure the cooperation of those agencies in carrying out the requirements of this chapter.

(b) Referral for services or investigation.--If the complaint received does not suggest suspected child abuse but does suggest a need for social services or other services or investigation, the department shall transmit the information to the county agency or other public agency for appropriate action. The information shall not be considered a child abuse report unless the agency to which the information was referred has reasonable cause to suspect after investigation that abuse occurred. If the agency has reasonable cause to suspect that abuse occurred, the agency shall notify the department, and the initial complaint shall be considered to have been a child abuse report.

(c) Recording in pending complaint file.--Upon receipt of a complaint of suspected child abuse, the department shall maintain a record of the complaint of suspected child abuse in the pending complaint file. Upon receipt of a report under section 6353.2 (relating to responsibilities of county agency), the department shall maintain a record of the report in the report file under section 6331 (relating to establishment of pending complaint file, Statewide central register and file of unfounded reports).

(d) Incidents occurring outside of this Commonwealth.--

(1) A report of suspected child abuse occurring in another state where the child victim is identified as a resident of this Commonwealth and the other state child protective services agency cannot investigate the report because of statutory or policy limitations shall be assigned as a general protective services report to the county of the child's residence or as determined by the department.

(2) In addition to complying with the other requirements of this chapter and applicable regulations, a copy of the report shall be provided to the other state's child protective services agency and, when applicable under Pennsylvania law, to law enforcement officials where the incident occurred.

(3) Reports and information under this subsection shall be provided within seven calendar days of completion of the general protective services assessment under section 6375 (relating to county agency requirements for general protective services).

§ 6335. Information in pending complaint and unfounded report files.

(a) Information authorized.--The information contained in the pending complaint file shall be limited to the information required in sections 6313(c) (relating to reporting procedure) and 6353.2 (relating to responsibilities of county agency). The information contained in the file for unfounded reports shall be limited to the information required by section 6336 (relating to information in Statewide central register).

(b) Access to information.--Except as provided in sections 6332 (relating to establishment of Statewide toll-free telephone number), 6334 (relating to disposition of complaints received), 6340 (relating to release of information in confidential reports) and 6342 (relating to studies of data in records), no person, other than an employee of the department in the course of official duties in connection with the responsibilities of the department under this chapter, shall at any time have access to any information in the pending complaint file or Statewide central register. Information in the file of unfounded reports shall be available only to employees of the department pursuant to this subsection, to subjects of a report or law enforcement officials pursuant to section 6340 and to the Office of Attorney General pursuant to section 6345 (relating to audits by Attorney

General) until the reports are expunged pursuant to section 6337 (relating to disposition of unfounded reports).]

§ 6335.1 Access to information in Statewide database.

(a) For assessment or investigation.--Upon receipt of a report or complaint of child abuse, a county agency or law enforcement agency shall use the Statewide toll-free telephone number to determine the existence of any prior reports or complaints involving a subject of the report. If the Statewide database contains information indicating a prior report or complaint or a pending investigation concerning a subject of the report, the department shall immediately convey this information to the county agency or law enforcement agency.

(b) Use by county agency.--A county agency may only request this information for the purposes of assessing and investigating reports or complaints of child abuse or allegations that a child is in need of general protective services under the following conditions:

(1) On its own behalf because it has received a report or complaint of suspected child abuse or an allegation that a child is in need of general protective services.

(2) On behalf of the following individuals, where that individual suspects that a child is a victim of child abuse or has reason to believe that a child is in need of general protective services:

(i) A physician examining or treating a child.

(ii) The director or a person specifically designated in writing by the director of any hospital or other medical institution where a child is being treated.

(c) Use by law enforcement.--The district attorney or a person specifically designated in writing by the district attorney may request information for the purposes of investigating allegations of criminal conduct, as set forth in section 6340(a)(9) and (10) (relating to release of information in confidential reports).

(d) Authorized releases for governmental functions.--No person, other than an employee of the department in the course of official duties in connection with the responsibilities of the department under this chapter, shall at any time have access to any information in the Statewide database except as provided in this section and the following provisions:

(1) Section 6322 (relating to availability to receive reports).

(2) Section 6323 (relating to disposition of initial reports)

(3) Section 6340 (relating to release of information in confidential reports).

(4) Section 6342 (relating to studies of data in records).

(e) Clearances.--Information provided in response to inquiries under section 6344 (relating to prospective child-care personnel), 6344.1 (relating to family day-care home residents) or 6344.2 (relating to other persons having contact with children) shall be limited to the following:

(1) Whether the person was named as a perpetrator of child abuse in a founded or indicated report.

(2) Whether there is an investigation pending in which the individual is an alleged perpetrator.

(3) The number, date of the incidents upon which the report is based and the type of abuse or neglect involved in any reports identified under paragraph (1).

(f) Requests using advance communication technologies.--Requests under this section may be made using advance communication technologies if appropriate verification is made in accordance with the provisions of section 6322(e) (relating to availability to receive reports).

Note

Subsection (a) is based on repealed § 6334(a). Subsection (b) is based on repealed § 6332(b). Subsection (c) is based on repealed §§ 6335(b) and 6336(b). Subsection (d) is based on repealed § 6335(b). Subsection (e) is based on repealed § 6336(b). Subsection (f) is new.

Comment to § 6335.1

Information retained in the Statewide database is confidential and may be accessed only by the persons designated in this subchapter and used only for the purposes specifically set forth. This information will include allegations that have not been substantiated; therefore, its use outside of assessment and investigative purposes is strictly limited. Maintenance of this information is deemed necessary in order for the department, county agencies and law enforcement to more adequately protect vulnerable children.

[§ 6336. Information in Statewide central register.

(a) Information authorized.--The Statewide central register shall include and shall be limited to the following information:

(1) The names, Social Security numbers, age and sex of the subjects of the reports.

(2) The date or dates and the nature and extent of the alleged instances of suspected child abuse.

(3) The home addresses of the subjects of the report.

(4) The county in which the suspected abuse occurred.

(5) Family composition.

(6) The name and relationship to the abused child of other persons named in the report.

(7) Factors contributing to the abuse.

(8) The source of the report.

(9) Services planned or provided.

(10) Whether the report is a founded report or an indicated report.

(11) Information obtained by the department in relation to a perpetrator's or school employee's request to release, amend or expunge information retained by the department or the county agency.

(12) The progress of any legal proceedings brought on the basis of the report of suspected child abuse.

(13) Whether a criminal investigation has been undertaken and the result of the investigation and of any criminal prosecution.

No information other than that permitted in this subsection shall be retained in the Statewide central register.

(b) Type of information released.--Except as provided in sections 6334 (relating to disposition of complaints received), 6335 (relating to information in pending complaint and unfounded report files), 6340 (relating to release of information in confidential reports) and 6342 (relating to studies of data in records), persons receiving information from the Statewide central register or pending complaint file may be informed only as to:

(1) Whether the report is a founded or indicated abuse or is under investigation.

(2) The number of such reports.

(3) The nature and extent of the alleged or actual instances of suspected child abuse.

(4) The county in which the reports are investigated.

(5) Any other information available which would further the purposes of this chapter.

(c) Limitation on release of information.--Except as provided in sections 6334, 6335, 6340 and 6342, no information shall be released from the Statewide central register or pending complaint file unless pursuant to section 6332 (relating to establishment of Statewide toll-free telephone number) and unless the department has positively identified the representative of the county agency requesting the information and the department has inquired into and is satisfied that the representative has a legitimate need, within the scope of official duties and the provisions of section 6332, to obtain the information. Information in the Statewide central register or pending complaint file shall not be released for any purpose or to any individual not specified in section 6340.

§ 6337. Disposition of unfounded reports.

(a) General rule.--When a report of suspected child abuse is determined by the appropriate county agency to be an unfounded report, the information concerning that report of suspected child abuse shall be maintained for a period of one year. Following the expiration of one year after the date the report was received by the department, the report shall be expunged from the pending complaint file, as soon as possible, but no later than 120 days after the one-year period following the date the report was received by the department, and no information other than that authorized by subsection (b), which shall

not include any identifying information on any subject of the report, shall be retained by the department.

(b) Absence of other determination.--If an investigation of a report of suspected child abuse conducted by the appropriate county agency pursuant to this chapter does not determine within 60 days of the date of the initial report of the instance of suspected child abuse that the report is a founded report, an indicated report or an unfounded report, or unless within that same 60-day period court action has been initiated and is responsible for the delay, the report shall be considered to be an unfounded report, and all information identifying the subjects of the report shall be expunged no later than 120 days following the expiration of one year after the date the report was received by the department. The agency shall advise the department that court action or an arrest has been initiated so that the pending complaint file is kept current regarding the status of all legal proceedings and expunction delayed.

(c) Expunction of information.--All information identifying the subjects of any report of suspected child abuse and of any report under Subchapter C.1 (relating to students in public and private schools) determined to be an unfounded report shall be expunged from the pending complaint file pursuant to this section. The expunction shall be mandated and guaranteed by the department.

§ 6338. Disposition of founded and indicated reports.

(a) General rule.--When a report of suspected child abuse or a report under Subchapter C.1 (relating to students in public and private schools) is determined by the appropriate county agency to be a founded report or an indicated report, the information concerning that report of suspected child abuse shall be expunged immediately from the

pending complaint file, and an appropriate entry shall be made in the Statewide central register. Notice of the determination must be given to the subjects of the report, other than the abused child, and to the parent or guardian of the affected child or student along with an explanation of the implications of the determination. Notice given to perpetrators of child abuse and to school employees who are subjects of indicated reports for school employees or founded reports for school employees shall include notice that their ability to obtain employment in a child-care facility or program or a public or private school may be adversely affected by entry of the report in the Statewide central register. The notice shall also inform the recipient of his right, within 45 days after being notified of the status of the report, to appeal an indicated report, and his right to a hearing if the request is denied.

(b) Expunction of information when child attains 23 years of age.--Except as provided in subsection (c), all information which identifies the subjects of founded and indicated child abuse reports shall be expunged when the subject child reaches the age of 23. The expunction shall be mandated and guaranteed by the department.

(c) Retention of information.--A subfile shall be established in the Statewide central register to indefinitely retain the names of perpetrators of child abuse and school employees who are subjects of founded or indicated reports only if the individual's Social Security number or date of birth is known to the department. The subfile shall not include identifying information regarding other subjects of the report.]

§ 6339. Confidentiality of reports.

Except as otherwise provided in this subchapter, reports made pursuant to this chapter, including, but not limited to, report summaries of child abuse and [written]

reports made pursuant to section 6313 [(b) and (c)] (relating to reporting procedure) as well as any other information obtained, reports written or photographs or X-rays taken concerning alleged instances of child abuse in the possession of the department or a county agency shall be confidential.

Comment to § 6339

***See* the Comment to § 6335.1.**

§ 6340. Release of information in confidential reports.

(a) General rule.--Reports specified in section 6339 (relating to confidentiality of reports) shall only be made available to:

* * *

[(2) A physician examining or treating a child or the director or a person specifically designated in writing by the director of any hospital or other medical institution where a child is being treated when the physician or the director or the designee of the director suspects the child of being an abused child or a child alleged to be in need of protection under this chapter.]

* * *

(4) An authorized official or agent of the department in accordance with department regulations or in accordance with the conduct of a performance audit as authorized by section [6343] 6359.5 (relating to investigating performance of county agency).

(5) A court of competent jurisdiction, including a magisterial district judge, a judge of the Philadelphia Municipal Court and a judge of the Pittsburgh Magistrates Court, pursuant to court order or subpoena in a criminal matter involving a charge of

child abuse under section 6303[(b)] (relating to definitions). Disclosure through testimony shall be subject to the restrictions of subsection (c).

* * *

(6) A standing committee of the General Assembly, as specified in section [6384] 6359.4 (relating to legislative oversight).

* * *

(9) Law enforcement officials of any jurisdiction, as long as the information is relevant in the course of investigating cases of:

(i) Homicide or other criminal offense set forth in section [6344(c) (relating to information relating to prospective child-care personnel)] 6344.3(a) (relating to grounds for denying employment or participation in program, activity or service), sexual abuse[, sexual] or exploitation, bodily injury or serious bodily injury [or serious physical injury perpetrated by persons whether or not related to the victim] caused by a perpetrator or non-perpetrator.

(ii) [Child abuse perpetrated by persons who are not family members] Child abuse other than that identified in paragraph (i) by a non-perpetrator.

(iii) Repeated physical injury to a child under circumstances which indicate that the child's health, safety or welfare is harmed or threatened.

(iv) A missing child report.

(10) The district attorney or his designee or other law enforcement official, as set forth in the county protocols for multidisciplinary investigative teams required in section [6365(c) (relating to services for prevention, investigation and treatment of child abuse)] 6326 (relating to investigation by multidisciplinary investigative team),

shall receive, immediately after the county agency has ensured the safety of the child, reports of abuse [, either orally or in writing], according to regulations promulgated by the department, from the department or the county agency in which the initial report of suspected child abuse or initial inquiry into the report gives evidence that the abuse is:

(i) a criminal offense set forth in section [6344(c)] 6344.3(a), [not including an offense under 18 Pa.C.S. § 4304 (relating to endangering welfare of children)] or an equivalent crime under Federal law or the law of another state[, sexual abuse, sexual exploitation or serious bodily injury perpetrated by persons, whether or not related to the victim]; or

(ii) child abuse [perpetrated by persons who are not family members] pursuant to section 6321(2) or (3) (relating to responsibility for investigation)[; or

[(iii) serious physical injury involving extensive and severe bruising, burns, broken bones, lacerations, internal bleeding, shaken baby syndrome or choking or an injury that significantly impairs a child's physical functioning, either temporarily or permanently].

* * *

(12) A mandated reporter of suspected child abuse as defined in section 6311 (relating to persons required to report suspected child abuse) who made a report of abuse involving the subject child, but the information permitted to be released to the mandated reporter shall be limited to the following:

(i) The final status of the child abuse report following the investigation, whether it be indicated, founded or unfounded.

(ii) Any services provided, arranged for or to be provided by the county agency to protect the child, or any service plan developed.

[(13) Persons required to make reports under Subchapter C.1 (relating to students in public and private schools). Information under this paragraph shall be limited to the final status of the report following the investigation as to whether the report is indicated, founded or unfounded.]

* * *

(16) Members of citizen review panels convened pursuant to section [6343.1] 6359 (relating to citizen review panels), provided that such members shall not disclose to any person or government official any identifying information about any specific child protective services case with respect to which the panel is provided information.

(17) A member of a child fatality or near fatality review team under section [6365(d)] 6359.2 (relating to child fatality or near fatality review team).

(b) Release of information to subject of report.--At any time and upon written request, a subject of a report may receive a copy of all information, except that prohibited from being disclosed by subsection (c), contained in the Statewide [central register] database or in any report filed pursuant to section 6313 (relating to reporting procedure).

(c) Protecting identity of person making report.--Except for reports pursuant to subsection (a)(9) and (10), and in response to law enforcement officials investigating allegations of false reports under 18 Pa.C.S. § 4906.1 (relating to false reports of child abuse), the release of data that would identify the person who made a report of suspected child abuse or the person who cooperated in a subsequent investigation is prohibited

unless the secretary finds that the release will not be detrimental to the safety of that person. Law enforcement officials shall treat all reporting sources as confidential informants.

(d) Exclusion of administrative information.--Information maintained in the Statewide [central register] database which was obtained from an investigating agency in relation to an appeal request shall not be released to any person except a department official, as provided by regulation.

Comment to § 6340

Subsection (a)(9) authorizes the department or county agency to make confidential reports available to any law enforcement agency in any jurisdiction that is investigating any criminal offense against a child, certain forms of child abuse committed by a perpetrator or a non-perpetrator, and other forms of child abuse (an injury set forth under paragraph (2) of the definition of "child abuse" and serious mental injury) by a non-perpetrator.

Subsection (a)(10) affirmatively requires notification to the local district attorney or other local law official of confidential child abuse reports received by the department or the county agency that include evidence of a criminal offense against a child or child abuse, whether committed by a perpetrator or a non-perpetrator.

The exclusion of endangering the welfare of children from the list of offenses that are required to be reported to the district attorney under subsection (a)(10) has been deleted.

§ 6340.1 Exchange of information with medical practitioners.

(a) Exchange of information relevant to report by mandated reporter.--A certified medical practitioner reporting child abuse under section 6311 (relating to persons required to report suspected child abuse) or a child in need of protective services shall provide the county agency with information and the county agency shall respond to requests for information from the certified medical practitioner, subject to the following:

(1) The certified medical practitioner shall provide all relevant medical information known to the certified medical practitioner about the child's prior and current health, as well as any subsequent examination and treatment of the child who is a subject of the report of suspected child abuse.

(2) Parental consent is not required for the certified medical practitioner to provide the information under paragraph (1).

(3) Upon request by the certified medical practitioner, the county agency shall provide the following:

(i) Information regarding the condition and well-being of the child and the progress and outcome of the investigation under this chapter.

(ii) Any protective services records regarding the child and any other child in the child's household where such information is relevant to the medical evaluation of the child.

(iii) Information regarding the identity of other certified medical practitioners providing medical care to the child so as to facilitate the transfer of the child's medical records.

(b) Information by primary care provider.--A certified medical practitioner who is the primary care provider of a child who is a subject of the report of suspected child abuse shall provide all relevant medical information regarding the child and any other child in the child's household to the county agency and law enforcement without the need for parental consent. A certified medical practitioner under this subsection may or may not be the person who submitted the report of suspected child abuse.

(c) Notification of services.--Upon the initiation of an assessment, investigation or the provision of services by a county agency, an authorized official of the county agency shall notify the certified medical practitioner who is the child's primary care provider and other certified medical practitioners who are providing ongoing care to the child of the following information:

(1) The reason that the county agency is involved with the child.

(2) Any service plan developed for the child and the child's family.

Comment to § 6340.1

This section is intended to promote the flow of information between medical personnel who are involved with the child who is a subject of the report of suspected child abuse and the county agency or law enforcement to provide better input regarding the medical care and follow-up treatment of the child. The federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5101 *et seq.*, specifically authorizes release of information to other entities or classes of individuals authorized by statute to receive information pursuant to a legitimate state purpose.

This section specifically authorizes physicians to report children believed to be in need of general protective services without parental consent under the exclusion found in the federal Health Insurance Portability and Accountability Act (HIPAA), at 45 C.F.R. § 164.512(c).

Under HIPAA, written authorization is not required when reporting child abuse to an appropriate government authority authorized by law to receive reports of child abuse and neglect. (45 C.F.R. § 164.512(b)(1)(ii)) Lack of parental consent is seen as a bar to physicians attempting to report children in need of general protective services (GPS), because they are not identified as child abuse cases. However, § 6373(a)(2) specifically cites as one of the goals of general protective services the prevention of abuse, neglect or exploitation. HIPAA permits disclosure when the physician reasonably believes a person is a victim of abuse, neglect or domestic violence, to a government authority, including a social service or protective services agency authorized by law to receive reports of such abuse, neglect or domestic violence to the extent the disclosure complies with and is limited to the relevant requirements of the law. The disclosure must be expressly authorized by statute or regulation, and the physician, in the exercise of professional judgment, must believe the disclosure is

necessary to prevent serious harm to the individual (in GPS cases, the child). Generally, the physician is required to notify the individual of the report (or the individual's personal representative, *i.e.*, the parent of a child) UNLESS the physician believes that the personal representative (*e.g.*, the parent) is responsible for the abuse, neglect or domestic violence and that informing such person, in the physician's professional judgment, would not be in the best interests of the individual. Further, notice to the individual (child) is not required if notifying the individual will place the individual at risk of serious harm. (45 C.F.R. § 164.512(c))

[§ 6341. Amendment or expunction of information.

(a) General rule.--At any time:

(1) The secretary may amend or expunge any record under this chapter upon good cause shown and notice to the appropriate subjects of the report.

(2) Any person named as perpetrator, and any school employee named, in an indicated report of child abuse may, within 45 days of being notified of the status of the report, request the secretary to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.

(b) Review of grant of request.--If the secretary grants the request under subsection (a)(2), the Statewide central register, appropriate county agency, appropriate law enforcement officials and all subjects shall be so advised of the decision. The county agency and any subject have 45 days in which to file an administrative appeal with the secretary. If an administrative appeal is received, the secretary or his designated agent shall schedule a hearing pursuant to Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, and attending departmental regulations. If no administrative appeal is received within the designated time period, the Statewide central register shall comply with the decision of the secretary and advise the county agency to

amend or expunge the information in their records so that the records are consistent at both the State and local levels.

(c) Review of refusal of request.--If the secretary refuses the request under subsection (a)(2) or does not act within a reasonable time, but in no event later than 30 days after receipt of the request, the perpetrator or school employee shall have the right to a hearing before the secretary or a designated agent of the secretary to determine whether the summary of the indicated report in the Statewide central register should be amended or expunged on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with this chapter. The perpetrator or school employee shall have 45 days from the date of the letter giving notice of the decision to deny the request in which to request a hearing. The appropriate county agency and appropriate law enforcement officials shall be given notice of the hearing. The burden of proof in the hearing shall be on the appropriate county agency. The department shall assist the county agency as necessary.

(d) Stay of proceedings.--Any administrative appeal proceeding pursuant to subsection (b) shall be automatically stayed upon notice to the department by either of the parties when there is a pending criminal proceeding or a dependency or delinquency proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters), including any appeal thereof, involving the same factual circumstances as the administrative appeal.

(e) Order.--The secretary or designated agent may make any appropriate order respecting the amendment or expunction of such records to make them accurate or consistent with the requirements of this chapter.

(f) Notice of expunction.--Written notice of an expunction of any child abuse record made pursuant to the provisions of this chapter shall be served upon the subject of the record who was responsible for the abuse or injury and the appropriate county agency. Except as provided in this subsection, the county agency, upon receipt of the notice, shall take appropriate, similar action in regard to the local child abuse and school employee records and inform, for the same purpose, the appropriate coroner if that officer has received reports pursuant to section 6367 (relating to reports to department and coroner). Whenever the county agency investigation reveals, within 60 days of receipt of the report of suspected child abuse, that the report is unfounded but that the subjects need services provided or arranged by the county agency, the county agency shall retain those records and shall specifically identify that the report was an unfounded report of suspected child abuse. An unfounded report regarding subjects who receive services shall be expunged no later than 120 days following the expiration of one year after the termination or completion of services provided or arranged by the county agency.]

§ 6342. Studies of data in records.

(a) Studies.--The department may conduct or authorize the conducting of studies of the data contained in the [pending complaint file and the Statewide central register and county agencies] Statewide database and distribute the results of the studies. No study may contain the name or other information by which a subject of a report could be identified. The department may allow Federal auditors access to nonidentifiable duplicates of reports in the [pending complaint file and the Statewide central register] Statewide database if required for Federal financial participation in funding of agencies.

(b) Data form.--The department shall develop a data form to facilitate the collection of statistical and demographic information from a child fatality or near fatality review team and a county agency, which can be incorporated into a study conducted by the department.

[§ 6343. Investigating performance of county agency.

(a) General rule.--If, within 30 days from the date of an initial report of suspected child abuse, the appropriate county agency has not investigated the report and informed the department that the report is an indicated report or an unfounded report or unless within that same 30-day period the report is determined to be a founded report, the department shall have the authority to begin an inquiry into the performance of the county agency which inquiry may include a performance audit of the county agency as provided in subsection (b). On the basis of that inquiry, the department shall take appropriate action to require that the provisions of this chapter be strictly followed, which action may include, without limitation, the institution of appropriate legal action and the withholding of reimbursement for all or part of the activities of the county agency. The department shall determine in its review whether the county agency has sufficiently documented reasons why the investigation has not been completed in the 30-day period.

(b) Performance audit.--Notwithstanding any other provision of this chapter, the secretary or a designee of the secretary may direct, at their discretion, and after reasonable notice to the county agency, a performance audit of any activity engaged in pursuant to this chapter.

(c) Department reviews and reports of child fatalities and near fatalities.

(1) The department shall conduct a child fatality and near fatality review and provide a written report on any child fatality or near fatality, if child abuse is suspected. The department shall summarize:

(i) the circumstances of the child's fatality or near fatality;

(ii) the nature and extent of its review;

(iii) statutory and regulatory compliance by the county agency in the county where:

(A) the fatality or near fatality occurred; and

(B) the child resided within the 16 months preceding the fatality or near fatality;

(iv) its findings; and

(v) recommendations for reducing the likelihood of future child fatalities and near fatalities resulting from child abuse.

(2) The department's child fatality or near fatality review shall be commenced immediately upon receipt of a report to the department that a child died or nearly died as a result of suspected child abuse. The department shall provide assistance and relevant information to the child fatality or near fatality review team and attempt to coordinate its fact-finding efforts and interviews with the team to avoid duplication. The department's child fatality or near fatality review and report shall be completed as soon as possible but no later than six months from receipt of the initial report of the child fatality or near fatality.

(3) Prior to completing its report, the department may release the following information to the public concerning a child who died or nearly died as a result of suspected or substantiated child abuse:

(i) The identity of the child.

(ii) If the child was in the custody of a public or private agency, the identity of the agency.

(iii) The identity of the public or private agency under contract with a county agency to provide services to the child and the child's family in the child's home prior to the child's death or near fatality.

(iv) A description of services provided under subparagraph (iii).

(v) The identity of the county agency that convened a child fatality or near fatality review team with respect to the child.

(4) Upon completion of the review and report, the department's child fatality or near fatality report shall be made available to the county agency, the child fatality or near fatality review team and designated county officials under section 6340(a)(11) (relating to release of information in confidential reports). The report shall be made available, upon request, to other individuals to whom confidential reports may be released, as specified by section 6340. The department's report shall be made available to the public, but identifying information shall be removed from the contents of the report except for disclosure of the identity of a deceased child; if the child was in the custody of a public or private agency, the identity of the agency; the identity of the public or private agency under contract with a county agency to provide services to the child and the child's family in the child's home prior to the

child's death or near fatality; and the identity of any county agency that convened a child fatality or near fatality review team in respect to the child. The report shall not be released to the public if the district attorney certifies that release of the report may compromise a pending criminal investigation or proceeding. Certification by the district attorney shall stay the release of the report for a period of 60 days, at which time the report shall be released unless a new certification is made by the district attorney.

§ 6343.1. Citizen review panels.

(a) Establishment.--The department shall establish a minimum of three citizen review panels. The department may designate a child fatality or near fatality review team under section 6365(d) (relating to services for prevention, investigation and treatment of child abuse) as a citizen review panel as long as the team has the capacity to perform as a citizen review panel.

(b) Function.--The panels shall examine all of the following:

(1) Policies, procedures and practices of State and local agencies and, where appropriate, specific cases to evaluate the extent to which State and local child protective services system agencies are effectively discharging their child protection responsibilities under section 106(b) of the Child Abuse Prevention and Treatment Act (Public Law 93-247, 42 U.S.C. § 5106a(b)).

(2) Other criteria the panel considers important to ensure the protection of children, including:

(i) a review of the extent to which the State and local child protective services system is coordinated with the foster care and adoption programs established

under Part E of Title IV of the Social Security Act (49 Stat. 620, 42 U.S.C. § 670 et seq.); and

(ii) a review of child fatalities and near fatalities, including, but not limited to, a review of any child fatality or near fatality involving a child in the custody of a public or private agency where there is no report of suspected child abuse and the cause of death is neither the result of child abuse nor natural causes.

(c) Membership.--The panels shall be composed of volunteer members who represent the community, including members who have expertise in the prevention and treatment of child abuse and neglect.

(d) Meetings.--Each citizen review panel shall meet not less than once every three months.

(e) Reports.--The department shall issue an annual report summarizing the activities and recommendations of the panels and summarizing the department response to the recommendations.]

§ 6344. Information relating to prospective child-care personnel.

(a) Applicability.--[This section applies to all prospective employees of child-care services, prospective foster parents, prospective adoptive parents, prospective self-employed family day-care providers and other persons seeking to provide child-care services under contract with a child-care facility or program. This section also applies to individuals 14 years of age or older who reside in the home of a prospective foster parent for at least 30 days in a calendar year or who reside in the home of a prospective adoptive parent for at least 30 days in a calendar year. This section does not apply to

administrative or other support personnel unless their duties will involve direct contact with children.] This section applies to any of the following individuals:

(1) A prospective employee of child-care services.

(2) A prospective foster parent.

(3) A prospective adoptive parent.

(4) A prospective self-employed family day-care provider.

(5) Any person seeking to provide child-care services under contract with a child-care facility or program.

(6) An individual 18 years of age or older who resides in the home of a prospective foster parent for at least 30 days in a calendar year or who resides in the home of a prospective adoptive parent for at least 30 days in a calendar year.

(b) [Information submitted by prospective employees.--Administrators of child-care services shall require applicants to submit with their applications the following information obtained within the preceding one-year period] Information to be submitted.--An individual identified in paragraph (a)(6) at the time the individual meets the description set forth in that paragraph and an individual applying to serve in any capacity identified in paragraphs (a)(1) through (5) at the time of application shall be required to submit the following information obtained within the preceding one-year period:

(1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information), a report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the State Police central repository contains no such information relating to that person. The criminal

history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).

(2) A certification from the department as to whether the applicant is named in the [central register] Statewide database as the perpetrator of a founded [report of child abuse,] or indicated report of child abuse [, founded report for school employee or indicated report for school employee].

(3) A report of Federal criminal history record information. The applicant shall submit a full set of fingerprints in a manner prescribed by the department. The Commonwealth shall submit the fingerprints to the Federal Bureau of Investigation in order to obtain a report of Federal criminal history record information and serve as intermediary for the purposes of this section.

For the purposes of this subsection, [an applicant may submit a copy of the information required under paragraphs (1) and (2) with an application for employment. Administrators shall maintain a copy of the required information and shall require applicants to produce the original document prior to employment] an individual may submit a copy of the information required under paragraphs (1) and (2) when applying to serve in any capacity identified in paragraphs (a)(1) through (5). The person responsible for determining the employment or acceptance of the individual to serve in such a capacity shall maintain a copy of the required information and require the individual to produce the original document prior to employment or acceptance to serve in such capacity.

* * *

[(c) Grounds for denying employment.--

(1) In no case shall an administrator hire an applicant where the department has verified that the applicant is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section.

(2) In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of one or more of the following offenses under Title 18 (relating to crimes and offenses) or an equivalent crime under Federal law or the law of another state:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

The attempt, solicitation or conspiracy to commit any of the offenses set forth in this paragraph.

(3) In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of a felony offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, committed within the five-year period immediately preceding verification under this section.]

Note

Subsection (c) is repealed and replaced by proposed § 6344.3.

(d) Prospective adoptive or foster parents.--With regard to prospective adoptive or prospective foster parents, the following shall apply:

(1) In the course of causing an investigation to be made pursuant to section 2535(a) (relating to investigation), an agency or person designated by the court to

conduct the investigation shall require prospective adoptive parents and any individual over the age of 18 years residing in the home to submit the information set forth in subsection (b) for review in accordance with this section. If a prospective adoptive parent, or any individual over 18 years of age residing in the home, has resided outside this Commonwealth at any time within the previous five-year period, the agency or person designated by the court shall require that person to submit a certification obtained within the previous one-year period from the Statewide [central registry] database, or its equivalent in each state in which the person has resided within the previous five-year period, as to whether the person is named as a perpetrator of child abuse. If the certification shows that the person is named as a perpetrator of child abuse within the previous five-year period, the agency or person designated by the court shall forward the certification to the department for review. The agency or person designated by the court shall not approve the prospective adoptive parent if the department determines that the person is named as the equivalent of a perpetrator of a founded report of child abuse within the previous five-year period.

(2) In the course of approving a prospective foster parent, a foster family care agency shall require prospective foster parents and any individual over the age of 18 years residing in the home to submit the information set forth in subsection (b) for review by the foster family care agency in accordance with this section. If a prospective foster parent, or any individual over 18 years of age residing in the home, has resided outside this Commonwealth at any time within the previous five-year period, the foster family care agency shall require that person to submit a certification

obtained within the previous one-year period from the Statewide [central registry] database, or its equivalent in each state in which the person has resided within the previous five-year period, as to whether the person is named as a perpetrator of child abuse. If the certification shows that the person is named as a perpetrator of child abuse within the previous five-year period, the foster family care agency shall forward the certification to the department for review. The foster family care agency shall not approve the prospective foster parent if the department determines that the person is named as the equivalent of a perpetrator of a founded report of child abuse within the previous five-year period. In addition, the foster family care agency shall consider the following when assessing the ability of applicants for approval as foster parents:

* * *

[(3) Foster parents and any individual over 18 years of age residing in the home shall be required to submit the information set forth in subsection (b) every 24 months following approval for review by the foster family care agency in accordance with subsection (c).

Note

Subsection (d)(3) is repealed, and its subject matter is relocated to proposed § 6344.4(a).

(4) Foster parents shall be required to report, within 48 hours, any change in information required pursuant to subsection (b) about themselves and any individuals over the age of 18 years residing in the home for review by the foster family care agency in accordance with subsection (c).]

Note

Subsection (d)(4) is repealed, and its subject matter is relocated to proposed § 6344.4(b).

(4.1) Foster parents shall be required to report an arrest or conviction for violation of an offense described in subsection 6344.3 (relating to grounds for denying employment or participation in program, activity or service) pursuant to section 6344.3.

(5) Foster parents shall be required to report any other change in the foster family household composition within 30 days of the change for review by the foster family care agency. If any individual over 18 years of age, who has resided outside this Commonwealth at any time within the previous five-year period, begins residing in the home of an approved foster family, that individual shall, within 30 days of beginning residence, submit to the foster family care agency a certification obtained within the previous one-year period from the Statewide [central registry] database, or its equivalent in each state in which the person has resided within the previous five-year period, as to whether the person is named as a perpetrator of child abuse. If the certification shows that the person is named as a perpetrator of child abuse within the previous five-year period, the foster family care agency shall forward the certification to the department for review. If the department determines that the person is named as the equivalent of a perpetrator of a founded report of child abuse within the previous five-year period and the person does not cease residing in the home immediately, the foster child or children shall immediately be removed from the home without a hearing.

(6) In cases where foster parents knowingly fail to submit the material information required in [paragraphs (3), (4) and (5)] paragraph (5) and section 6344.4 (relating to certification compliance) and such that it would disqualify them as foster parents, the child shall immediately be removed from the home without a hearing.

* * *

(i) Time limit for certification.--The department shall comply with certification requests no later than [14] 28 days from the receipt of the request.

* * *

[(k) Existing or transferred employees.--A person employed in child-care services on July 1, 2008, shall not be required to obtain the information required in subsection (b) as a condition of continued employment. A person who has once obtained the information required under subsection (b) may transfer to another child-care service established and supervised by the same organization and shall not be required to obtain additional reports before making the transfer.

Note

Subsection (k) is repealed, and its subject matter is relocated to proposed § 6344.3(f).

(l) Temporary employees under special programs.--The requirements of this section do not apply to employees of child-care services who meet all the following requirements:

(1) They are under 21 years of age.

(2) They are employed for periods of 90 days or less.

(3) They are a part of a job development or job training program funded, in whole or in part, by public or private sources.

Once employment of a person who meets these conditions extends beyond 90 days, all requirements of this section shall take effect.]

(m) Provisional employees for limited periods.--Notwithstanding subsection (b), [administrators] employers may employ applicants on a provisional basis for a single period not to exceed 30 days or, for out-of-State applicants, a period of 90 days, if all of the following conditions are met:

(1) The applicant has applied for the information required under subsection (b) and the applicant provides a copy of the appropriate completed request forms to the [administrator] employer.

(2) The [administrator] employer has no knowledge of information pertaining to the applicant which would disqualify him from employment pursuant to [subsection (c)] section 6344.3.

(3) The applicant swears or affirms in writing that he is not disqualified from employment pursuant to [subsection (c)] section 6344.3.

(4) If the information obtained pursuant to subsection (b) reveals that the applicant is disqualified from employment pursuant to [subsection (c)] section 6344.3, the applicant shall be immediately dismissed by the [administrator] employer.

(5) The [administrator] employer requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a permanent employee.

(n) Confidentiality.--The information provided and compiled under this section, including, but not limited to, the names, addresses and telephone numbers of applicants and foster and adoptive parents, shall be confidential and shall not be subject to the act of

[June 21, 1957 (P.L.390, No.212), referred to as] February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law. This information shall not be released except as permitted by the department through regulation.

(o) Use of information.--A foster family care agency may not approve a prospective foster parent if the prospective foster parent or an individual [14] 18 years of age or older who resides for at least 30 days in a calendar year with the prospective foster parent meets either of the following:

(1) Is named in the [central register] Statewide database as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section [or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section].

(2) Has been found guilty of an offense listed in [subsection (c)(2)] section 6344.3.

(p) Use of information.--A prospective adoptive parent may not be approved if the prospective adoptive parent or an individual [14] 18 years of age or older who resides for at least 30 days in a calendar year with the prospective adoptive parent meets either of the following:

(1) Is named in the [central register] Statewide database as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section [or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section].

(2) Has been found guilty of an offense listed in [subsection (c)(2)] section 6344.3.

Comment to § 6344

The references to an individual 18 years of age or older in subsections (a)(6), (o) and (p) are consistent with subsection (d) and required by 42 U.S.C. § 671(a)(20) (the "Adam Walsh bill").

Subsection (c)(2) is amended to make it consistent with § 6344.3 and the provisions of the Public School Code of 1949 governing background checks for school employees. *See* § 111 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, as amended by the act of June 30, 2011 (P.L.112, No.24).

Section 6344.4(a)(1) broadens the scope of repealed § 6344(d)(3) from foster and adoptive parents to all persons having regular contact with children, requiring them to renew the clearances provided for under § 6344(b) every two years.

An individual subject to the Public School Code of 1949 would need to pay any fee under subsection (h) for obtaining a certification required under subsection (b)(2).

Given the anticipated increase in the volume of certification requests as a result of the amendments to this subchapter, the time for the department to comply with requests is doubled, from 14 days to 28 days, in subsection (i). The department would have 28 days to comply with the certification request by an individual subject to the Public School Code of 1949.

Subsections (k) and (l) are repealed in order to harmonize the provisions of this chapter with the provisions of § 111 of the Public School Code of 1949. The subject matter of repealed subsection (k) has been re-written to be consistent with the Public School Code amendments and can be found in § 6344.3(f).

§ 6344.1. Information relating to family day-care home residents.

* * *

(b) Required information.--Child abuse record information required under subsection (a) shall include certification by the department as to whether the applicant is named in the [central register] Statewide database as the perpetrator of a founded report[,] or indicated report [, founded report for school employee or indicated report for school employee].

(c) Effect on registration.--The department shall refuse to issue or renew a registration certificate or shall revoke a registration certificate if the family day-care home provider or individual 18 years of age or older who has resided in the home for at least 30 days in a calendar year:

(1) is named in the [central register] Statewide database on child abuse established under Chapter 63 (relating to child protective services) as the perpetrator of a founded report committed within the immediately preceding five-year period; or

(2) has been convicted of an offense enumerated in section [6344(c)] 6344.3(a).

* * *

§ 6344.2. Information relating to other persons having contact with children.

(a) Applicability.--[This section applies to prospective employees applying to engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training. Such persons include social service workers, hospital personnel, mental health professionals, members of the clergy, counselors, librarians and doctors.] This section applies to a person applying for a paid or unpaid position as a person responsible for the welfare of a child.

(b) Investigation.--Employers, administrators or supervisors or other person responsible for employment decisions or selection of volunteers shall require an applicant to submit to all requirements set forth in section 6344(b) (relating to information relating to prospective child-care personnel). An employer, administrator, supervisor or other person responsible for employment decisions or selection of volunteers regarding an applicable prospective employee or volunteer under this section that intentionally fails to

require the submissions before hiring that individual commits a misdemeanor of the third degree.

(c) Grounds for denial.--Each applicant shall be subject to the requirements of section [6344(c)] 6344.3 (relating to grounds for denial of employment or participation in program, service or activity).

(d) Departmental treatment of information.--Information provided and compiled under this section by the department shall be confidential and shall not be subject to the act of [June 21, 1957 (P.L.390, No.212), referred to] February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law. This information shall not be released except as permitted by the department through regulation. The department may charge a fee to conduct a certification as required by section 6344(b)(2) in accordance with the provisions of section 6344(h). The department shall promulgate regulations necessary to carry out this subsection.

§ 6344.3 Grounds for denying employment or participation in program, activity or service.

(a) Permanent ban.--No person subject to section 6344 (relating to information relating to prospective child-care personnel) or 6344.2 (relating to information relating to other persons having contact with children) shall be employed or serve as a volunteer where the information under section 6344(b) indicates that the person has been identified as follows:

(1) Convicted of an offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 2910 (relating to luring a child into a motor vehicle or structure).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 3129 (relating to sexual intercourse with animal).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301(a)(1)(ii) (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

Section 6318 (relating to unlawful contact with minor).

Section 6319 (relating to solicitation of minors to traffic drugs).

Section 6320 (relating to sexual exploitation of children).

(2) Convicted of an offense similar in nature to those crimes listed in paragraph (1) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this Commonwealth.

(3) Identified in the Statewide database as the perpetrator of a founded or indicated report of child abuse that involved the sexual abuse or exploitation of a child.

(b) Temporary 10-year ban.--

(1) Subject to paragraph (2), no person subject to section 6344 or 6344.2 shall be employed or serve as a volunteer where the information under section 6344(b) indicates that the person has been convicted of a felony offense of the first, second or third degree for a crime other than those enumerated under subsection (a), where the victim is a child, or a felony offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) The person under paragraph (1) shall be eligible for prospective employment or service as a volunteer only if a period of ten years has elapsed from the date of expiration of the sentence for the offense.

(c) Temporary 5-year ban.--

(1) Subject to paragraph (2), no person subject to section 6344 or 6344.2 shall be employed or serve as a volunteer where the information under section 6344(b) indicates that the person has been:

(i) convicted of a misdemeanor of the first degree for a crime other than those enumerated under subsection (a), where the victim is a child; or

(ii) identified in the Statewide database as a perpetrator of a founded report of child abuse other than sexual abuse or exploitation.

(2) The person under paragraph (1) shall be eligible for prospective employment or service as a volunteer only if a period of five years has elapsed from the date of:

(i) the expiration of the sentence for the offense under paragraph (1)(i); or

(ii) identification under paragraph (1)(ii).

(d) Non-interference with decisions.--Nothing in this section shall be construed to otherwise interfere with the ability of employer or program, activity or service to make employment, discipline or termination decisions.

(e) Any person who has once obtained the information required under this section may transfer or provide services to another subsidiary or branch established and supervised by the same organization and shall not be required to obtain additional reports before making such transfer.

(f) Departmental form.--

(1) The department shall develop a standardized form to be used by current and prospective employees and volunteers for the written reporting by current and

prospective employees or volunteers of any arrest or conviction for an offense enumerated under subsection (a)(1) or (2).

(2) The form shall provide a space in which a current or prospective employee or volunteer who has not been convicted of or arrested for any such offense will respond "no conviction" and "no arrest."

(3) The form shall provide that failure to accurately report any arrest or conviction for an offense enumerated under subsection (a) shall subject the current or prospective employee or volunteer to criminal prosecution under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(4) The department shall publish the form on its publicly accessible Internet website and in the Pennsylvania Bulletin.

(g) Compliance by certain persons employed or serving.--

(1) By (the Legislative Reference Bureau shall insert here the date that is 90 days after the effective date of this subsection), all current employees and volunteers shall complete the form described in subsection (f), indicating whether or not they have been arrested or convicted of an offense enumerated under subsection (a)(1) or (2).

(2) If, as required in paragraph (1), an employee or volunteer refuses to submit the form described in subsection (f), the person responsible for employment decisions or the administrator of a program, activity or service shall immediately require the employee or volunteer to submit to the information set forth in section 6344(b).

(h) Effect of new arrest or conviction.--

(1) If an arrest or conviction for an offense enumerated under subsection (a)(1) or (2) occurs after the effective date of this subsection, the employee or volunteer shall

provide the administrator or designee with written notice utilizing the form provided for in subsection (f) not later than 72 hours after an arrest or conviction.

(2) If the person responsible for employment decisions or the administrator of a program, activity or service has a reasonable belief that an employee or volunteer was arrested or has a conviction for an offense required to be reported under paragraph (g)(1) or paragraph (1) of this section and the employee or volunteer or prospective employee or volunteer has provided notice as required under this section, the person responsible for employment decisions or administrator of a program, activity or service shall immediately require the employee or volunteer to submit a current information as required under subsection 6344(b). The cost of the information set forth in subsection 6344(b) be borne by the employing entity or program, activity or service.

(i) Effect of non-compliance.--

(1) An employee or volunteer who willfully fails to disclose a conviction or an arrest for an offense enumerated under subsection (a)(1) or (2) shall be subject to discipline up to and including termination or denial of employment or volunteer position and may be subject to criminal prosecution under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(2) An employee or volunteer who willfully fails to disclose a conviction of any other offense required to be reported by this section may be subject to discipline and may be subject to criminal prosecution under 18 Pa.C.S. § 4904.

Comment to § 6344.3

This section is based on § 111 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, as amended by the

act of June 30, 2011 (P.L.112, No.24), and is designed to apply the same rules applicable to school employees to all child-care personnel and other persons having contact with children.

§ 6344.4 Certification compliance.

(a) Obtaining new certifications.--A person identified in section 6344(a)(1) (relating to information relating to prospective child-care personnel) or 6344.2(a) (relating to information relating to other persons having contact with children) shall be required to obtain the certifications required in subsection 6344(b) every 24 months.

(b) Reports of changes.--Within 48 hours, foster parents shall report any change in information required pursuant to section 6344(b) about themselves and any individuals over the age of 18 years residing in their home for review by the foster family care agency in accordance with section 6344.

[§ 6345. Audits by Attorney General.

The Attorney General shall conduct a mandated audit done randomly but at least once during each year on an unannounced basis to ensure that the expunction requirements of this chapter are being fully and properly conducted.

§ 6346. Cooperation of other agencies.

(a) General rule.--The secretary may request and shall receive from Commonwealth agencies, political subdivisions, an authorized agency or any other agency providing services under the local protective services plan any assistance and data that will enable the department and the county agency to fulfill their responsibilities properly, including law enforcement personnel when assistance is needed in conducting an investigation or an assessment of risk to the child. School districts shall cooperate with the department

and the agency by providing them upon request with the information as is consistent with law.

(b) Willful failure to cooperate.--Any agency, school district or facility or any person acting on behalf of an agency, school district or facility that violates this section by willfully failing to cooperate with the department or a county agency when investigating a report of suspected child abuse or a report under Subchapter C.1 (relating to students in public and private schools) or when assessing risk to a child commits a summary offense for a first violation and a misdemeanor of the third degree for subsequent violations.

(c) Cooperation of county agency and law enforcement agencies.--Consistent with the provisions of this chapter, the county agency and law enforcement agencies shall cooperate and coordinate, to the fullest extent possible, their efforts to respond to and investigate reports of suspected child abuse and to reports under Subchapter C.1.

(d) Advice to county agency.--Whenever a report of suspected child abuse is referred from a county agency to a law enforcement agency pursuant to section 6340(a)(9) and (10) (relating to release of information in confidential reports), as soon as possible, and without jeopardizing the criminal investigation or prosecution, the law enforcement agency shall advise the county agency as to whether a criminal investigation has been undertaken and the results of the investigation and of any criminal prosecution. The county agency shall ensure that the information is referred to the Statewide central register.

§ 6347. Reports to Governor and General Assembly.

(a) General rule.--No later than May 1 of every year, the secretary shall prepare and transmit to the Governor and the General Assembly a report on the operations of the

central register of child abuse and child protective services provided by county agencies. The report shall include a full statistical analysis of the reports of suspected child abuse made to the department and the reports under Subchapter C.1 (relating to students in public and private schools), together with a report on the implementation of this chapter and its total cost to the Commonwealth, the evaluation of the secretary of services offered under this chapter and recommendations for repeal or for additional legislation to fulfill the purposes of this chapter. All such recommendations should contain an estimate of increased or decreased costs resulting therefrom. The report shall also include an explanation of services provided to children who were the subjects of founded or indicated reports while receiving child-care services. The department shall also describe its actions in respect to the perpetrators of the abuse.

(b) Reports from county agencies.--To assist the department in preparing its annual report and the quarterly reports required under subsection (c), each county agency shall submit a quarterly report to the department, including, at a minimum, the following information, on an aggregate basis, regarding general protective services, child protective services and action under Subchapter C.1:

(1) The number of referrals received and referrals accepted.

(2) The number of children over whom the agency maintains continuing supervision.

(3) The number of cases which have been closed by the agency.

(4) The services provided to children and their families.

(5) A summary of the findings with nonidentifying information about each case of child abuse or neglect which has resulted in a child fatality or near fatality.

(c) Quarterly reports.--The department shall prepare and transmit to the Governor and the General Assembly a quarterly report that includes a summary of the findings with nonidentifying information about each case of child abuse or neglect that has resulted in a child fatality or near fatality. One of the quarterly reports may be included within the annual report required under subsection (a).

§ 6348. Regulations.

The department shall adopt regulations necessary to implement this chapter.

§ 6349. Penalties.

(a) Failure to amend or expunge information.--

(1) A person or official authorized to keep the records mentioned in section 6337 (relating to disposition of unfounded reports) or 6338 (relating to disposition of founded and indicated reports) who willfully fails to amend or expunge the information when required commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

(2) A person who willfully fails to obey a final order of the secretary or designated agent of the secretary to amend or expunge the summary of the report in the Statewide central register or the contents of any report filed pursuant to section 6313 (relating to reporting procedure) commits a summary offense.

(b) Unauthorized release of information.--A person who willfully releases or permits the release of any information contained in the pending complaint file, the Statewide central register or the county agency records required by this chapter to persons or agencies not permitted by this chapter to receive that information commits a misdemeanor of the third degree. Law enforcement agencies shall insure the

confidentiality and security of information under this chapter. A person, including an employee of a law enforcement agency, who violates the provisions of this subsection shall, in addition to other civil or criminal penalties provided by law, be denied access to the information provided under this chapter.

(c) Noncompliance with child-care personnel regulations.--An administrator, or other person responsible for employment decisions in a child-care facility or program, who willfully fails to comply with the provisions of section 6344 (relating to information relating to prospective child-care personnel) commits a violation of this chapter and shall be subject to a civil penalty as provided in this subsection. The department shall have jurisdiction to determine violations of section 6344 and may, following a hearing, assess a civil penalty not to exceed $2,500. The civil penalty shall be payable to the Commonwealth.

SUBCHAPTER C.1

STUDENTS IN PUBLIC AND PRIVATE SCHOOLS

Sec.

§ 6351. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrator." The person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor.

§ 6352. School employees.

(a) Requirement.--

(1) Except as provided in paragraph (2), a school employee who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before the school employee in the employee's professional or official capacity is a victim of serious bodily injury or sexual abuse or sexual exploitation by a school employee shall immediately contact the administrator.

(2) If the school employee accused of seriously injuring or sexually abusing or exploiting a student is the administrator, the school employee who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before the school employee in the employee's professional or official capacity is a victim of serious bodily injury or sexual abuse or sexual exploitation shall immediately report to law enforcement officials and the district attorney under section 6353(a) (relating to administration). If an administrator is the school employee who suspects injury or abuse, the administrator shall make a report under section 6353(a).

(3) The school employee may not reveal the existence or content of the report to any other person.

(b) Immunity.--A school employee who refers a report under subsection (a) shall be immune from civil and criminal liability arising out of the report.

(c) Criminal penalty.--

(1) A school employee who willfully violates subsection (a) commits a summary offense.

(2) A school employee who, after being sentenced under paragraph (1), violates subsection (a) commits a misdemeanor of the third degree.

§ 6353. Administration.

(a) Requirement.--An administrator and a school employee governed by section 6352(a)(2) (relating to school employees) shall report immediately to law enforcement officials and the appropriate district attorney any report of serious bodily injury or sexual abuse or sexual exploitation alleged to have been committed by a school employee against a student.

(b) Report.--A report under subsection (a) shall include the following information:

(1) Name, age, address and school of the student.

(2) Name and address of the student's parent or guardian.

(3) Name and address of the administrator.

(4) Name, work and home address of the school employee.

(5) Nature of the alleged offense.

(6) Any specific comments or observations that are directly related to the alleged incident and the individuals involved.

(c) Immunity.--An administrator who makes a report under subsection (a) shall be immune from civil or criminal liability arising out of the report.

(d) Criminal penalty.--An administrator who willfully violates subsection (a) commits a misdemeanor of the third degree.

§ 6353.1. Investigation.

(a) General rule.--Upon receipt of a report under section 6353 (relating to administration), an investigation shall be conducted by law enforcement officials, in cooperation with the district attorney, and a determination made as to what criminal charges, if any, will be filed against the school employee.

(b) Referral to county agency.--

(1) If local law enforcement officials have reasonable cause to suspect on the basis of initial review that there is evidence of serious bodily injury, sexual abuse or sexual exploitation committed by a school employee against a student, local law enforcement officials shall notify the county agency in the county where the alleged abuse or injury occurred for the purpose of the agency conducting an investigation of the alleged abuse or injury.

(2) To the fullest extent possible, law enforcement officials and the county agency shall coordinate their respective investigations. In respect to interviews with the student, law enforcement officials and the county agency shall conduct joint interviews. In respect to interviews with the school employee, law enforcement officials shall be given an opportunity to interview the school employee prior to the employee having any contact with the county agency.

(3) The county agency and law enforcement officials have the authority to arrange for photographs, medical tests or X-rays of a student alleged to have been abused or injured by a school employee. The county agency and law enforcement officials shall coordinate their efforts in this regard and, to the fullest extent possible, avoid the duplication of any photographs, medical tests or X-rays.

(4) Law enforcement officials and the county agency shall advise each other of the status and findings of their respective investigations on an ongoing basis.

§ 6353.2. Responsibilities of county agency.

(a) Information for the pending complaint file.--Immediately after receiving a report under section 6353.1 (relating to investigation), the county agency shall notify the department of the receipt of the report, which is to be filed in the pending complaint file as provided in section 6331(1) (relating to establishment of pending complaint file, Statewide central register and file of unfounded reports). The oral report shall include the following information:

(1) The name and address of the student and the student's parent or guardian.

(2) Where the suspected abuse or injury occurred.

(3) The age and sex of the student.

(4) The nature and extent of the suspected abuse or injury.

(5) The name and home address of the school employee alleged to have committed the abuse or injury.

(6) The relationship of the student to the school employee alleged to have committed the abuse or injury.

(7) The source of the report to the county agency.

(8) The actions taken by the county agency, law enforcement officials, parents, guardians, school officials or other persons, including the taking of photographs, medical tests and X-rays.

(b) Investigation of reports.--Upon receipt of a report under section 6353.1, the county agency shall commence, within the time frames established in department regulations, an investigation of the nature, extent and cause of any alleged abuse or injury enumerated in the report. The county agency shall coordinate its investigation to the fullest extent possible with law enforcement officials as provided in section 6353.1(b).

(c) Completion of investigation.--The investigation by the county agency to determine whether the report is an indicated report for school employee or an unfounded report shall be completed within 60 days.

(d) Notice to subject of a report.--Prior to interviewing a subject of the report, the county agency shall orally notify the subject of the report of the existence of the report and the subject's rights under this chapter in regard to amendment or expungement. Within 72 hours following oral notification to the subject, the county agency shall give written notice to the subject. The notice may be reasonably delayed if notification is likely to threaten the safety of the student or the county agency worker, to cause the school employee to abscond or to significantly interfere with the conduct of a criminal investigation.

(e) Reliance on factual investigation.--The county agency may rely on a factual investigation of substantially the same allegations by a law enforcement officials to support the agency's finding. This reliance shall not relieve the county agency of its responsibilities relating to the investigation of reports under this subchapter.

(f) Notice to the department of the county agency's determination.--As soon as the county agency has completed its investigation, the county agency shall advise the department and law enforcement officials of its determination of the report as an indicated report for school employee or an unfounded report. Supplemental reports shall be made at regular intervals thereafter in a manner and form the department prescribes by regulation to the end that the department is kept fully informed and up-to-date concerning the status of the report.

§ 6353.3. Information in Statewide central register.

The Statewide central register established under section 6331 (relating to establishment of pending complaint file, Statewide central register and file of unfounded reports) shall retain only the following information relating to reports of abuse or injury of a student by a school employee which have been determined to be a founded report for school employee or an indicated report for school employee:

(1) The names, Social Security numbers, age and sex of the subjects of the report.

(2) The home address of the subjects of the report.

(3) The date and the nature and extent of the alleged abuse or injury.

(4) The county and state where the abuse or injury occurred.

(5) Factors contributing to the abuse or injury.

(6) The source of the report.

(7) Whether the report is a founded or indicated report.

(8) Information obtained by the department in relation to the school employee's request to release, amend or expunge information retained by the department or the county agency.

(9) The progress of any legal proceedings brought on the basis of the report.

(10) Whether a criminal investigation has been undertaken and the result of the investigation and of any criminal prosecution.

§ 6353.4. Other provisions.

The following provisions shall apply to the release and retention of information by the department and the county agency concerning reports of abuse or injury committed by a school employee as provided by this subchapter:

Section 6336(b) and (c) (relating to information in Statewide central register).

Section 6337 (relating to disposition of unfounded reports).

Section 6338(a) and (b) (relating to disposition of founded and indicated reports).

Section 6339 (relating to confidentiality of reports).

Section 6340 (relating to release of information in confidential reports).

Section 6341(a) through (f) (relating to amendment or expunction of information).

Section 6342 (relating to studies of data in records).

SUBCHAPTER C.2

BACKGROUND CHECKS FOR EMPLOYMENT IN SCHOOLS

Note

Subchapter C.2 is repealed, as the subject matter covered under § 111 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, as amended by the act of June 30, 2011 (P.L.112, No.24).

Sec.

6357. Fee.

6358. Time limit for official clearance statement.

§ 6354. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." An individual who applies for a position as a school employee. The term includes an individual who transfers from one position as a school employee to another position as a school employee.

"Administrator." The person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes a person responsible for employment decisions in a school and an independent contractor.

§ 6355. Requirement.

(a) Investigation.--

(1) Except as provided in paragraph (2), an administrator shall require each applicant to submit an official clearance statement obtained from the department within the immediately preceding year as to whether the applicant is named as the perpetrator of an indicated or a founded report or is named as the individual responsible for injury or abuse in an indicated report for school employee or a founded report for school employee.

(2) The official clearance statement under paragraph (1) shall not be required for an applicant who:

(i) transfers from one position as a school employee to another position as a school employee of the same school district or of the same organization; and

(ii) has, prior to the transfer, already obtained the official clearance statement under paragraph (1).

(b) Grounds for denying employment.--Except as provided in section 6356 (relating to exceptions), an administrator shall not hire an applicant if the department verifies that the applicant is named as the perpetrator of a founded report or is named as the individual responsible for injury or abuse in a founded report for school employee. No individual who is a school employee on the effective date of this subchapter shall be required to obtain an official clearance statement under subsection (a)(1) as a condition of continued employment.

(c) Penalty.--An administrator who willfully violates this section shall be subject to an administrative penalty of $2,500. An action under this subsection is governed by 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 6356. Exceptions.

Section 6355 (relating to requirement) shall not apply to any of the following:

(1) A school employee who is:

(i) under 21 years of age;

(ii) participating in a job development or job training program; and

(iii) employed for not more than 90 days.

(2) A school employee hired on a provisional basis pending receipt of information under section 6355(a) if all of the following apply:

(i) The applicant demonstrates application for the official clearance statement under section 6355(a).

(ii) The applicant attests in writing by oath or affirmation that the applicant is not disqualified under section 6355(b).

(iii) The administrator has no knowledge of information which would disqualify the applicant under section 6355(b).

(iv) The provisional period does not exceed:

(A) 90 days for an applicant from another state; and

(B) 30 days for all other applicants.

(v) The hiring does not take place during a strike under the act of July 23, 1970 (P.L.563, No.195), known as the Public Employe Relations Act.

§ 6357. Fee.

The department may charge a fee of not more than $10 for the official clearance statement required under section 6355(a) (relating to requirement).

§ 6358. Time limit for official clearance statement.

The department shall comply with the official clearance statement requests under section 6355(a) (relating to requirement) within 14 days of receipt of the request.]

SUBCHAPTER C.3

REVIEWS AND OVERSIGHT

Sec.

6359.5. Reports to Governor and General Assembly.

6359.6. Legislative oversight.

§ 6359. Citizen review panels.

(a) Establishment.--The department shall establish a minimum of three citizen review panels. The department may designate a child fatality or near fatality review team under section 6359.2 (relating to child fatality and near fatality review team) as a citizen review panel if the team has the capacity to perform as a citizen review panel.

(b) Function.--A citizen review panel shall examine all of the following:

(1) Policies, procedures and practices of State and local agencies and, where appropriate, specific cases to evaluate the extent to which State and local child protective services system agencies are effectively discharging their child protection responsibilities under section 106(b) of the Child Abuse Prevention and Treatment Act (Public Law 93-247, 42 U.S.C. § 5106a(b)).

(2) Other criteria that the panel considers important to ensure the protection of children, including a review of the following:

(i) The extent to which the State and local child protective services system is coordinated with the foster care and adoption programs established under Part E of Title IV of the Social Security Act (49 Stat. 620, 42 U.S.C. § 670 et seq.).

(ii) Child fatalities and near fatalities, including, but not limited to, any child fatality or near fatality involving a child in the custody of a public or private agency where there is no report of suspected child abuse and the cause of death is neither the result of child abuse nor natural causes.

(c) Membership.--The panels shall be composed of volunteer members who represent the community, including members who have expertise in the prevention and treatment of child abuse and neglect.

(d) Meetings.--Each citizen review panel shall meet not less than once every three months.

(e) Reports.--The department shall issue an annual report summarizing the activities and recommendations of the citizen review panels and summarizing the department's response to the recommendations.

Note

This section is based on repealed § 6343.1 and is placed here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6343.1.

§ 6359.1 Multidisciplinary review team.

A county agency shall make available among its services a multidisciplinary review team for the prevention, investigation and treatment of child abuse and shall convene the multidisciplinary review team at any time, but not less than annually:

(1) to review substantiated cases of child abuse, including responses by the county agency and other agencies providing services to the child; and

(2) where appropriate to assist in the development of a family service plan for the child.

Note

This section is based on repealed § 6365(b) and is placed here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6365(b). Under repealed § 6365(b), this team is called a "multidisciplinary team." It has been renamed in order to better distinguish its role

from that of the multidisciplinary investigative team established in § 6326.

§ 6359.2 Child fatality and near fatality review team.

(a) When team to be convened.--

(1) A child fatality or near fatality review team shall be convened by a county agency in accordance with a protocol developed by the county agency, the department and the district attorney in a case when there is a fatality or near fatality of a child as a result of child abuse and there is an indicated report or the county agency has not made a status determination within 30 days of the report.

(2) The child fatality or near fatality review team may convene after a county agency makes a determination of an indicated report and shall convene no later than 31 days from the receipt of the report to the department of the suspected child abuse.

(3) A county agency in the county where the abuse occurred and in any county where the child resided within the 16 months preceding the fatality or near fatality shall convene a child fatality or near fatality review team.

(b) Team composition.--A child fatality or near fatality review team shall consist of at least six individuals who are broadly representative of the county where the team is established and who have expertise in prevention, assessment and treatment of child abuse. With consideration given to the circumstances of each case and availability of individuals to serve as members, the team may consist of the following individuals:

(1) A staff person from the county agency.

(2) A member of the advisory committee of the county agency.

(3) A health care professional.

(4) A representative of a local school, educational program or child care or early childhood development program.

(5) A representative of law enforcement or the district attorney or a designee of the district attorney.

(6) An attorney-at-law trained in legal representation of children or an individual trained under 42 Pa.C.S. § 6342 (relating to court-appointed special advocates).

(7) A mental health professional.

(8) A representative of a children's advocacy center that provides services to children in the county. The individual under this subparagraph must not be an employee of the county agency.

(9) The county coroner or forensic pathologist.

(10) A representative of a local domestic violence program.

(11) A representative of a sexual assault program.

(12) A representative of a local drug and alcohol program.

(13) An individual representing parents.

(14) Any individual, as determined by the county agency or child fatality or near fatality review team, to be necessary to assist the team in performing its duties.

(c) Team responsibilities.--Members of the child fatality or near fatality review team shall be responsible for all of the following:

(1) Maintaining confidentiality of information under sections 6339 (relating to confidentiality of reports) and 6340 (relating to release of information in confidential reports).

(2) Providing and discussing relevant case-specific information.

(3) Attending and participating in all meetings and activities as required.

(4) Assisting in the development of the report under subsections (g) and (h).

(d) Chair.--In accordance with the protocol and in consultation with the child fatality or near fatality review team, the county agency shall appoint an individual who is not an employee of the county agency to serve as chairperson of the team.

(e) Reviews performed by team.--The child fatality or near fatality review team shall perform reviews of the following:

(1) The circumstances of the child's fatality or near fatality resulting from suspected or substantiated child abuse.

(2) The delivery of services provided by the county agency to the abused child and the child's family in each county where the child and family resided within the 16 months preceding the fatality or near fatality.

(3) Services provided to the perpetrator by the county agency in each county where the child and family resided within the 16 months preceding the fatality or near fatality.

(4) Services provided to the child, the child's family and the perpetrator by other public and private community agencies or professionals.

(5) Relevant court records and documents related to the abused child and the child's family.

(6) The county agency's compliance with statutes and regulations and with relevant policies and procedures of the county agency.

Services under this subsection may include law enforcement services, mental health services, programs for young children and children with special needs, drug and alcohol programs, local school programs and services by health care providers.

(f) Status reports.--

(1) Prior to completing its report, the child fatality or near fatality review team may release the following information to the public concerning a fatality or near fatality of a child that is a result of suspected or substantiated child abuse:

(i) The identity of the deceased child.

(ii) If the child was in the custody of a public or private agency, the identity of the agency.

(iii) The identity of the public or private agency providing services to the child and the child's family in the child's home prior to the fatality or near fatality of the child.

(iv) A description of the services provided under subparagraph (iii).

(v) The identity of any county agency that convened a child fatality or near fatality review team with respect to the child.

(2) Prior to completion of the report of the child fatality or near fatality review team, if appropriate and in response to inquiries received, the administrator of the county agency may release minimal information regarding the child fatality or near fatality.

(g) Final report by child fatality or near fatality review team--

(1) Within 90 days of convening, the team shall submit a final written report on the child fatality or near fatality to the department and designated county officials under section 6340(a)(11).

(2) Within 30 days after submission of the report to the department and upon request, the report shall be made available to other persons to whom confidential reports may be released under section 6340.

(h) Report contents--The report under this subsection (g) shall include:

(1) Deficiencies and strengths in complying with statutes and regulations and regarding services to children and families.

(2) Recommendations for changes at the State and local levels to:

(i) reduce the likelihood of future child fatalities and near fatalities directly related to child abuse and neglect;

(ii) monitor and inspect county agencies; and

(iii) collaborate among community agencies and service providers to prevent child abuse and neglect.

(i) Public disclosure of final report.--Subject to subsection (j), the department or administrator of the county agency shall make available the final report of the child fatality or near fatality review team to the public, but identifying information shall be removed from the contents of the report except for disclosure of the following:

(1) The identity of the deceased child;

(2) The identity of any public or private agency in which the child was in custody;

(3) The identity of the public or private agency providing services to the child and members of the child's family in the child's household prior to the child's fatality or near fatality.

(4) The identity of any county agency that convened a child fatality or near fatality review team in respect to the child.

(j) Impact on criminal investigation.--A child fatality or near fatality report shall not be released to the public if, after inquiry by the department or county agency solicitor, the district attorney or a designee of the district attorney certifies that release of the report may compromise a pending criminal investigation or proceeding. Certification by the district attorney or the designee of the district attorney shall stay the release of the report for a period of 60 days, at which time the report shall be released unless a new certification is made by the district attorney or the designee of the district attorney.

(k) Response by department.--Within 45 days of receipt of a report of a child fatality or near fatality, the department shall review the findings and recommendations of the report and provide a written response to the county agency and the child fatality or near fatality review team. Upon request, the department's response to the report of the child fatality or near fatality review team shall be made available to other persons to whom confidential reports may be released under section 6340. The department's response shall be made available to the public, subject to the restrictions under subsections (f) and (i).

(l) County agency response to department.--Within six months of the receipt of the response by the department in subsection (k), the county agency shall file a report with

the department specifically responding to the recommendations of each child fatality or near fatality review team final report.

(m) Annual summary report to department.--On or before December 31 of each year, the county agency shall submit an annual report that summarizes and aggregates the county agency's response to and implementation of the recommendations of the child fatality or near fatality review team.

(n) Effect on criminal prosecutions.--The provisions of this section shall be construed to assist in the improvement of services designed to identify and prevent child abuse. The procedures authorized shall not be allowed to impede or interfere with criminal investigations or prosecutions of persons who have committed child abuse.

Note

Subsections (a) through (j) are based on repealed § 6365(d), although subsections (b)(11) and (f)(2) are new. Subsection (k) is based on repealed § 6365(e). Subsections (l) and (m) are new. Subsection (n) is based on repealed § 6365(f).

Comment to § 6359.2

Subsection (f)(2) clarifies that the county agency, through its administrator, may make limited public disclosure of regarding child fatality or near fatality reviews during the pendency of the review in response to inquiries for information, including those by the media. Subsection (j) strengthens the district attorney's ability to stop release of a report to the public if it could impact an ongoing criminal investigation.

§ 6359.3 Departmental reviews and reports of child fatalities and near fatalities.

(a) Reports by county agencies.--A county agency shall immediately provide information to the department regarding its involvement with the child and the child's parent, guardian or custodian when a child is a fatality or near fatality and child abuse is suspected. The county agency shall inform the department of any history of child

protective services or general protective services provided to the child prior to the child's fatality or near fatality and of services provided to other children of the child's parent, guardian or custodian by the county agency or by court order. The county agency shall inform the department if the child was in the agency's custody at the time of the child's fatality or near fatality. The county agency shall provide this information in writing on forms provided by the department within 48 hours of the report.

(b) Departmental review.--The department shall conduct a child fatality and near fatality review and provide a written report on any child fatality or near fatality, if child abuse is suspected. The department shall summarize the following:

(1) The circumstances of the child's fatality or near fatality.

(2) The nature and extent of its review.

(3) Statutory and regulatory compliance by the county agency in the county where:

(i) the fatality or near fatality occurred; and

(ii) the child resided within the 16 months preceding the fatality or near fatality.

(4) The findings by the department.

(5) Recommendations for reducing the likelihood of future child fatalities and near fatalities resulting from child abuse.

(c) Timing of review.--The department's child fatality or near fatality review shall be commenced immediately upon receipt of a report to the department of a child fatality or near fatality as a result of suspected child abuse.

(d) Coordination with and assistance to child fatality or near fatality review team.--The department shall provide assistance and relevant information to the child fatality or near fatality review team and attempt to coordinate its fact-finding efforts and interviews with the team to avoid duplication.

(e) Status reports.--Prior to completing its report, the department may release the same information as child fatality and near fatality review teams may release under section 6359.2(f) (relating to child fatality and near fatality review team).

(f) Final report.--

(1) The department's child fatality or near fatality review and report shall be completed as soon as possible but no later than six months from receipt of the initial report of the child fatality or near fatality.

(2) Upon completion of the review and report, the department's child fatality or near fatality report shall be made available to the county agency, the child fatality or near fatality review team and designated county officials under section 6340(a)(11) (relating to release of information in confidential reports.

(3) Upon request, the report shall be made available to other persons to whom confidential reports may be released under section 6340.

(g) Public disclosure of final report.--The final report of the department shall be made available to the public, subject to the limitations set forth in section 6359.2(i) and (j) (relating to child fatality or near fatality review team).

Note

Subsection (a) is based on repealed § 6367(c). Subsections (b) through (g) are based on repealed § 6343(c).

§ 6359.4 Investigating performance of county.

(a) General rule.--If, within 30 days from the date of an initial report of suspected child abuse, the appropriate county agency has not investigated the report and informed the department that the report is an indicated report or an unfounded report or unless within that same 30-day period the report is determined to be a founded report, the department shall have the authority to begin an inquiry into the performance of the county agency which inquiry may include a performance audit of the county agency as provided in subsection (b). On the basis of that inquiry, the department shall take appropriate action to require that the provisions of this chapter be strictly followed, which action may include, without limitation, the institution of appropriate legal action and the withholding of reimbursement for all or part of the activities of the county agency. The department shall determine in its review whether the county agency has sufficiently documented reasons why the investigation has not been completed in the 30-day period.

(b) Performance audit.--Notwithstanding any other provision of this chapter, the secretary or a designee of the secretary may direct, at their discretion, and after reasonable notice to the county agency, a performance audit of any activity engaged in pursuant to this chapter.

Note

This section is based on repealed § 6343(a) and (b) and is relocated here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6343(a) and (b).

§ 6359.5. Reports to Governor and General Assembly.

(a) General rule.--No later than May 1 of every year, the secretary shall prepare and transmit to the Governor and the General Assembly a report on the operations of the

Statewide database and child protective services provided by county agencies. The report shall include a full statistical analysis of the reports of suspected child abuse made to the department, together with a report on the implementation of this chapter and its total cost to the Commonwealth, the evaluation of the secretary of services offered under this chapter and recommendations for repeal or for additional legislation to fulfill the purposes of this chapter. All such recommendations should contain an estimate of increased or decreased costs resulting therefrom. The report shall also include an explanation of services provided to children who were the subjects of founded or indicated reports while receiving child-care services. The department shall also describe its actions in respect to the perpetrators of the abuse.

(b) Reports from county agencies.--To assist the department in preparing its annual report and the quarterly reports required under subsection (c), each county agency shall submit a quarterly report to the department, including, at a minimum, the following information, on an aggregate basis, regarding general protective services and child protective services:

(1) The number of referrals received and referrals accepted.

(2) The number of children over whom the agency maintains continuing supervision.

(3) The number of cases which have been closed by the agency.

(4) The services provided to children and their families.

(5) A summary of the findings with nonidentifying information about each case of child abuse or neglect which has resulted in a child fatality or near fatality.

(c) Quarterly reports.--The department shall prepare and transmit to the Governor and the General Assembly a quarterly report that includes a summary of the findings with nonidentifying information about each case of child abuse or neglect that has resulted in a child fatality or near fatality. One of the quarterly reports may be included within the annual report required under subsection (a).

Note

This section is based on repealed § 6347 and is relocated here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6347.

§ 6359.6. Legislative oversight.

A committee of the Senate designated by the President pro tempore of the Senate and a committee of the House of Representatives designated by the Speaker of the House of Representatives, either jointly or separately, shall review the manner in which this chapter has been administered at the State and local level for the following purposes:

(1) Providing information that will aid the General Assembly in its oversight responsibilities.

(2) Enabling the General Assembly to determine whether the programs and services mandated by this chapter are effectively meeting the goals of this chapter.

(3) Assisting the General Assembly in measuring the costs and benefits of this program and the effects and side-effects of mandated program services.

(4) Permitting the General Assembly to determine whether the confidentiality of records mandated by this chapter is being maintained at the State and local level.

(5) Providing information that will permit State and local program administrators to be held accountable for the administration of the programs mandated by this chapter.

Note

This section is based on repealed § 6384 and is relocated here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6384.

SUBCHAPTER D

ORGANIZATION AND RESPONSIBILITIES OF

CHILD PROTECTIVE SERVICE

Sec.

§ 6361. Organization for child protective services.

* * *

(b) Staff and organization.--The county agency shall have a sufficient staff of sufficient qualifications to fulfill the purposes of this chapter and be organized in a way to maximize the continuity of responsibility, care and services of individual workers toward individual children and families. The department, by regulation, shall set forth staff-to-family ratios for the various activities required of the county agency under this chapter, including reports and investigations of suspected child abuse, safety assessment or risk assessment and the provision or monitoring of services to abused children and their families.

* * *

§ 6362. Responsibilities of county agency for child protective services.

(a) General rule.--The county agency shall be the sole civil agency responsible for receiving and investigating all reports of child abuse by a perpetrator made pursuant to this chapter, specifically including, but not limited to, reports of child abuse in facilities operated by the department and other public agencies, for the purpose of providing protective services to prevent further abuses to children and to provide or arrange for and monitor the provision of those services necessary to safeguard and ensure the well-being and development of the child and to preserve and stabilize family life wherever appropriate. The county agency shall, through participation in the multidisciplinary investigative team established in section 6326 (relating to multidisciplinary investigative team), investigate all reports of child abuse by a perpetrator that include criminal offenses

against the child, as set forth in section 6321(2) (relating to responsibility for investigation).

* * *

(d) Reliance on factual investigation.--An agency charged by this section or section 6361 (relating to organization for child protective services) with investigating a report of child abuse may rely on a factual investigation of substantially the same allegations by a law enforcement agency to support the agency's finding. This reliance shall not, however, limit the duties imposed by section [6368(a) (relating to investigation of reports)] 6325 (relating to investigation by county agency).

(e) Safety and risk [Risk] assessment.--Each county agency shall implement a State-approved safety assessment and risk assessment process in performance of its duties under this subchapter.

* * *

§ 6362.1 Home education program.

(a) Applicability of section.--This section shall apply to a child who is of school age who is not attending school, is enrolled in or has transferred to a home education program as authorized under section 1327.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949 or cyber charter school as authorized under Article XVII-A of the Public School Code of 1949 and either of the following has occurred:

(1) A child or another child in the child's household has been the subject of a founded or indicated report or received general protective services within the last five years.

(2) The parent or other person the child resides with has been the subject of a report within the last five years.

(b) Notice by school district.--The school district in which the child resides shall notify the county whenever a child enrolls in a home school program or cyber charter school, is truant, or fails to register for school upon attaining the age of compulsory school attendance as defined in section 1326 of the Public School Code of 1949.

(c) Responsibilities of county agency.--Upon receipt of notice as set forth in subsection (b), the county agency shall promptly perform a safety and risk assessment. A subsequent safety and risk assessment shall be performed every six months thereafter. If after two consecutive six-month safety and risk assessments, it is determined that no risk of abuse exists, no further assessment shall be made, except upon receipt of a report under Subchapter B (relating to provisions and responsibilities for reporting suspected child abuse).

* * *

§ 6365. Services for prevention, investigation and treatment of child abuse.

[(a) Instruction and education.--]Each county agency shall make the following available among its services for the prevention and treatment of child abuse [instruction and education for parenthood and parenting skills, protective and preventive social counseling, outreach and counseling services to prevent newborn abandonment, emergency caretaker services, emergency shelter care, emergency medical services and the establishment of self-help groups organized for the prevention and treatment of child abuse, part-day services, out-of-home placement services, therapeutic activities for child and family directed at alleviating conditions that present a risk to the safety and well-

being of a child and any other services required by department regulations.] by perpetrators:

(1) Instruction and education for parenthood and parenting skills.

(2) Protection and preventive social counseling.

(3) Outreach and counseling services to prevent newborn abandonment.

(4) Emergency caretaker services.

(5) Emergency shelter care.

(6) Emergency medical services.

(7) Establishment of self-help groups organized for the prevention and treatment of child abuse.

(8) Part-day services.

(9) Out-of-home placement services.

(10) Therapeutic activities for child and family directed at alleviating conditions that present a risk to the safety and well-being of a child.

(11) A multidisciplinary review team as set forth in section 6359.1 (relating to multidisciplinary review team).

(12) Any other services required by departmental regulations.

[(b) Multidisciplinary team.--The county agency shall make available among its services a multidisciplinary team for the prevention, investigation and treatment of child abuse and shall convene the multidisciplinary team at any time, but not less than annually:

(1) To review substantiated cases of child abuse, including responses by the county agency and other agencies providing services to the child.

(2) Where appropriate to assist in the development of a family service plan for the child.

Note

The multidisciplinary team under repealed subsection (b) has been renamed as the multidisciplinary review team and relocated to proposed § 6359.1 in order to better distinguish its role from that of the multidisciplinary investigation team.

(c) Investigative team.--The county agency and the district attorney shall develop a protocol for the convening of investigative teams for any case of child abuse involving crimes against children which are set forth in section 6340(a)(9) and (10) (relating to release of information in confidential reports). The county protocol shall include standards and procedures to be used in receiving and referring reports and coordinating investigations of reported cases of child abuse and a system for sharing the information obtained as a result of any interview. The protocol shall include any other standards and procedures to avoid duplication of fact-finding efforts and interviews to minimize the trauma to the child. The district attorney shall convene an investigative team in accordance with the protocol. The investigative team shall consist of those individuals and agencies responsible for investigating the abuse or for providing services to the child and shall at a minimum include a health care provider, county caseworker and law enforcement official.

(d) Child fatality or near fatality review team and written report.--

(1) A child fatality or near fatality review team shall be convened by a county agency in accordance with a protocol developed by the county agency, the department and the district attorney in a case when a child dies or nearly dies as a result of child abuse as to which there is an indicated report or when the county

agency has not made a status determination within 30 days. The team may convene after a county agency makes a determination of an indicated report and shall convene no later than 31 days from the receipt of the oral report to the department of the suspected child abuse. A county agency in the county where the abuse occurred and in any county where the child resided within the 16 months preceding the fatality or near fatality shall convene a child fatality or near fatality review team. A team shall consist of at least six individuals who are broadly representative of the county where the team is established and who have expertise in prevention and treatment of child abuse. With consideration given to the circumstances of each case and availability of individuals to serve as members, the team may consist of the following individuals:

(i) A staff person from the county agency.

(ii) A member of the advisory committee of the county agency.

(iii) A health care professional.

(iv) A representative of a local school, educational program or child care or early childhood development program.

(v) A representative of law enforcement or the district attorney.

(vi) An attorney-at-law trained in legal representation of children or an individual trained under 42 Pa.C.S. § 6342 (relating to court-appointed special advocates).

(vii) A mental health professional.

(viii) A representative of a children's advocacy center that provides services to children in the county. The individual under this subparagraph must not be an employee of the county agency.

(ix) The county coroner or forensic pathologist.

(x) A representative of a local domestic violence program.

(xi) A representative of a local drug and alcohol program.

(xii) An individual representing parents.

(xiii) Any individual whom the county agency or child fatality or near fatality review team determines is necessary to assist the team in performing its duties.

(2) Members of the team shall be responsible for all of the following:

(i) Maintaining confidentiality of information under sections 6339 (relating to confidentiality of reports) and 6340.

(ii) Providing and discussing relevant case-specific information.

(iii) Attending and participating in all meetings and activities as required.

(iv) Assisting in the development of the report under paragraph (4)(v).

(3) The county agency, in accordance with the protocol and in consultation with the team, shall appoint an individual who is not an employee of the county agency to serve as chairperson.

(4) The team shall perform the following:

(i) Review the circumstances of the child's fatality or near fatality resulting from suspected or substantiated child abuse.

(ii) Review the delivery of services to the abused child and the child's family provided by the county agency and review services provided to the perpetrator by the county agency in each county where the child and family resided within the 16 months preceding the fatality or near fatality and the services provided to the child, the child's family and the perpetrator by other public and private

community agencies or professionals. This subparagraph includes law enforcement, mental health services, programs for young children and children with special needs, drug and alcohol programs, local schools and health care providers.

(iii) Review relevant court records and documents related to the abused child and the child's family.

(iv) Review the county agency's compliance with statutes and regulations and with relevant policies and procedures of the county agency.

(v) Within 90 days of convening, submit a final written report on the child fatality or near fatality to the department and designated county officials under section 6340(a)(11). Within 30 days after submission of the report to the department, the report shall be made available, upon request, to other individuals to whom confidential reports may be released, as specified by section 6340. The report shall be made available to the public, but identifying information shall be removed from the contents of the report except for disclosure of: the identity of a deceased child; if the child was in the custody of a public or private agency, the identity of the agency; the identity of the public or private agency under contract with a county agency to provide services to the child and the child's family in the child's home prior to the child's death or near fatality; and the identity of any county agency that convened a child fatality or near fatality review team in respect to the child. The report shall not be released to the public if the district attorney certifies that release of the report may compromise a pending criminal investigation or proceeding. Certification by the district attorney shall stay the

release of the report for a period of 60 days, at which time the report shall be released unless a new certification is made by the district attorney. The report shall include:

(A) Deficiencies and strengths in:

(I) compliance with statutes and regulations; and

(II) services to children and families.

(B) Recommendations for changes at the State and local levels on:

(I) reducing the likelihood of future child fatalities and near fatalities directly related to child abuse and neglect;

(II) monitoring and inspection of county agencies; and

(III) collaboration of community agencies and service providers to prevent child abuse and neglect.

(e) Response by department.--Within 45 days of receipt of a report of a child fatality or near fatality under subsection (d), the department shall review the findings and recommendations of the report and provide a written response to the county agency and the child fatality review team or near fatality review team. The department's response to the report of the child fatality or near fatality review team shall be made available, upon request, to other individuals to whom confidential reports may be released, as specified by section 6340. The department's response shall be made available to the public, but identifying information shall be removed from the contents of the response, except for disclosure of: the identity of a deceased child; if the child was in the custody of a public or private agency, the identity of the agency; the identity of the public or private agency under contract with a county agency to provide services to the child and the child's

family in the child's home prior to the child's death or near fatality; and the identity of any county agency that convened a child fatality or near fatality review team in respect to the child. The response shall not be released to the public if the district attorney certifies that release of the response may compromise a pending criminal investigation or proceeding. Certification by the district attorney shall stay the release of the report for a period of 60 days, at which time the report shall be released unless a new certification is made by the district attorney.

(f) Construction.--The provisions of this section shall be construed to assist in the improvement of services designed to identify and prevent child abuse. The provisions shall not be construed to impede or interfere with criminal prosecutions of persons who have committed child abuse.

Note

For organizational purposes and to improve the clarity and readability of this chapter, repealed subsection (c) has been renumbered as proposed § 6326, and repealed subsections (d), (e) and (f) have been renumbered as proposed § 6359.2. For substantive changes to these provisions, *see* the Comments to §§ 6326 and 6359.2.

§ 6366. Continuous availability to receive reports.

Each county agency shall receive 24 hours a day, seven days a week, all reports, both oral and written, of suspected child abuse in accordance with this chapter, the county plan for the provision of child protective services and the regulations of the department.

§ 6367. Reports to department and coroner.

(a) Reports to department.--Upon the receipt of each report of suspected child abuse made pursuant to this chapter, the county agency shall immediately transmit a child abuse report summary as provided in section 6313 (relating to reporting procedure) to the

department. Supplemental reports shall be made at regular intervals thereafter in a manner and form the department prescribes by regulation to the end that the department is kept fully informed and up-to-date concerning the status of reports of child abuse.

(b) Reports to coroner.--The county agency shall give telephone notice and forward immediately a copy of reports made pursuant to this chapter which involve the death of a child to the appropriate coroner pursuant to section 6317 (relating to mandatory reporting and postmortem investigation of deaths).

(c) Child deaths and near fatalities.--A county agency shall immediately provide information to the department regarding its involvement with the child and with the child's parent, guardian or custodian when a child dies or nearly dies and child abuse is suspected. The county agency shall inform the department of any history of child protective or general protective services provided to the child prior to the child's death or near fatality and of services provided to other children of the child's parent, guardian or custodian by the county agency or by court order. The county agency shall inform the department if the child was in the agency's custody at the time of the child's death or near fatality. The county agency shall provide this information in writing on forms provided by the department within 48 hours of the oral report.

§ 6368. Investigation of reports.

(a) General rule.--Upon receipt of each report of suspected child abuse, the county agency shall immediately commence an appropriate investigation and see the child immediately if emergency protective custody is required or has been or shall be taken or if it cannot be determined from the report whether emergency protective custody is needed. Otherwise, the county agency shall commence an appropriate investigation and

see the child within 24 hours of receipt of the report. The investigation shall include a determination of the risk of harm to the child or children if they continue to remain in the existing home environment, as well as a determination of the nature, extent and cause of any condition enumerated in the report, any action necessary to provide for the safety of the child or children and the taking of photographic identification of the child or children to be maintained with the file. During the investigation, the county agency shall provide or arrange for services necessary to protect the child while the agency is making a determination pursuant to this section. If the investigation indicates serious physical injury, a medical examination shall be performed on the subject child by a certified medical practitioner. Where there is reasonable cause to suspect there is a history of prior or current abuse, the medical practitioner has the authority to arrange for further medical tests or the county agency has the authority to request further medical tests. The investigation shall include communication with the department's service under section 6332 (relating to establishment of Statewide toll-free telephone number). Prior to interviewing a subject of the report, the county agency shall orally notify the subject who is about to be interviewed of the existence of the report, the subject's rights under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights) and the subject's rights pursuant to this chapter in regard to amendment or expungement. Within 72 hours following oral notification to the subject, the county agency shall give written notice to the subject. The notice may be reasonably delayed if notification is likely to threaten the safety of the victim, a nonperpetrator subject or the investigating county agency worker, to cause the perpetrator to abscond or to significantly interfere with the conduct of a criminal investigation. However, the written notice must be

provided to all subjects prior to the county agency's reaching a finding on the validity of the report.

(a.1) Investigation of report concerning child-care service personnel.--Upon notification that an investigation involves suspected child abuse perpetrated by child-care service personnel, including a child-care service employee, service provider or administrator, the respective child-care service must immediately implement a plan of supervision or alternative arrangement subject to the county agency's approval for the individual under investigation to ensure the safety of the child and other children who are in the care of the child-care service. Such plan of supervision or alternative arrangement shall be kept on file with the county agency until such time that the investigation is completed.

(b) Conditions outside home environment.--The investigation shall determine whether the child is being harmed by factors beyond the control of the parent or other person responsible for the welfare of the child, and, if so determined, the county agency shall promptly take all available steps to remedy and correct these conditions, including, but not limited to, the coordination of social services for the child and the family, or referral of the family to appropriate agencies for the provision of services.

(c) Completion of investigations.--The investigation by the county agency to determine whether the report is "founded," "indicated" or "unfounded" and whether to accept the family for service shall be completed within 60 days in all cases. If, due to the particular circumstances of the case, the county agency cannot complete the investigation within 30 days, the particular reasons for the delay shall be described in the child protective service record and available to the department for purposes of determining

whether the county agency has strictly followed the provisions of this chapter and whether the county agency is subject to action as authorized by section 6343 (relating to investigating performance of county agency). Where a petition has been filed under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) alleging that the child is a dependent child, the county agency shall make all reasonable efforts to complete the investigation to enable the hearing on the petition to be held as required by 42 Pa.C.S. § 6335 (relating to release or holding of hearing).

(d) Referral for investigation.--If the complaint of suspected abuse is determined to be one which cannot be investigated under this chapter because the person accused of the abuse is not a perpetrator within the meaning of section 6303 (relating to definitions) but does suggest the need for investigation, the county agency shall immediately transmit the information to the appropriate authorities, including the district attorney, the district attorney's designee or other law enforcement official, in accordance with the county protocols for investigative teams required by section 6365(c) (relating to services for prevention, investigation and treatment of child abuse).

§ 6369. Taking child into protective custody.

Pursuant to the provisions of section 6315 (relating to taking child into protective custody) and after receipt of a court order, the county agency shall take a child into protective custody for protection from abuse. No county agency worker may take custody of the child without judicial authorization based on the merits of the situation.]

§ 6370. Voluntary or court-ordered services; findings of child abuse.

* * *

(b) Initiation of court proceeding.--

* * *

(2) (i) If the county agency deems it appropriate in a dependency or delinquency proceeding, including an instance in which the alleged perpetrator has access or poses a threat to a child, the county agency may petition the court under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) for a finding of child abuse.

(ii) If the court makes a specific finding that child abuse as defined by this chapter has not occurred, the county agency shall consider the court's finding to be a determination that the report of suspected abuse was an unfounded report. The county agency shall immediately notify the department of the change in the status of the report from an indicated report to an unfounded report. [Upon notice, the department shall be responsible for expunging the indicated report consistent with the expunction requirements of this chapter.

(iii) If there is a determination that the subjects of the unfounded report need services provided or arranged by the county agency, the county agency may retain those records only if it specifically identifies the report as an unfounded report of suspected child abuse.

§ 6371. Rehabilitative services for child and family.

The county agency shall provide or arrange for and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the court.

§ 6372. Protecting well-being of children maintained outside home.

The county agency shall be as equally vigilant of the status, well-being and conditions under which a child is living and being maintained in a facility other than that of a parent,

custodian or guardian from which the child has been removed as the service is of the conditions in the dwelling of the parent, custodian or guardian. Where the county agency finds that the placement for any temporary or permanent custody, care or treatment is for any reason inappropriate or harmful in any way to the physical or mental well-being of the child, it shall take immediate steps to remedy these conditions including petitioning the court.]

SUBCHAPTER D.1

ORGANIZATION AND RESPONSIBILIITIES OF

GENERAL PROTECTIVE SERVICE

Sec.

§ 6373. General protective services responsibilities of county agency.

* * *

(c.1) Referrals to community agencies.--If the county agency determines that a child is not in need of general protective services but environmental factors such as those described in section 6304(a) (relating to exclusions from child abuse) exist for the child

and the family, the county agency may refer the child and the family to public or private community agencies that can assist in addressing those factors.

* * *

§ 6375. County agency requirements for general protective services.

* * *

(c) Assessment for services.--

* * *

(2) Each county agency shall implement a State-approved safety assessment and risk assessment process in performance of its duties.

(d) Receiving [and assessing] reports.--The county agency shall be [the sole civil agency] responsible for receiving [and assessing] all reports of children in need of protective services made pursuant to this chapter for the purpose of providing protective services to prevent abuse or neglect to children and to provide or arrange for and monitor the provision of those services necessary to safeguard and ensure the child's well-being and development and to preserve and stabilize family life wherever appropriate. The department may waive the receipt and assessment requirement pursuant to section 6361 (relating to organization for child protective services). Nothing in this subsection limits 42 Pa.C.S. § 6304 (relating to powers and duties of probation officers).

* * *

(f) Types of services.--Each county agency shall make available for the prevention and treatment of child abuse and neglect[: multidisciplinary teams, instruction and education for parenthood and parenting skills, protective and preventive social counseling, emergency caretaker services, emergency shelter care, emergency medical

services, part-day services, out-of-home placement services, therapeutic activities for the child and family directed at alleviating conditions that present a risk to the safety and well-being of a child and any other services required by department regulations] the services set forth is section 6365 (relating to services for prevention, investigation and treatment of child abuse).

* * *

§ 6375.1 Reports to department.

(a) Initial referrals and complaints.--Whenever the county agency receives a referral or complaint alleging that a child is in need of general protective services, the county agency shall provide the an initial report to the department according to the procedures and containing the information set forth in subsection 6313(c) (relating to reporting procedure).

(b) Periodic updates.--The county agency shall provide the department with reports regarding the following actions, within 60 days of receipt of the report:

(1) Services arranged for, or provided or offered to the child, and the child's family.

(2) Information regarding any referrals to community-based agencies.

(3) Any other information the department deems necessary.

(c) Regulations.--The department shall promulgate regulations to implement this section.

Note

This section is new.

[§ 6376. Appeals with respect to general protective services.

(a) Right to appeal.--A custodial parent or person who has primary responsibility for the welfare of a child may appeal the county agency's decision to accept the family for services. Written notice of this right, along with an explanation of the agency's decision, shall be given to the family within seven days of the decision to accept for service. The department has no authority to modify an order of a court of common pleas.

(b) Receipt and grounds of appeal.--Appeals must be received by the county agency within 45 days of the date when the notice was mailed to the custodial parent or person who has primary responsibility for the welfare of a child. Requests must be made on the grounds that the child is or is not at risk of abuse or neglect.

(c) Review and decision and request for hearing.--The county agency shall review the request and issue a written decision within 45 days of receipt of the appeal. If the agency denies the request, the custodial parent or person who has primary responsibility for the welfare of a child may request a hearing before the department. The request must be made within 45 days of the date of the county agency's decision.

(d) Hearing.--If a hearing is requested, the secretary or his designated agent shall schedule a hearing pursuant to Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, and applicable department regulations. The burden of proof in the hearing shall be on the county agency. The department shall assist the county agency as necessary.

(e) Order.--The department is authorized and empowered to make any appropriate order regarding records to make them accurate or consistent with the requirements of this chapter.

(f) Other appeals.--Action by a custodial parent or person who has primary responsibility for the welfare of a child under this section does not preclude his right to exercise other appeals available through department regulations or the courts.]

* * *

§ 6378. Purchase of services.

[Except for the receipt and assessment of reports alleging a need for protective services, the] The county agency may purchase and utilize the services of any appropriate public or private agency. The department shall promulgate regulations establishing standards and qualifications of persons or agencies providing services for a county agency. The department may, by regulation, provide for the establishment of regional facilities or a regional coordination of licensed professional service providers to provide county agencies with access to licensed physicians and psychologists, as required by this section.

SUBCHAPTER D.2

IMMUNITY AND LIABILITY

Sec.

6379. Immunity from liability.

6379.1. Employment retaliation.

6379.2. Penalties for failure to report or refer.

6379.3. Unauthorized release of information.

6379.4. Failure to amend information.

6379.5. Noncompliance with regulations.

6379.6. Other criminal liability.

§ 6379. Immunity from liability

(a) General rule.--A person, hospital, institution, school, facility, agency or agency employee acting in good faith and without actual malice shall have immunity from civil and criminal liability that might otherwise result from any of the following:

(1) Making a report of suspected child abuse or causing a report of suspected child abuse to be made, or making a referral for general protective services, regardless of whether the report is required to be made under this chapter.

(2) Cooperating or consulting with an investigation under this chapter, including providing information to a child fatality or near fatality review team.

(3) Testifying in a proceeding arising out of an instance of suspected child abuse.

(4) Engaging in any action taken under section 6314 (relating to photographs, medical tests and X-rays of child subject to report), 6315 (relating to taking child into protective custody), 6316 (relating to admission to private and public hospitals) or 6317 (relating to mandatory reporting and postmortem investigation of deaths).

(b) Departmental and county agency immunity.--An official or employee of the department or county agency who refers a report of suspected child abuse to law enforcement authorities or provides services under this chapter shall have immunity from civil and criminal liability that might otherwise result from the action.

(c) Presumption of good faith.--For the purpose of any civil or criminal proceeding, the good faith of a person required to report pursuant to section 6311 (relating to persons required to report suspected child abuse) and of any person required to make a referral to law enforcement officers under this chapter shall be presumed unless actual malice is proven.

Note

This section is based on repealed § 6318 and is relocated here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6318.

§ 6379.1. Protection from employment discrimination.

(a) Basis for relief.--Subject to subsection (a), a person may commence an action for appropriate relief if all of the following apply:

(1) The person is required to report under section 6311 (relating to persons required to report suspected child abuse) or encouraged to report under section 6312 (relating to persons encouraged to report suspected child abuse).

(2) The person acted in good faith in making or causing the report of suspected child abuse to be made.

(3) As a result of the report of suspected child abuse, the person is discharged from employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment.

(b) Where to file.--An action under this subsection shall be filed in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred.

(c) Relief.--Upon a finding in favor of the plaintiff, the court may grant appropriate relief, which may include reinstatement of the plaintiff with back pay.

(d) Departmental intervention.--The department may intervene in any action commenced under this subsection.

Comment to § 6379.1

The prohibition against employment discrimination under repealed § 6311(d) has been expanded to include permissive reporters under its protections.

§ 6379.2. Penalties for failure to report or to refer.

(a) Failure to report or refer.--A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities who willfully fails to do so commits a misdemeanor of the second degree.

(b) Interference with making report or referral.--A person who intentionally or knowingly prevents or interferes with the making of a report or referral of suspected child abuse commits a misdemeanor of the first degree.

(c) Concealment of abuse to protect another.--A person who intentionally or knowingly acts to prevent the discovery under this chapter of child abuse in order to protect or insulate any person or entity from prosecution or liability commits a felony of the third degree.

(d) Continuing course of action.--If a person's willful failure under subsection (a) continues while the person knows or has reasonable cause to believe the child is actively being abused, the person commits a felony of the third degree.

(e) Multiple offenses.--A person who commits a second or subsequent offense under subsections (a), (b), (c) or (d) commits a felony of the second degree.

Note

Subsection (a) is based on repealed § 6319. The penalty under subsection (a) is increased to a second degree felony. It is not intended to change the meaning of the language originally found in repealed § 6319(a).

§ 6379.3. Unauthorized release of information.

A person who willfully releases or permits the release of any information contained in Statewide database or the county agency records required by this chapter to persons or agencies not permitted by this chapter to receive that information commits a misdemeanor of the third degree. Law enforcement agencies shall insure the confidentiality and security of information under this chapter. A person, including an employee of a law enforcement agency, who violates the provisions of this subsection shall, in addition to other civil or criminal penalties provided by law, be denied access to the information provided under this chapter.

Note

This section is based on repealed § 6349(b) and is relocated here for organizational purposes only. It is not intended to change the meaning of the language originally found in repealed § 6349(b).

§ 6379.4. Failure to amend information.

A person or official authorized to keep the records in the Statewide database willfully fails to obey a final order of the secretary or designated agent of the secretary to amend the information or who otherwise fails to amend the information when required commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

Note

This section is based on section 6349(a).

§ 6379.5. Noncompliance with regulations.--

(a) Offense defined.--If any of the following persons willfully fails to comply with the provisions of section 6344 (relating to information relating to prospective child-care

personnel) or 6344.3 (relating to information relating to other persons having contact with children), that person commits a violation of this chapter and shall be subject to a civil penalty as provided in this section:

(1) An administrator or other person responsible for employment decisions in a child-care facility or program.

(2) An administrator of a program, activity or service.

(b) Jurisdiction and penalty.--The department shall have jurisdiction to determine violations of section 6344 and 6344.3 and may, following a hearing, assess a civil penalty not to exceed $2,500. The civil penalty shall be payable to the Commonwealth.

Note

This section is based on repealed § 6349(c).

§ 6379.6. Other criminal liability.

A person subject to this chapter is also subject to the provisions of the following sections of 18 Pa.C.S. (relating to crimes and offenses):

Section 4304 (relating to endangering the welfare of children)

Section 4906.1 (relating to false reports of child abuse).

Section 4958 (relating to intimidation or retaliation in child abuse cases).

SUBCHAPTER E

MISCELLANEOUS PROVISIONS

Sec.

6382. Guardian ad litem for child in court proceedings (Repealed).

6383. Education and training.

6383.1. Oath.

[6384. Legislative oversight.]

6385. Reimbursement to county agencies.

[6386. Mandatory reporting of infants born and identified as being affected by illegal substance abuse.]

6387. Child protection advisory council.

6388. Children's justice task force.

6389. Child protection policy academy.

§ 6380. Rehabilitative services for child and family.

The county agency shall provide or arrange for and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the court.

Note

This section is based on repealed § 6371. As part of the reorganization of this chapter to improve its clarity and readability, child protective services and general protective services are addressed in separate subchapters. This provision and proposed § 6380.1 have been placed in this subchapter because they relate to both child protective services and general protective services. This relocation is not intended to change the meaning of the language originally found in repealed § 6371.

§ 6380.1. Protecting well-being of children maintained outside home.

The county agency shall be as equally vigilant of the status, well-being and conditions under which a child is living and being maintained in a facility other than that of a parent, custodian or guardian from which the child has been removed as the service is of the

conditions in the dwelling of the parent, custodian or guardian. Where the county agency finds that the placement for any temporary or permanent custody, care or treatment is for any reason inappropriate or harmful in any way to the physical or mental well-being of the child, it shall take immediate steps to remedy these conditions including petitioning the court.

Note

This section is based on repealed § 6372. As part of the reorganization of this chapter to improve its clarity and readability, child protective services and general protective services are addressed in separate subchapters. This provision and proposed § 6380 have been placed in this subchapter because they relate to both child protective services and general protective services. This relocation is not intended to change the meaning of the language originally found in repealed § 6372.

§ 6381. Evidence in court proceedings.

(a) General rule.--In addition to the rules of evidence provided under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), the rules of evidence in this section shall govern in child abuse proceedings in court or in any department administrative hearing pursuant to [section 6341 (relating to amendment or expunction of information)] section 6329 (relating to appeals of indicated reports).

* * *

(c) Privileged communications.--Except for privileged communications [between a lawyer and a client and between a minister and a penitent] specifically protected under section 6311(f) (relating to persons required to report suspected child abuse), a privilege of confidential communication between husband and wife or between any professional person, including, but not limited to, physicians, psychologists, counselors, employees of hospitals, clinics, day-care centers and schools and their patients or clients, shall not

constitute grounds for excluding evidence at any proceeding regarding child abuse or the cause of child abuse.

(d) Prima facie evidence of abuse.--Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the [acts or omissions] act or failure to act of the [parent or other person responsible for the welfare of the child] alleged perpetrator shall be prima facie evidence of child abuse by [the parent or other person responsible for the welfare of the child] the alleged perpetrator. Once it has been established that prima facie evidence of child abuse exists, the burden shall shift to the alleged perpetrator to establish that the alleged perpetrator was not the person who caused the child to suffer child abuse.

Note

***See* the Comment to § 6329(c)(5).**

* * *

§ 6383. Education and training.

[(a) Duties of department and county agencies.--The department and each county agency, both jointly and individually, shall conduct a continuing publicity and education program for the citizens of this Commonwealth aimed at the prevention of child abuse and child neglect, including the prevention of newborn abandonment, the identification of abused and neglected children and the provision of necessary ameliorative services to abused and neglected children and their families. The department and each county agency shall conduct an ongoing training and education program for local staff, persons required to make reports and other appropriate persons in order to familiarize those persons with the reporting and investigative procedures for cases of suspected child abuse

and the rehabilitative services that are available to children and families. In addition, the department shall, by regulation, establish a program of training and certification for persons classified as protective services workers. The regulations shall provide for the grandfathering of all current permanent protective services workers as certified protective services workers. Upon request by the county agency and approval of the department, the agency may conduct the training of the county's protective services workers.

(a.1) Study by department.--The department shall conduct a study to determine the extent of the reporting of suspected child abuse in this Commonwealth where the reports upon investigation are determined to be unfounded and to be knowingly false and maliciously reported or it is believed that a minor was persuaded to make or substantiate a false and malicious report. The department shall submit the report to the Governor, General Assembly and Attorney General no later than June 1, 1996. The report shall include the department's findings and recommendations on how to reduce the incidence of knowingly false and malicious reporting.

(b) Duties of Department of State.--

(1) The Department of State shall make training and educational programs and materials available for all professional licensing boards whose licensees are charged with responsibilities for reporting child abuse under this chapter with a program of distributing educational materials to all licensees.

(2) Each licensing board with jurisdiction over professional licensees identified as mandated reporters under this chapter shall promulgate regulations within one year of the effective date of this subsection on the responsibilities of mandated reporters. These regulations shall clarify that the provisions of this chapter take precedence over

any professional standard that might otherwise apply in order to protect children from abuse.]

(a) Public education.--The department and each county agency, both jointly and individually, shall conduct a continuing publicity and education program for the residents of this Commonwealth with the following goals:

(1) The prevention of child abuse and child neglect.

(2) The prevention of newborn abandonment.

(3) The identification of abused and neglected children .

(4) Provision of necessary ameliorative services to abused and neglected children and their families.

(b) Training for county agency general staff.--The department and each county agency shall conduct an ongoing training and education program for county agency general staff in order to familiarize those persons with the reporting and investigative procedures for cases of suspected child abuse and the rehabilitative services that are available to children and families.

(c) Training for protective services workers.--The department shall by regulation establish a program of training and certification for persons classified as protective services workers. The regulations shall provide for the grandfathering of all permanent protective services workers who began their service before July 1, 1995 as certified protective services workers. Upon request by the county agency and approval of the department, the agency may conduct the training of the county's protective services workers.

(d) Duties of Department of State.--

(1) The Department of State shall make training and educational programs and materials available for all professional licensing boards whose licensees are charged with responsibilities for reporting child abuse under this chapter with a program of distributing educational materials to all licensees.

(2) Each licensing board with jurisdiction over professional licensees identified as mandated reporters under this chapter shall promulgate regulations by (the Legislative Reference Bureau shall insert here the date that is one year after the effective date of this subsection) on the responsibilities of mandated reporters. These regulations shall:

(i) make clear that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse;

(ii) provide that licensees who fail to report child abuse shall lose their license upon conviction; and

(iii) fix fees to be paid by licensees that shall fully cover the costs of training regarding the reporting of child abuse by the board or its designee.

(e) Training of mandated reporters and others.--The department shall approve the training of mandated reporters and others subject to training under this chapter.

(f) Training for school employees.--School employees subject to §1205.6 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, shall receive mandatory training on child abuse recognition and reporting. If § 1205.6 is repealed or found invalid for any reason, those school employees covered under § 1205.6

shall be subject to the education and training provisions of this chapter, as applicable. All other school employees shall be subject to the education and training provisions of this chapter, as applicable.

(g) Costs of training and fees.--Each person subject to the training requirements of subsections (d) and (f) shall be responsible for payment of a training fee subject to the following conditions:

(1) The department shall approve all fees.

(2) Fees received by the department under this subsection shall be used to defray the cost of preventing child abuse.

Note

Subsections (a), (b) and (c) are a rewrite of repealed subsection (a). Subsection (a.1) is repealed as obsolete. Repealed subsection (b) is relocated to proposed subsection (d). The grandfathering of protective service workers found in proposed subsection (c) was added by amendments to this section contained in the act of December 16, 1994 (P.L.1292, No.151), effective July 1, 1995. Subsection (g) is new.

The requirements of repealed subsection (a) now found in proposed (d)(2) were implemented by the Department of State, and the regulations are listed below:

Profession	49 Pa. Code
Chiropractor	§ 5.91 *et seq.*
Funeral director	§ 13.301 *et seq.*
Board of medicine-regulated practitioner (medical doctor, midwife, physician's assistant, drugless therapist, athletic trainer, acupuncturist, practitioner of Oriental medicine)	§ 16.101 *et seq.*
Nurse	§ 21.501 *et seq.*
Optometrist	§ 23.111 *et seq.*
Osteopathic practitioner	§ 25.401 *et seq.*
Podiatrist	§ 29.91 *et seq.*
Dentist	§ 33.250 *et seq.*
Physical therapist	§ 40.201 *et seq.*
Psychologist	§ 41.71 *et seq.*
Speech language and hearing practitioner (audiologist, speech-language pathologist, teacher of the hearing-impaired)	§ 45.501 *et seq.*
Social worker, marriage and family therapist and professional counselor	§ 47.51 *et seq.*

Comment to § 6383

Subsection (f) acknowledges that § 1205.6 of the Public School Code of 1949, added by the act of July 5, 2012 (P.L.1084, No.126), effective January 2, 2013 (180 days), provides for mandatory training for certain school employees. However, employees of other "schools," as defined by this chapter, are also required to obtain mandatory training under the provisions of this chapter.

§ 6383.1 Oath.

Each individual subject to mandatory training under this chapter shall, upon completion of the training, receive a certificate from the person providing the training verifying completion of the training. The certificate shall contain the following oath at the bottom of the certificate, to be affirmed by the signature of the individual completing the training:

> "By signing this oath I declare that I understand that I have a legal and moral duty to report suspected child abuse whenever I have reasonable cause to suspect that a child is or has been a victim of child abuse. I also understand that I must complete as scheduled all required continuing education concerning my duties as a mandated reporter of child abuse. I also understand that my failure to fulfill my duty to report suspected child abuse may result in my loss of licensure and may subject me to criminal penalties, including fines and imprisonment, and civil liability."

[§ 6384. Legislative oversight.

A committee of the Senate designated by the President pro tempore of the Senate and a committee of the House of Representatives designated by the Speaker of the House of Representatives, either jointly or separately, shall review the manner in which this chapter has been administered at the State and local level for the following purposes:

(1) Providing information that will aid the General Assembly in its oversight responsibilities.

(2) Enabling the General Assembly to determine whether the programs and services mandated by this chapter are effectively meeting the goals of this chapter.

(3) Assisting the General Assembly in measuring the costs and benefits of this program and the effects and side-effects of mandated program services.

(4) Permitting the General Assembly to determine whether the confidentiality of records mandated by this chapter is being maintained at the State and local level.

(5) Providing information that will permit State and local program administrators to be held accountable for the administration of the programs mandated by this chapter.]

* * *

[§ 6386. Mandatory reporting of infants born and identified as being affected by illegal substance abuse.

Health care providers who are involved in the delivery or care of an infant who is born and identified as being affected by illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure shall immediately cause a report to be made to the appropriate county agency. The county agency shall provide or arrange for appropriate services for the infant.]

Note

This section is has been relocated to section 6317.1.

Prefatory Note to Proposed §§ 6387-6389

The Task Force on Child Protection conducted numerous formal hearings during which the members heard from concerned citizens, interested government officials and a wide range of professionals who have dedicated their lives to responding to and endeavoring to prevent maltreatment of children. The Task Force also devoted numerous working sessions to formal deliberations aimed at crafting a comprehensive, realistic and prioritized report in accordance with the charge from the General Assembly. In between the days of formal deliberations, Task Force members and staff continued their research and collaboration. Yet even as this report was prepared, new and possibly valid proposals for legislation or community action were brought to their attention. The belief of persons across Pennsylvania in the possibility that change in the way our communities protect our children might actually be achievable was palpable and growing.

The Task Force was created in significant measure because several high profile prosecutions resulted in an enhanced public consciousness of the fact that children are daily abused throughout Pennsylvania. The establishment of the Task Force was a wise response by Pennsylvania government to this public awareness. The Task Force recommends that the momentum for child protection continue, and to that end, the Commonwealth will benefit materially from the future existence of an entity in some ways similar to the Task Force. This new entity, proposed as an advisory council, in turn supported by two other proposed panels (the Children's Justice Task Force and the Child Protection Policy Academy) would provide an ongoing vehicle for further improvement of child protection in Pennsylvania.

The Task Force finds it desirable to have the opportunity for a cadre of people with expertise in this field to have direct access to and participation from all three branches of state government, at the same time providing a sounding board for the continuing advocacy of the many individuals and organizations in this Commonwealth concerned with child protection. In this time of limited governmental funds, such an entity could serve as a resource to help advise against unnecessary duplication of effort among many governmental entities and between competing private interests.

Many of the recommendations contained in this report are aimed at increasing the education of those who will now be named mandated reporters concerning their duties and their ability to recognize child abuse when it occurs. Other recommendations emphasize the need for prevention activities – raising the awareness of all persons living in our communities that child abuse is a very real and dangerous part of human nature which requires eternal vigilance if children are to be spared. Moreover, preventative education can strengthen families and avoid the need for public intervention by preventing child abuse before it has occurred. Thus, in addition to serving as an advisor to government, a continuing entity dedicated to proper responses to child abuse could serve as a "board of directors" for an academy dedicated to harnessing and building collaboration among the many academic resources existing in this Commonwealth. Suggested language for the creation of such an academy as well as the advisory council

and task force, follow this prefatory note as proposed 23 Pa.C.S. §§ 6387-6389. As noted above, a demand for the academy's initial services will be created by the expansion of the universe of mandated reporters which the Task Force recommends, as well as the review and expansion of the profession-appropriate child abuse curricula which is also recommended. The Task Force proposes that each licensed professional be required to demonstrate comprehension and mastery before achieving initial licensing in the professional's field and that each professional receive updates as a part of continuing professional education at regular intervals. The Task Force further recommends that all curricula for this training be reviewed and/or developed by the academy.

Pennsylvania is blessed with a remarkable array of public and private colleges and universities already conducting research in and providing practical training in all child protection related disciplines. For example, Pennsylvania is home to the Field Center for Children's Policy, Practice and Research of the University of Pennsylvania. The center is the only academic entity in our nation which brings together the work and knowledge of a university's Schools of Social Work, Law, Medicine and Nursing and a major children's hospital with the object of changing the systems charged with protecting children. The University of Pittsburgh presently conducts much of the training of child protective services workers throughout Pennsylvania. Pennsylvania State University has articulated a desire to develop academic programs in this area. This names only a few of the scores of institutions with expertise in fields as diverse as medicine, criminal justice, social work, forensic science, communications, psychiatry and psychology and many other relevant fields. In addition, private nonprofit organizations such as Child First are presently providing excellent research-based education to professionals serving in multidisciplinary investigative teams and children's advocacy centers. Various professional organizations like the Pennsylvania District Attorneys Association are providing relevant training to their members to advance their abilities to play their appropriate roles in combating child abuse.

One of the most often heard buzz-words in the field of public policy – particularly as related to criminal justice and corrections – is the term "evidence based." This term means that a particular policy or program has been demonstrated to be effective by academic research using scientific principles. As Pennsylvania government leaders make critical decisions about the expenditure of limited resources, direct access between the many excellent college faculties and those who make public policy appears to be highly desirable so that policy makers can learn what the "evidence" supports.

Membership of the proposed advisory council and its supporting panels could draw from a cross-section of expertise from child welfare practitioners, solicitors and administrators, physicians, victim advocates, prosecutors, judges and educators, as did the Task Force. The addition of legislative leaders from the relevant standing committees and the Governor (or the Governor's designee) would enhance access of knowledgeable professionals to Pennsylvania's policymakers. Like the Task Force, staff could be drawn from existing sources, limiting the actual cost of such an entity. Such a panel could meet periodically with a group of academicians from across the Commonwealth selected by the Governor and the four legislative caucuses. This separate academy could be charged

with the task of reviewing academic research in relevant fields, recommending proposed research projects or educational programs for grants from agencies such as the Pennsylvania Commission on Crime and Delinquency, and otherwise exploring new ideas and promising developments in fields relevant to the protection and healing of our children. Where successful, these approaches would be directly introduced to government policymakers through the advisory council.

Considerable momentum has been built and continues to grow in the wake of the Sandusky prosecution and sentencing, the scandals in the Philadelphia Archdiocese and the ongoing drumbeat of prosecution of child abusers throughout our Commonwealth. The hopes of the Task Force are that the executive and legislative activity springing from its recommendations will continue to respond to this awareness beyond 2012. The existence of a structure with access to state government which can be a continued focus for the energies of the public, coupled with a vehicle for focusing the ongoing scholarly work which is being and will be done in scores of outstanding academic institutions throughout our Commonwealth, is desirable if Pennsylvania is to move forward and continue to meet the challenge of child maltreatment.

Along with the creation of the academy, the Task Force recommends the creation of a second entity which would report to the advisory council. This Children's Justice Task Force is required by the seminal federal legislation for child protection, the Child Abuse Prevention and Treatment Act (CAPTA). In addition to providing technical assistance and conducting review of actual cases, this entity would bring real-world experience to the discussion of future child protection policy conducted by the advisory council.

The Task Force recognizes that additional staffing and resources may be necessary for those entities charged with assisting the proposed advisory council, task force and academy.

§ 6387. Child protection advisory council.

(a) Establishment and membership.--There shall be established the Child Protection Advisory Council, to be composed of individuals who are knowledgeable and experienced in issues relating to child abuse and neglect, child welfare social policy, child protective services and law enforcement response to child abuse. The following shall be members of the advisory council:

(1) Three individuals appointed by the President pro tempore of the Senate after consultation with the Majority Leader and the Minority Leader of the Senate.

(2) Three individuals appointed by the Speaker of the House of Representatives after consultation with the Majority Leader and the Minority Leader of the House of Representatives.

(3) Four individuals appointed by the Governor as follows:

(i) One individual shall be a pediatrician who is a board-certified child abuse pediatric subspecialist.

(ii) One individual shall be a director of a children's advocacy center.

(iii) One individual shall be experienced in the operation and interaction between a county agency and the department.

(iii) One individual shall be a district attorney or assistant district attorney with expertise in a multidisciplinary investigative team response to child abuse.

(4) The secretary or the secretary's designee who shall be an employee of the department. The secretary's designee shall be appointed in writing, and a copy of the appointment letter shall be submitted to the chairperson of the advisory council.

(5) The chairperson of the Aging and Youth Committee of the Senate.

(6) The chairperson of the Children and Youth Committee of the House of Representatives.

(7) The chairperson of the Pennsylvania Commission on Crime and Delinquency.

(8) The chairperson of the Juvenile Court Judges' Commission.

(9) The Attorney General of the Commonwealth or a designee of the Attorney General.

(10) The Commissioner of the Pennsylvania State Police or a designee of the Commissioner.

(b) Chairperson.--The members of the advisory council shall elect a chairperson from among the members of the advisory council. The chairperson shall have the power to administer oaths or affirmations to witnesses appearing before the advisory council.

(c) Term of service.--

(1) Except as provided in paragraph (2), a member of the advisory council shall serve for a period of four years.

(2) Immediately upon termination of holding the position by virtue of which the member was eligible for membership or appointed as a member of the advisory council, any member of the advisory council shall cease to be a member of the advisory council.

(d) Compensation and expenses.--The members of the advisory council shall serve without compensation but shall be reimbursed for necessary and actual expenses incurred in attending the meetings of the advisory council and in the performance of their duties under this section.

(e) Removal from office.--A member of the advisory council may be removed by the appointing authority for cause after written notice.

(f) Vacancies.--An individual appointed to fill a vacancy not created by the expiration of a term shall be appointed for the unexpired term of the member that the individual is to succeed in the same manner as the original appointment.

(g) Quorum.--A majority of the members currently serving on the advisory council shall constitute a quorum at a meeting to officially conduct the business of the advisory committee, if the members are physically present at or participating by teleconference or

videoconference during the meeting. Action by the quorum shall be authorized or ratified by a majority vote of the members.

(h) Meetings with other organizations.--

(1) The advisory council shall meet not less than annually with the members of:

(i) the task force established under section 6388 (relating to children's justice task force); and

(ii) the policy academy established under section 6389 (relating to child protection policy academy).

(i) Powers and duties.--The advisory council shall have the power to:

(1) Examine and analyze the practices, processes and procedures relating to effective responses to child abuse and neglect.

(2) Review and analyze law, procedures, practices and rules relating to the reporting of child abuse and neglect.

(3) Hold public hearings for the taking of testimony and the request of documents.

(4) Nominate members of the academy under section 6389.

(5) Receive recommendations concerning child protection from the task force under section 6388 and the academy under section 6389 and to convey the same to the Governor, the President pro tempore of the Senate, the Speaker of the House of Representatives and other appropriate members of the General Assembly.

(j) Administrative support.--The department, the Joint State Government Commission and the Juvenile Court Judges' Commission shall cooperate to provide administrative or other assistance to the advisory council.

§ 6388. Children's justice task force.

(a) Establishment and membership.--The secretary shall establish the Children's Justice Task Force, to be composed of individuals with knowledge and experience relating the criminal justice system and issues of child physical abuse, child neglect, child sexual abuse and exploitation and child abuse related fatalities. The following shall be members of the task force:

(1) A representative of a county agency from a county with a population of 250,000 or more.

(2) A representative of a county agency from a county with a population of less than 250,000.

(3) A representative of a multidisciplinary investigative team.

(4) A representative of a victim services organization directly involved in providing services to victims of child abuse.

(5) A representative of a county agency directly involved in providing services to victims of child abuse.

(6) An individual experienced in working with children with disabilities.

(7) A parent.

(8) A representative of a parents' group.

(9) An adult former victim of child abuse or neglect.

(10) An individual experienced in working with homeless children and youth.

(11) A medical health professional.

(12) A mental health professional.

(13) A child advocate, who shall be a person who regularly serves as a court-appointed special advocate or guardian ad litem.

(14) A district attorney from a county with a population of 250,000 or more.

(15) A police officer from a county with a population of 250,000 or more.

(16) A district attorney from a county with a population of less than 250,000.

(17) A police officer from a county with a population of less than 250,000.

(18) A judge involved in both civil and criminal proceedings related to child abuse and neglect.

(19) An attorney with experience in the defense of child abuse cases.

(20) Eight representatives from academic institutions of higher learning.

(21) The secretary or a designee of the secretary who shall be an employee of the department.

(22) The Commissioner of the Pennsylvania State Police or a designee of the Commissioner who shall be an employee of the State Police.

(b) Chairperson.--The members of the task force shall elect a chairperson from among the members of the task force. The chairperson shall serve for two years or until a successor is elected.

(c) Term of office.--Members of the task force shall serve for a period of four years. Immediately upon termination of holding the position by virtue of which a member was eligible for membership or appointed as a member of the task force, the member of the task force shall cease to be a member of the task force.

(d) Meetings.--The task force shall meet at least four times annually.

(e) Compensation and expenses.--The members of the task force shall serve without compensation but shall be reimbursed for necessary and actual expenses incurred in attending the meetings of the task force and in the performance of their duties under this section.

(f) Removal from office.--A member of the task force may be removed by the appointing authority for cause after written notice.

(g) Vacancies.--An individual appointed to fill a vacancy not created by the expiration of a term shall be appointed for the unexpired term of the member that the individual is to succeed in the same manner as the original appointment.

(h) Quorum; conduct of meetings.--

(1) A simple majority of the task force members shall constitute a quorum at a meeting to officially conduct the business of the task force.

(2) The members of the task force shall establish rules for the conduct of their meetings.

(i) Powers and duties.--

(1) The task force shall provide technical assistance to persons providing education training programs or child protective services in this Commonwealth.

(2) The task force shall review and evaluate State investigative, administrative and civil and criminal judicial handling of cases of child abuse and neglect, including:

(i) Child sexual abuse and exploitation.

(ii) Suspected child maltreatment-related fatalities.

(iii) A potential combination of jurisdictions, such as intrastate, interstate, and Federal-State.

(3) The task force may make policy recommendations in each of the following categories:

(i) Investigative, administrative and judicial handling of cases described in paragraph (2) which reduces the additional trauma to the child victim and the victim's family and ensures procedural fairness to the accused.

(ii) Experimental, model, and demonstration programs for testing innovative approaches and techniques which may improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases, including the enhancement of performance of court-appointed attorneys and guardians ad litem for children, and which also ensure procedural fairness to the accused.

(iii) Reform of State laws, ordinances, regulations, protocols and procedures to provide comprehensive protection for children, which may include those children involved in reports of child abuse or neglect with a potential combination of jurisdictions, such as intrastate, interstate and Federal-State, from child abuse and neglect, including child sexual abuse and exploitation, while ensuring fairness to all affected persons.

(4) The task force shall consult and cooperate with departments and agencies of this Commonwealth and other states and the Federal Government concerned with child protective services.

(j) Reports.--The task force shall report to the advisory council under section 6387 (relating to child protection advisory council) on or before December 31st of every calendar year concerning the administration of the program and activities of the task force, together with recommendations for executive or legislative action necessary for the improvement of child protective services.

(k) Administrative support.--The Office of Attorney General and the Pennsylvania Commission on Crime and Delinquency shall cooperate to provide administrative and other assistance to the task force.

§ 6389. Child protection policy academy.

(a) Establishment and purpose.--There shall be established a child protection policy academy to provide academically sound guidance to those persons making and carrying out child protection policies for this Commonwealth, in recognition of the following:

(1) This Commonwealth is home to a large community of institutions of higher of education, including many whose faculty and students engage in research and academic exploration at the highest levels in fields as diverse as medicine, psychology and psychiatry, law enforcement and criminal justice, social work, communications technology and a host of other fields relevant to the response of our governments and communities to child abuse and neglect and related aberrant behavior.

(2) This Commonwealth is home to a number of private nonprofit as well as government-supported organizations whose objective and function is in whole or in part the eradication of child abuse, the disclosure, arrest and successful prosecution of

abusers and the prevention of child abuse in our communities as well as the nurturing of children with various needs.

(3) No one government entity can realistically be expected to achieve and articulate a comprehensive understanding of the sources of child abuse and neglect in this Commonwealth or formulate appropriate public and private responses to the reality of child abuse nor develop appropriate curricula from time to time for training the many different categories of citizens and professionals required to report child abuse as well as the child welfare and law enforcement professionals charged with the duty of child protection.

(b) Membership.--

(1) Members of the academy shall be appointed by the Governor after nomination by not fewer than a majority of the members of the advisory council under section 6387 (relating to child protection advisory council).

(2) The academy shall consist of not fewer than nine academicians or as many more as the advisory council under section 6387 shall from time to time approve.

(3) Each member of the academy shall be:

(i) a faculty member or administrator of an accredited Commonwealth institution of higher learning;

(ii) a physician or medical staff member practicing or conducting research at a medical facility providing treatment to abused children; or

(iii) an administrator or practitioner at another organization providing services to children in this Commonwealth.

(c) Chairperson.--The members of the academy shall elect a chairperson from among the members of the academy. The chairperson shall serve for two years or until a successor is elected.

(d) Meetings.--The academy shall meet when and as directed by the chairperson who shall be required to schedule a meeting upon written request from a majority of the current members of the academy.

(e) Compensation and expenses.--The members of the academy shall serve without compensation but shall be reimbursed for necessary and actual expenses incurred in attending the meetings of the academy and in the performance of their duties under this section.

(f) Removal from office.--A member of the academy may be removed by the appointing authority for cause after written notice.

(g) Quorum; conduct of meetings.--

(1) A simple majority of the academy members shall constitute a quorum at a meeting to officially conduct the business of the academy.

(2) The members of the academy shall establish rules for the conduct of their meetings.

(h) Mandated powers and duties.--The academy shall have the power and duty to:

(1) Review and approve existing training and curricula for persons required to receive training under this chapter.

(2) Establish minimum standards of training for all persons required to received training under this chapter.

(3) Develop curricula for training of all persons mandated to receive training under this chapter, including mandated reporters, child protective service workers, members of multidisciplinary investigative teams and child advocacy centers and law enforcement officials investigating child abuse.

(4) Assist the Department of State of this Commonwealth in developing training and education programs for mandated reporters who are licensees of the Department of State.

(5) Establish the minimum qualifications for instructors of persons receiving training required under this chapter and to develop the requirements for continued certification.

(6) Promote the most efficient and economical programs for training by utilizing existing facilities, programs and qualified personnel.

(7) Consult and cooperate with universities, colleges, community colleges and institutes for the development of specialized courses for the prevention of child abuse and training of all persons under paragraph (3).

(8) Make policy recommendations regarding the following:

(i) Investigative, administrative and judicial handling of cases which will reduce the additional trauma to the child victim and the victim's family and which also ensure procedural fairness to the accused.

(ii) Experimental, model, and demonstration programs for testing innovative approaches and techniques which may improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of

judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases.

(iii) Reform of State laws, ordinances, regulations, protocols, and procedures to provide comprehensive protection for children, which may include those children involved in reports of child abuse or neglect.

(i) Discretionary powers.--The academy may:

(1) sponsor research designed to develop evidence based prevention and response programs addressing child abuse; or

(2) recommend to the Pennsylvania Commission on Crime and Delinquency, the department and other appropriate government agencies policies, programs and funding priorities best calculated to prevent child abuse, respond effectively to abuse when it occurs and heal the victims of abuse.

(j) Reports.--The academy shall report to the advisory council under section 6387 on or before December 31st of every calendar year concerning actions taken by the Academy and any recommendations for executive or legislative action necessary for the improvement of child protective services.

(k) Administrative support.--The department, the Joint State Government Commission and the Pennsylvania Commission on Crime and Delinquency shall cooperate to provide administrative and other assistance to the academy.

BLANK

PAGE

Title 18 of the Pennsylvania Consolidated Statutes (the Crimes Code) is amended as follows:

Section 2701 is amended to read:

§ 2701. Simple assault.

* * *

(b) Grading.--Simple assault is a misdemeanor of the second degree unless committed:

* * *

(2) against a child under 12 years of age by [an adult 21] a person 18 years of age or older, in which case it is a misdemeanor of the first degree.

Section 2702 is amended to read:

§ 2702. Aggravated assault.

(a) Offense defined.--A person is guilty of aggravated assault if he:

* * *

(6) attempts by physical menace to put any of the officers, agents, employees or other persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury; [or]

(7) uses tear or noxious gas as defined in section 2708(b) (relating to use of tear or noxious gas in labor disputes) or uses an electric or electronic incapacitation device against any officer, employee or other person enumerated in subsection (c) while acting in the scope of his employment[.];

(8) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to a child under 4 years of age;

(9) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a child under 12 years of age; or

(10) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a child under 4 years of age.

(b) Grading.--Aggravated assault under subsection (a)(1) [and], (2) and (10) is a felony of the first degree. Aggravated assault under subsection (a)(3), (4), (5), (6), [and], (7) and (9) is a felony of the second degree. Aggravated assault under subsection (a)(8) is a felony of the third degree.

Section 4304 is amended to read:

§ 4304. Endangering welfare of children.

(a) Offense defined.--

* * *

(2) A person commits an offense if the person[, in an official capacity,] intentionally or knowingly prevents or interferes with the making of a report of suspected child abuse under 23 Pa.C.S. Ch. 63 (relating to child protective services).

(2.1) A person commits an offense regarding a child who is under 18 years of age if the person:

(i) is 18 years of age or older and resides in the home of the child or is a paramour of the parent of the child;

(ii) has knowledge or reason to believe that the child is being endangered as described in paragraph (1); and

(iii) fails to report the endangerment under 23 Pa.C.S. Ch. 63.

(2.2) A person commits an offense if the person intentionally or knowingly acts to prevent the discovery by law enforcement or a county agency of an abused or neglected child under 23 Pa.C.S. Ch. 63.

* * *

(b) Grading.--An offense under this section constitutes a misdemeanor of the first degree. However, where there is a course of conduct of endangering the welfare of a child or there is an offense under subsection (a)(2.2), the offense constitutes a felony of the third degree.

Title 18 is amended by adding a section to read:

§ 5743.1. Administrative subpoena.

(a) Authorization.--

(1) In an investigation of or relating to an offense involving the sexual exploitation or abuse of children, the following shall apply:

(i) The following may issue in writing and cause to be served a subpoena requiring the production and testimony under subparagraph (ii):

(A) The Attorney General.

(B) A deputy attorney general designated in writing by the Attorney General.

(C) A district attorney.

(D) An assistant district attorney designated in writing by a district attorney.

(ii) A subpoena issued under subparagraph (i) may be issued to a provider of electronic communication service or remote computing service:

(A) requiring disclosure under section 5743(c)(2) (relating to requirements for governmental access) of a subscriber or customer's name, address, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address, which may be relevant to an authorized law enforcement inquiry; or

(B) requiring a custodian of the records of the provider to give testimony or affidavit concerning the production and authentication of the records or information.

(2) A subpoena under this section shall describe the information required to be produced and prescribe a return date within a reasonable period of time within which the information can be assembled and made available.

(3) If summoned to appear under paragraph (1)(ii)(B), a custodian of records subpoenaed under this section shall be paid the same fees and mileage that are paid to witnesses in the courts of this Commonwealth.

(4) Prior to the return date specified in the summons, the person or entity summoned may, in the court of common pleas of the county in which the person or entity conducts business or resides, petition for an order modifying or setting aside the summons or for a prohibition of disclosure ordered by a court under paragraph (7).

(5) The following shall apply:

(i) Except as provided under subparagraph (ii), if no case or proceeding arises from the production of materials under this section within a reasonable time after the materials are produced, the agency to which the materials were delivered shall, upon written demand made by the person producing the materials, return the materials to the person.

(ii) This paragraph shall not apply if the production required was of copies rather than originals.

(6) A subpoena issued under paragraph (1)(i) may require production as soon as possible, but not less than 24 hours after service of the subpoena.

(7) Upon application of the Commonwealth, a court of common pleas for the jurisdiction in which the investigation is taking place may issue an ex parte order that no person or entity may disclose to any other person or entity, other than to an attorney in order to obtain legal advice, the existence of the summons for a period of up to 90 days. The following shall apply:

(i) The order may be issued on a showing that the materials being sought may be relevant to the investigation and there is reason to believe that the disclosure may result in any of the following:

(A) Endangerment to the life or physical safety of any person.

(B) Flight to avoid prosecution.

(C) Destruction of or tampering with evidence.

(D) Intimidation of potential witnesses.

(ii) An order under this paragraph may be renewed for additional periods of up to 90 days upon a showing that the circumstances under subparagraph (i) continue to exist.

(8) A summons issued under this section may not require the production of anything that would be protected from production under the standards applicable to a subpoena for the production of documents issued by a court.

(b) Service.--The following shall apply:

(1) A subpoena issued under this section may be served by any person who is at least 18 years of age and is designated in the subpoena to serve it.

(2) Service upon a natural person may be made by personal delivery of the subpoena to him.

(3) Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name by delivering the subpoena to any of the following:

(i) An officer of the entity.

(ii) A managing or general agent of the entity.

(iii) An agent authorized by appointment or by law to receive service of process in this Commonwealth.

(4) The affidavit of the person serving the subpoena entered on a true copy of the subpoena by the person serving it shall be proof of service.

(c) Enforcement.--The following shall apply:

(1) The Attorney General or a district attorney may invoke the aid of a court of common pleas within the following jurisdictions to compel compliance with the subpoena:

(i) The jurisdiction in which the investigation is carried on.

(ii) The jurisdiction in which the subpoenaed person resides, conducts business or may be found.

(2) The court may issue an order requiring the subpoenaed person to appear before the Attorney General or a district attorney to produce records or to give testimony concerning the production and authentication of the records. A failure to obey the order of the court may be punished by the court as contempt of court. All process may be served in a judicial district of the Commonwealth in which the person may be found.

(d) Immunity from civil liability.--Notwithstanding any State or local law, any person receiving a subpoena under this section who complies in good faith with the subpoena and produces the records sought shall not be liable in a court of this Commonwealth to a subscriber, customer or other person for the production or for nondisclosure of that production to the subscriber, customer or person.

(e) Definition.--As used in this section, the term "offense involving the sexual exploitation or abuse of children" means an offense, including an attempt, conspiracy or solicitation involving any of the following, in which a victim is an individual who is under the age of 18 years:

(1) Chapter 29 (relating to kidnapping).

(2) Chapter 30 (relating to trafficking of persons).

(3) Chapter 31 (relating to sexual offenses).

(4) Section 6312 (relating to sexual abuse of children).

(5) Section 6318 (relating to unlawful contact with minor).

(6) Section 6320 (relating to sexual exploitation of children).

Note

The provisions of proposed § 5743.1 are taken directly from House Bill No. 2590 of 2012. The bill was referred to the House Judiciary Committee on September 5, 2012 but no further legislative action was taken on the bill. The bill provided the act shall take effect immediately.

Title 18 is amended by adding a section to read:

§ 4906.1. False reports of child abuse.

A person commits a misdemeanor of the second degree if the person knowingly or intentionally makes a report of child abuse that is false or induces a child to make a false claim of child abuse under 23 Pa.C.S. Ch. 63 (relating to child protective services) for any of the following purposes:

(1) Harassing, embarrassing or harming another person.

(2) Personal financial gain.

(3) Acquiring any right under 23 Pa.C.S. Ch. 53 (relating to child custody).

(4) Personal benefit in any other private dispute.

Title 18 is amended by adding a section to read:

§ 4958. Intimidation or retaliation in child abuse cases.

(a) Offense defined; intimidation.--A person commits an offense if:

(1) The person has knowledge or intends that the person's conduct under paragraph (2) will obstruct, impede, impair, prevent or interfere with the making of a child abuse report or the conducting of an investigation into suspected child abuse under 23 Pa.C.S. Ch. 63 (relating to child protective services) or prosecuting a child abuse case.

(2) The person intimidates or attempts to intimidate any reporter, victim or witness to engage in any of the following actions:

(i) Refrain from making a report of suspected child abuse or causing a report of suspected child abuse to be made.

(ii) Refrain from providing or withhold information, documentation, testimony or evidence to any person regarding a child abuse investigation or proceeding.

(iii) Give false or misleading information, documentation, testimony or evidence to any person regarding a child abuse investigation or proceeding.

(iv) Elude, evade or ignore any request or legal process summoning the reporter, victim or witness to appear to testify or supply evidence regarding a child abuse investigation or proceeding.

(v) Fail to appear at or participate in a child abuse proceeding or meeting involving a child abuse investigation to which the reporter, victim or witness has been legally summoned.

(b) Offense defined; retaliation.--A person commits an offense if the person harms another person by any unlawful act or engages in a course of conduct or repeatedly commits acts which threaten another person in retaliation for anything that the other person has lawfully done in the capacity of a reporter, witness or victim of child abuse.

(c) Grading.--

(1) An offense under this section is a felony of the second degree if:

(i) The actor employs force, violence or deception or threatens to employ force, or violence or deception upon the reporter, witness or victim or, with the reckless intent or knowledge, upon any other person.

(ii) The actor offers pecuniary or other benefit to the reporter, witness or victim.

(iii) The actor's conduct is in furtherance of a conspiracy to intimidate or retaliate against the reporter, witness or victim.

(iv) The actor accepts, agrees or solicits another person to accept any pecuniary benefit to intimidate or retaliate against the reporter, witness or victim.

(v) The actor has suffered a prior conviction for a violation of this section or has been convicted under a Federal statute or statute of any other state of an act which would be a violation of this section if committed in this Commonwealth.

(2) An offense not otherwise addressed in paragraph (1) is a misdemeanor of the second degree.

(d) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Child abuse." As defined in 23 Pa.C.S. § 6303 (relating to definitions).

"Reporter." A person, including a mandated reporter as defined in 23 Pa.C.S. § 6303, having reasonable cause to suspect that a child under 18 years of age is a victim of child abuse.

"Witness." A person having knowledge of the existence or non-existence of facts or information relating to child abuse or suspected child abuse.

"Victim." A child who has been subjected to child abuse.

BLANK

PAGE

Title 23 of the Pennsylvania Consolidated Statutes (the Domestic Relations Code) is amended as follows:

Section 5328 is amended to read:

§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those actors which affect the safety of the child, including the following:

* * *

(2.1) The existence of an indicated or founded report of child abuse under Chapter 63 (relating to child protective services) by a party or member of the party's household.

* * *

Title 23 is amended by adding a section to read:

§ 5329.1. Consideration of child abuse and involvement with child welfare.

(a) Disclosure.--Where a party seeks any form of custody, the party shall state the following in the complaint for custody:

(1) With respect to child abuse under Chapter 63 (relating to child protective services) or a child who is a victim of abuse under 18 Pa.C.S. (relating to crimes and offenses):

(i) Whether the child has been identified as being abused.

(ii) Whether a party or member of a party's household has been identified as the perpetrator of child abuse.

(iii) The time, date and circumstances of the child abuse.

(iv) The jurisdiction where the child abuse investigation took place.

(2) With respect to child welfare services:

(i) Whether a party or member of a party's household has been involved with child welfare services.

(ii) The date when the services were provided.

(iii) The jurisdiction where the services were provided.

(b) Consideration by court.--The court shall consider whether a party or member of a party's household has been identified as a perpetrator of child abuse or has been involved with child welfare services.

Section 6106 is amended to read:

§ 6106. Commencement of proceedings.

* * *

(a.3) Notification regarding child abuse investigation.--

(1) If the petitioner has knowledge of a child abuse investigation involving the defendant, the petition shall include that information together with the name of the investigative agency.

(2) The petition shall include a notice to the defendant that an order issued under this chapter may have an impact on the defendant under Chapter 63 (relating to child protective services).

Title 42 of the Pennsylvania Consolidated Statutes (the Judicial Code) is amended as follows:

Section 3113 is amended to read:

§ 3113. Content of course of instruction and examination.

* * *

(b) Content of course.--The course of training and instruction shall not exceed four weeks in duration and shall consist of a minimum of 40 hours of class instruction in civil and criminal law, including evidence and procedure, summary proceedings, motor vehicles, the identification of child abuse, court proceedings involving children and courses in judicial ethics, in the case of all such officials except arraignment court magistrates, in which case the course of training shall consist of a minimum of 30 hours of class instruction in criminal law, search and seizure, arrest and bail practices and procedures, and except judges of the Traffic Court of Philadelphia, in which case the course of training shall consist of a minimum of 20 hours of class instruction in summary proceedings and laws relating to motor vehicles.

Section 5914 is amended to read:

§ 5914. Confidential communications between spouses.

Except as otherwise provided in this subchapter or as provided in 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), in a criminal proceeding neither husband nor wife shall be competent or permitted to testify to confidential communications made by one to the other, unless this privilege is waived upon the trial.

Section 5916 is amended to read:

§ 5916. Confidential communications to attorney.

[In] Except as provided in 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), in a criminal proceeding counsel shall not be competent or permitted to testify to confidential communications made to him by his client, nor shall the client be compelled to disclose the same, unless in either case this privilege is waived upon the trial by the client.

Section 5923 is amended to read:

§ 5923. Confidential communications between spouses.

Except as otherwise provided in this subchapter or as provided in 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), in a civil matter neither husband nor wife shall be competent or permitted to testify to confidential communications made by one to the other, unless this privilege is waived upon the trial.

Section 5928 is amended to read:

§ 5928. Confidential communications to attorney.

[In] Except as provided in 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), in a civil matter counsel shall not be competent or permitted to testify to confidential communications made to him by his client, nor shall the client be compelled to disclose the same, unless in either case this privilege is waived upon the trial by the client.

Section 5943 is amended to read:

§ 5943. Confidential communications to clergymen.

[No] Except as provided in 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), no clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

Section 9561 is amended to read:

§ 9561. Report by district attorney.

* * *

(b) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

* * *

"State board." Includes the following departmental administrative boards within the Department of State: the State Board of Medicine, the State Board of Osteopathic Medicine, the State Board of Dentistry, the State Board of Podiatry, the State Board of Pharmacy, the State Board of Nursing, the State Board of Physical Therapy, the State Board of Occupational Therapy Education and Licensure, the State Board of

[Optometrical Examiners] Optometry, the State Board of Examiners of Nursing Home Administrators, the State Board of [Chiropractic Examiners] Chiropractic, the State Board of [Psychologist Examiners and] Psychology, the State Board of Massage Therapy, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, the State Board of Examiners in Speech-Language and Hearing and any other health-related administrative board created within the Department of State. and finding as soon as practicable.

DISPOSITION TABLE

The following table provides information regarding the current provisions of the Child Protective Services Law under 23 Pa.C.S. Chapter 63 and their location in the proposed statutory framework contained in proposed legislation found in this report.

Current section	Proposed section
6301	6301
6302(a) and (b)	6302(a) and (b)
6302(c)	6304(d)
6303(a) "accept for service"	6303 "accept for service"
6303(a) "child"	6303 "child"
6303(a) "child-care services"	6303 "child-care services"
6303(a) "child protective services"	6303 "child protective services"
6303(a) "children's advocacy center"	6303 "children's advocacy center"
6303(a) "cooperation with an investigation or assessment"	6303 "cooperation with an investigation or assessment"
6303(a) "county agency"	6303 "county agency"
6303(a) "department"	6303 "department"
6303(a) "expunge"	Repealed
6303(a) "family members"	6303 "family members"
6303(a) "founded report"	6303 "founded report"
6303(a) "founded report for school employee"	Repealed
6303(a) "general protective services"	6303 "general protective services"
6303(a) "indicated report"	6303 "indicated report"
6303(a) "indicated report for school employee"	Repealed
6303(a) "individual residing in the same home as the child"	6303 "perpetrator"
6303(a) "near fatality"	6303 "near fatality"
6303(a) "newborn"	6303 "newborn"
6303(a) "nonaccidental"	Repealed; concept incorporated into 6303 "child abuse"
6303(a) "perpetrator"	6303 "perpetrator"
6303(a) "person responsible for the child's welfare"	6303 "person responsible for the child's welfare"
6303(a) "private agency"	6303 "private agency"
6303(a) "protective services"	6303 "protective services"
6303(a) "recent acts or omissions"	Repealed; concept incorporated into 6303 "child abuse"
6303(a) "resource family"	6303 "resource family"
6303(a) "risk assessment"	6303 "risk assessment"
6303(a) "school employee"	6303 "school employee"

Current section	Proposed section
6303(a) "secretary"	6303 "secretary"
6303(a) "serious bodily injury"	6303 "serious bodily injury"
6303(a) "serious mental injury"	6303 "serious mental injury"
6303(a) "serious physical injury"	Repealed
6303(a) "sexual abuse or exploitation"	6303 "sexual abuse or exploitation"
6303(a) "student"	6303 "student"
6303(a) "subject of the report"	6303 "subject of the report"
6303(a) "substantial evidence"	6303 "substantial evidence"
6303(a) "substantiated child abuse"	6303 "substantiated child abuse"
6303(a) "under investigation"	6303 "under investigation"
6303(a) "unfounded report"	6303 "unfounded report"
6303(b)(1)(i) through (iii)	6303 "child abuse"
6303(b)(1)(iv)	6303 "serious physical neglect"
6303(b)(2)	6304(a)
6303(b)(3)	6304(b)
6311(a) and (b)	6311(a) and (b)
6311(c)	6311(e)
6311(d)	6379.1
6312	6312
6313(a)	6313(a)(1)
6313(b)	6323(a)
6313(c)	6331(b)
6314	6314
6315	6315
6316	6316
6317	6317
6318	6379
6319	6379.2
6331	Repealed
6332(a)	6322(a) and (d)
6332(b)	6335.1(b)
6333	6322(b)
6334(a)	6335.1(a)
6334(a), first three sentences	6323(b)
6334(a), last sentence	6323(f)
6334(b)	6323(g)
6334(c)	Repealed
6334(d)(1)	6324(a)
6334(d)(2)	6324(c)
6334(d)(3)	6324(d)
6335(a)	Repealed
6335(b)	6335.1(c) and (d)
6336(a)	6331(b)
6336(b)	6335.1(c) and (e)
6336(c)	6322(e)(1)
6337(a) and (c)	Repealed
6337(b)	6328(c) and (d)

Current section	Proposed section
6338(a)	6329(a)
6338(a), second sentence	6328(e), introductory language, (c)(2), (3), (4) and (5)
6338(a), third sentence	6328(e)(1), (6) and (7)
6338(b) and (c)	Repealed
6339	6339
6340(a)(1), (3) through (9), 10(i) and (ii), (11), (12), (14) through (17)	6340(a)(1), (3) through (9), 10(i) and (ii), (11), (12), (14) through (17)
6340(a)(2), (10)(iii), (13)	Repealed
6340(b), (c) and (d)	6340(b), (c) and (d)
6341(a)(1)	6328(g)
6341(a)(2)	6329(a)
6341(b)	6328(h), 6329(c) and (h)
6341(c)	6328(i), 6329(g)
6341(d)	6329(b)
6341(e)	6328(j)
6341(f)	Repealed
6342	6342
6343(a) and (b)	6359.4(a) and (b)
6343(c)	6359.3(b) through (g)
6343.1	6359
6344(a) and (b)	6344(a) and (b)
6344(c)(1)	6344.3(c)
6344(c)(2)	6344.3(a)
6344(c)(3)	6344.3(b)
6344(d)(1), (2), (4) through (8)	6344(d)(1), (2), (4) through (8)
6344(d)(3)	6344.4
6344(d.1) through (j)	6344(d.1) through (j)
6344(k) and (l)	Repealed
6344(m) through (p)	6344(m) through (p)
6344.1	6344.1
6344.2	6344.2
6345	Repealed
6346	6327
6347	6359.5
6348	6306
6349(a)	6379.4
6349(b)	6379.3
6349(c)	6379.5
6351 through 6356	Repealed
6357	6344.2
6358	6344.2
6361	6361
6362	6362
6363	6363
6364	6364
6365(a)	6365

Current section	Proposed section
6365(b)	6359.1
6365(c)	6326(b), (c) and (d)
6365(d)	6359.2(a) through (j)
6365(e)	6359.2(k)
6365(f)	6326(g), 6359.2(n)
6366	6322(c)
6367(a)	6323(a)
6367(b)	6317
6367(c)	6359.3(a)
6368(a)	6325(b), (c), (d), (h) and (i)
6368(a.1)	6325(e)
6368(b)	6325(g)
6368(c)	6325(j), 6328(a)
6368(d)	6325(f)
6369	6315
6370	6370
6371	6380
6372	6380.1
6373	6373
6374	6374
6375	6375
6376	6330
6377	6377
6378	6378
6381	6381
6383(a)	6383(a), (b) and (c)
6383(a.1)	Repealed
6383(b)	6383(d)
6384	6359.6
6385	6385
6386	6317.1

Reports of Child Abuse

Child abuse and neglect "is a serious problem that has grave and costly consequences for the child, his or her family and the community at-large. A child who has experienced abuse and neglect is more likely to have social, emotional and physical health problems and perform poorly in school."[40]

Table A shows the following statistics from 2009-2011: the number of reports of suspected child and student abuse received in Pennsylvania through the ChildLine and Abuse Registry, the change in the number of reports from the previous year, the rate per 1,000 children ages 0-17, the number of the reports that were substantiated, the change in the number of substantiated reports from the previous year, and the substantiation rate.[41]

TABLE A. Child and Student Abuse Reports Received and Substantiated in Pennsylvania, 2009-2011.

Year	Total Reports	Change from Previous Year	Rate Per 1,000 Children Ages 0-17	Substantiated Reports	Change from Previous Year	Substantiation Rate
2011	24,378	(237)	8.7	3,408	(248)	14.0%
2010	24,615	(727)	9.0	3,656	(287)	14.9%
2009	25,342	--	9.2	3,943	--	15.6%

Sexual abuse was involved in 53% of all substantiated reports in 2011, compared to 54% in 2010 and 51% in 2009. In 2011, there were eight reports of suspected student abuse, compared to 23 reports in 2010 and 24 reports in 2009.[42]

[40] Pa. P'ships for Children, *supra* note 34, at 2.

[41] Pa. Dep't of Pub. Welfare (2010), *supra* note 33, pp. 6 & 9; Pa. Dep't of Pub. Welfare (2011), *supra* note 33, pp. 7 & 10; Pa. P'ships for Children, *supra* note 34, at 2. The total number of reports does not include General Protective Service reports, which include less severe general neglect reports; the substantiation rate does not include the number of children determined to be in need of General Protective Services. *Id.*

[42] Pa. Dep't of Pub. Welfare (2010), *supra* note 33, p. 6; Pa. Dep't of Pub. Welfare (2011), *supra* note 33, p. 7.

Table B shows the following statistics regarding perpetrators from 2010-2011: the number of perpetrators in the annual number of substantiated reports, the number and percentage of the perpetrators who had been a perpetrator in at least one prior substantiated report, the number and percentage of the perpetrators reported for the first time, and the percentage of the perpetrators that had a parental relationship to the child.[43]

TABLE B. Perpetrators in Substantiated Reports in Pennsylvania, 2010-2011.

Year	Total Perpetrators	Previously Named	%	First-Time	%	With Parental Relationship
2011	3,878	376	10%	3,502	90%	62%
2010	3,569	408	11%	3,161	89%	61%

Table C shows the following statistics regarding mandated and non-mandated reports from 2010-2011: the number and percentage of reports of suspected abuse referred by mandated reporters and non-mandated reporters, along with the number and percentage of mandated and non-mandated reports that were substantiated.[44]

TABLE C. Reports by Mandated and Non-Mandated Reporters in Pennsylvania, 2010-2011.

Year	Mandated Reports	%	Non-Mandated Reports	%	Mandated Substantiated Reports	%	Non-Mandated Substantiated Reports	%
2011	18,927	77.6%	5,451	22.4%	2,667	78.3%	741	21.7%
2010	18,972	77.1%	5,643	22.9%	2,806	76.8%	850	23.2%

Schools have consistently reported the highest number of total reports from mandated reporters, as shown in Table D, which provides the number of mandated reports by profession.[45]

---

[43] Pa. Dep't of Pub. Welfare (2010), *supra* note 33, p. 7; Pa. Dep't of Pub. Welfare (2011), *supra* note 33, p. 8. The number of perpetrators in the annual number of substantiated reports reflects an "unduplicated count," where the subject was counted only once, regardless of how many reports in which the subject appeared for the given year. A parental relationship includes the child's mother, father, stepparent and paramour of the child's mother or father. Pa. Dep't of Pub. Welfare (2010), *supra* note 33, p. 7; Pa. Dep't of Pub. Welfare (2011), *supra* note 33, p. 8.

[44] Pa. Dep't of Pub. Welfare (2010), *supra* note 33, p. 11; Pa. Dep't of Pub. Welfare (2011), *supra* note 33, p. 12. A mandated reporter is an individual whose occupation or profession brings the individual into contact with children and who is required by law to report suspected child abuse. Pa. Dep't of Pub. Welfare (2010), *supra* note 33, p. 11; Pa. Dep't of Pub. Welfare (2011), *supra* note 33, p. 12.

[45] Pa. Dep't of Pub. Welfare (2010), *supra* note 33, p. 11; Pa. Dep't of Pub. Welfare (2011), *supra* note 33, p. 12.

TABLE D. Reports by Mandated Reporters in Pennsylvania, By Profession, 2010-2011.

Profession	2011	2010
School	6,930	6,921
Other Public/Private Social Service Agency (not listed otherwise)	4,111	4,252
Hospital	2,750	2,783
Law Enforcement Agency	1,539	1,387
Public MH/MR Agency	1,255	1,035
Residential Facility	962	1,168
Private Doctor/Nurse	441	432
Private Psychiatrist	424	426
Child Care Staff	350	426
Courts	51	26
Clergy	37	42
Dentist	35	36
Public Health Department	35	35
Coroner	7	3
TOTAL	**18,927**	**18,972**

Statewide Child Abuse Hotline

The Department of Public Welfare has the responsibility of maintaining "a single Statewide toll-free telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse."[46] A county agency uses this telephone number to determine "the existence of prior founded or indicated reports of child abuse in the Statewide central register or reports under investigation in the pending complaint file."[47] In addition, a county agency may only request and receive information (1) on its own behalf because it has received a report of suspected child abuse or (2) on behalf of a physician examining or treating a child or on behalf of the director (or a person specifically designated in writing by the director) of any hospital or other medical institution where a child is being treated, if the physician or director (or designated person) suspects the child of being an abused child.[48]

The department established the Statewide Child Abuse Hotline (ChildLine)[49] as the continuous reporting system operated by the department's Office of Children, Youth and Families to receive reports of suspected child abuse from both mandated and non-

[46] 23 Pa.C.S. § 6332(a).

[47] *Id.*

[48] *Id.*

[49] ChildLine is defined as an organizational unit of the Department of Public Welfare that operates a Statewide toll-free system for receiving reports of suspected child abuse, refers the reports for investigation and maintains the reports in the appropriate file, and receives reports of student abuse. 55 Pa. Code § 3490.4.

mandated reporters.[50] ChildLine forwards (1) reports of suspected child abuse or neglect to the appropriate county children and youth social service agency,[51] (2) reports of student abuse by a school employee to the appropriate county children and youth social service agency, (3) certain reports of law enforcement officials[52] to the appropriate county district attorney's office and (4) reports of suspected child abuse by a county agency employee (or its agent) to state regional offices.[53]

Currently, mandated reporters of suspected child abuse must contact ChildLine to report the suspected child abuse, but they must also report certain crimes directly to law enforcement authorities. Mandated reporters have recommended that they should be required to make only one telephone call to report the suspected child abuse. Concerns have been raised about making multiple reports relating to the same incident: the process is confusing, time-consuming, and may detract from the mandatory reporters' ability to meet the immediate needs of the child, who is the subject of the report.

ChildLine Background Check Units are responsible for processing the following: (1) applications for child abuse history clearances for individuals who require clearances for child care service employment, foster care, adoption, school employment, certain volunteer activities, employment involving a significant likelihood of regular contact with children, and participation in the department's employment and training program; (2) F.B.I. criminal background checks; and (3) child abuse clearances and State Police criminal background checks for relative and neighbor child care providers.[54]

Table E shows the number of calls received on the Statewide Child Abuse Hotline.[55]

---

[50] Pa. Dep't of Pub. Welfare, Office of Children, Youth & Families, ChildLine PowerPoint presentation before the Task Force on Child Prot. (Sept. 20, 2012) (on file with the J. State Gov't Comm'n). OCYF supports the provision of quality services and best practices designed to ensure the safety, permanency and well-being of Pennsylvania's children and families. OCYF has identified four specific goals: children should achieve timely permanency, children should be free from incidents of abuse or neglect, services should be provided for the education and physical and emotional well-being of children and families, and the most effective services should be provided and promoted to meet the needs of children and families.

[51] *See, e.g.*, 55 Pa. Code § 3490.32.

[52] A law enforcement official includes the Attorney General, a county district attorney, a State Police officer, a county sheriff, a county police officer, a county detective, and a local or municipal police officer. *Id.*

[53] OCYF PowerPoint presentation, *supra* note 50.

[54] *Id.*

[55] *Id.* The difference between "total calls" and "total reports made" reflects calls made to ChildLine for other purposes (*e.g.*, to inquire about background checks for placement resources, clearances or departmental services; or to register complaints about individuals or agencies).

TABLE E. Calls Received on ChildLine, 2006-2012.

Year	Total Calls	Total Reports Made*	Child Protective Service Reports Made	General Protective Service Reports Made	Law Enforcement Official Reports Made
2006	105,737	44,411	25,088	18,414	909
2007	121,657	46,824	22,673	22,443	1,708
2008	121,369	54,729	24,064	28,063	2,602
2009	123,094	62,033	25,792	33,293	2,938
2010	133,660	65,603	25,812	36,503	3,288
2011	140,348	68,880	26,215	38,780	3,885
2012**	97,190	51,156	18,597	29,396	3,163

* This column represents (the number of child protective service reports made) + (the number of general protective service reports made) + (the number of law enforcement official reports made). *See* 23 Pa.C.S. § 6303 for the definition of "child protective services" and "general protective services."

** Numbers in this row as of August 30, 2012.

The department maintains statistics on abandoned telephone calls (where the caller terminates the call before a ChildLine caseworker answers) and deflected telephone calls (where all the available caseworkers are on the telephone with other callers and all open slots are filled with other callers waiting for their calls to be answered). The average annual abandoned and deflected telephone call statistics are as follows: 9% in 2010; 8.72% in 2011; and 5% in 2012 (as of August 30, 2012).[56] Efforts to decrease abandoned and deflected telephone calls have included the electronic transmission of (1) child abuse reports to the regional offices of the department's Office of Children, Youth and Families and (2) incidents and complaints to the Bureau of Human Licensing Services or the Office of Child Development and Early Learning.[57]

Throughout 2010, 2011 and 2012, the staff complement on ChildLine has remained at 38 caseworkers and six supervisors. The caseworker vacancy rate averages 2-4 per month.[58]

Child Welfare Information Technology

Future information technology plans for the Department of Public Welfare include upgrades to (1) share and exchange information received on the hotline across Commonwealth agencies, county children and youth social service agencies and other investigating authorities; (2) allow for the receipt of reports electronically from mandated reporters; (3) improve the effectiveness in collecting telephone call data and improving

[56] *Id.*
[57] *Id.*
[58] *Id.*

overall customer service experience for callers and (4) allow consumers to submit child abuse clearance applications electronically via the Internet and pay using a credit card.[59]

System development and enhancement plans include (1) providing real-time data on children being served by county agencies, including information on in-home services being provided to families; (2) tracking general protective service reports; (3) allowing one record for the family that can be seen by all counties; (4) allowing for identification and location of children in state custody during a disaster and (5) enabling the Commonwealth to be in compliance with Federal reporting requirements.[60] Emphasis is being given to ensure that all 67 counties in the Commonwealth have an information technology system.[61]

Of note is that the Department of Public Welfare conducted a Child Welfare Information System Feasibility Study and Alternatives Analysis from October 1, 2008 through September 30, 2009.[62] The purpose of the study was to determine the feasibility and alternatives for the successful design, development and implementation of an information technology solution to support Pennsylvania's child welfare programs. The Office of Children, Youth and Families (OCYF) had decommissioned the use of an earlier statewide system in 2002 due to major design and implementation issues and has made no major improvements to IT systems for almost ten years. A thorough analysis of the alternatives was performed to identify the approach that would best meet the needs of the Commonwealth. The design, development and implementation of the Automated Child Welfare Information System will improve operational efficiencies at the state and county levels and enable data-driven decision-making that will result in improved outcomes for children. The IT solution will provide the following benefits:

- Child safety, to (1) provide real-time data on children being served by the county agency, (2) allow for the exchange of information across counties, (3) eliminate gaps in information ever the life of a case and (4) allow for identification and location of children in state custody during a disaster.

- Program integrity, to improve (1) the accuracy and timeliness of data to evaluate program performance and outcomes and (2) OCYF's ability to hold counties fiscally responsible for how they spend state and federal funds.

---

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] This and subsequent information regarding child information technology, partnerships with the courts, roundtables, the Permanency Practice Initiative, and budgetary impacts is supplied by OCYF and is on file with the Joint State Goverment Commision.

- Improve efficiencies, to (1) decrease or eliminate manual data collection and reporting activities, (2) lower risk associated with application maintenance and business continuity by replacing outdated legacy applications with modern technology solutions and (3) reduce the level of duplication of IT management across 67 counties.

- Federal compliance, to (1) bring the state into compliance with Federal reporting requirements and (2) reduce the risk of federal penalties associated with Federal reporting.

The Department of Public Welfare implemented an interim plan to consolidate and support county case management needs and meet Federal reporting requirements. This enabled every county to adopt a sustainable case management system and provides the department with the information necessary to meet Federal reporting requirements. This work began January 1, 2010 and continues through June 30, 2013. The use of a master client index was also implemented in October 2010, providing a unique statewide identifier for all children served by child welfare agencies.

In April 2012, OCYF began work on the statewide system initiative; activities in progress consist of validation of the requirements from the feasibility study, gap analysis of those requirements, review of existing state and county systems and business processes to determine reusability and gaps, development of a standardized data dictionary and data reference model, and prioritization of functional components of the new system(s), including expedited improvements to ChildLine.

In an attempt to address some immediate issues and concerns with the hotline in terms of reducing dropped calls and reducing wait times, ChildLine has made the following changes to their internal procedures:

- As of July 2012, ChildLine began sending reports involving complaints relating to 3,800 licensed facilities to a resource account created for the Bureau of Human Services Licensing.

- As of August 2012, ChildLine began sending reports involving incidents that occur in licensed day care centers and homes to a resource account created for the Office of Child Development and Early Learning.

- As of August 2012, ChildLine began sending child abuse reports electronically to regional offices who investigate child abuse reports in situations that are conflicts for county children and youth agencies to investigate.

- ChildLine enhanced the practice of reviewing phone call data on a daily basis to determine appropriate staffing levels for each shift of the 24 hour/7 day a week operations.

Prior to implementing these changes, ChildLine called each of the agencies after reports were received on the hotline and read the entire report to the staff of those agencies. ChildLine would then print the report and mail it to the agencies via post office mail. Now that the agencies receive the reports electronically, ChildLine caseworkers no longer need to read the report to the staff of those agencies (except for those reports that are numbered child abuse reports), thus improving their ability to answer more calls coming into the statewide child abuse hotline. Priority was given to sending reports electronically to state agencies rather than county agencies because the department could guarantee the security of the transmission of confidential information to other state agencies but not to county agencies.

OCYF is currently looking at options for sending reports electronically to county agencies. However, a solution must be identified to allow a secure transmission of the documents from the state to the counties, and system changes are needed to the reporting form generated in the ChildLine application.

The system design, development and implementation will occur in phases based on prioritized areas of functionality or modules. Work will begin on initial components within the next year. Major system changes to ChildLine, including the electronic exchange of reports with counties, electronic submission of suspected abuse reports from mandated reporters and electronic submission of child abuse clearances are part of this future work.

Partnerships with the Courts, Roundtables and the Permanency Practice Initiative

In an effort to create more positive outcomes for children in foster care, the Pennsylvania Supreme Court established the Office of Children and Families in the Courts (OCFC) within the Administrative Office of the Pennsylvania Courts. The OCFC's principal goal is to minimize the length of time that dependent children must spend in foster care or in other temporary living situations when they have been removed from their parents under court order as a result of abuse or neglect. The OCFC also aims to reunite children with their families in a safe and timely manner, expedite the adoption process for those children with the goal of adoption, increase the incidence of legal guardianship, and enhance and expand ongoing permanent adult connections for those children who remain in the foster care system.

A three-tiered system of roundtables provides the overarching structure for Pennsylvania's Court Improvement Program. The three levels include local children's roundtables in each of the 60 judicial districts, eight statewide leadership roundtables and one state roundtable. Pennsylvania uses the roundtable model to guide the flow of dependency practice and the collaboration between the dependency courts, OCFC, OCYF, and other relevant stakeholders.

At the foundational level, each judicial district in Pennsylvania (the county dependency judge) convenes a local children's roundtable (LCR), which is comprised of relevant stakeholders in the dependency system, including, but not limited to, children and youth administrators, county commissioners, hearing masters, guardians ad litem, parent attorneys, agency solicitors, court-appointed special advocates, representatives from school districts, drug and alcohol and mental health professionals, families, county children and youth staff, juvenile probation staff, police department personnel, service providers and other relevant stakeholders. The LCRs meet on a regular basis (usually monthly) to share best or promising practices, address areas of concern within the county's dependency system and make plans to overcome barriers to timely permanency for children in their judicial district.

The second or intermediate level of roundtable infrastructure is known as the leadership roundtables (LRs). There are eight LRs dividing Pennsylvania's 60 judicial districts into groups based on size, with a minimum of five judicial districts per LR. The number of judicial districts per LR varies slightly to keep like-size judicial districts together. The dependency court judge, children and youth administrator and one additional designated stakeholder from the LCR join one of the eight LRs. At this level, counties are able to raise topical areas of interest or concerns from their own LCR and provide each other with support, problem solving techniques and practice awareness. The expectation is that like-size judicial districts will share similar concerns, solutions and resources. The LRs meet twice a year (in the spring and fall) and are co-chaired by a dependency court judge from one judicial district and a children and youth administrator from another. In 2008, the concept of co-chairs was developed to establish the LR agenda, facilitate the semi-annual meetings and provide follow-up to meeting discussions. In 2009, the role of the co-chairs was enhanced to include outreach efforts to encourage more participation from dependency court judges and children and youth administrators within their LR who have not yet participated or have minimal participation in a LR.

Issues are identified during LR meetings, and common themes are brought to the highest roundtable level, the state roundtable. The State Roundtable is convened by the Honorable Max Baer, Justice of the Supreme Court of Pennsylvania, and co-chaired by the Administrator of OCFC and the Deputy Secretary of OCYF. The State Roundtable also consists of other pertinent state and national leaders having specific expertise in dependency matters. During this statewide meeting, accomplishments are shared, LR co-chairs report on themes from the eight LRs, updates on initiatives are presented, and upcoming events are announced. It is at this annual roundtable that OCFC's priorities for the following year are set and activities are established for the intended use of court improvement award dollars. From the state roundtable membership, workgroups are established to research and address statewide areas of concern. Current workgroups include Bench Book and Education, Pennsylvania Children's Roundtable Summit, Truancy Reduction and Elimination, Fatherhood Engagement, Parent and Sibling Visitation, and Legal Representative Education. Finally, in addition to facilitating intrastate communication and topic specific work, the state roundtable is involved in the

dependency reform movement at the national level to keep Pennsylvania apprised of the evolving trends and best practices.

Such a structure enables Pennsylvania to be responsive to the common needs of the state, while at the same time allowing flexibility for each judicial district to function in a way that best meets its individual needs. The flow of information and communication occurs from both the top-down and the bottom-up. This ensures that a mutual understanding and collaboration of permanency efforts exist for all Pennsylvania agencies and court-involved children. Overall, the system moves Pennsylvania forward in a consistent, uniform and informed manner as it endeavors to address permanence, safety and well-being for all children in the dependency system. This organizational structure contributes to a free flow of ideas, challenges and solutions, from children's roundtables to leadership roundtables to the state roundtable and back again.

OCYF is working with the Pennsylvania Supreme Court to reduce the number of youth in care through the Permanency Practice Initiative (PPI), which began in 2008. PPI calls for the incorporation of strength-based social work practices with specific court related changes, and focuses on decreasing the use of congregate care and increasing permanence for older children in care. The seven identified goals for PPI are as follows:

- Reduce the number of children adjudicated dependent and in court-ordered placement.
- Reduce the time that children spend in the foster care system.
- Reduce the number of children who re-enter care.
- Reduce the dependency court caseload.
- Reduce placement costs in order to ensure that funds are redirected to other services, including placement prevention, aftercare and adoption services.
- Reduce the level of care (*i.e.*, reduce the number or percent of children in restrictive placements and increase the number of children in kinship care, when placement is needed).
- Increase placement stability, which equates to fewer moves for a child.

Strategies employed in PPI include utilizing Family Finding (intensive searches for extended family members) and the Family Credentialing Program (training for private providers to treat family as consumers and treatment partners) in the PPI-participating counties as well as any additional county that wishes to participate in these activities. In addition, OCYF is providing financial assistance to all counties through the purchase of a system that performs computerized searches for relatives of children in care. OCYF is also focusing PPI counties (as well as all other counties) on enhancing their concurrent planning efforts. Finally, PPI counties will increase review hearings from the current six-month period to every three months (or even more frequently). Currently, there are 34 counties involved in PPI.

Budgetary Impacts

The Department of Public Welfare recognizes that several areas require fiscal analysis:

- County information technology changes and forms.
- Interim changes to OCYF information technology systems and forms.
- Revision to training curricula.
- Statewide training for all county children and youth agency staff.
- Revisions to existing mandatory reporting trainings and informational materials.
- Notification to mandated reporters of training of revised mandates for reporting.
- Analysis of additional staffing needs at both the county and state level if investigation requirements are expanded.

Testimony Presented to the Task Force

The Task Force on Child Protection was privileged to receive testimony from experts in the field of child abuse and maltreatment. These experts encompassed the disciplines of medicine, child welfare policy and administration, legal advocacy, law enforcement and victim services. The Honorable David W. Heckler, the Chairman of the Task Force stated that "[t]hroughout my career as a public official in service to the Commonwealth, as a prosecutor, legislator and judge, I have rarely if ever encountered individuals of such extraordinary competence and commitment." What follows are some excerpts from the presented testimony that frame some of the challenges which confronted the Task Force.

The Big Picture

Pennsylvania is a national outlier in the investigation and substantiation of child abuse. In 2009, Pennsylvania's substantiated child abuse rate was the lowest in the country at 1.4 per 1,000 children, compared to the national average of 9.3 per 1,000. There are many factors that contribute to this. Some of the reasons are the "high bar" for determining abuse, the ambiguity of the definition and perceived need to identify a perpetrator, and Pennsylvania's unique two-tiered system that excludes a significant number of cases from being counted in state data.[63]

[63] Debra Schilling Wolfe, Testimony before the Task Force on Child Prot. (Harrisburg, Pa., May 3, 2012) (on file with the J. State Gov't Comm'n).

Pennsylvania's current child abuse reporting law is flawed. We find the statute to be both confusing and widely open to interpretation. The law should serve as a roadmap for caseworkers to investigate reports of child abuse, yet there are fundamental differences from county to county on how the law is applied. If a child is abused, then it should not matter if he or she lives in Monroe or Montgomery County; it should be clear and the same determination should be made.[64]

Pennsylvania's laws are not victim- or child-focused. If a child is abused, then that child should be determined to be abused. In practice, in many Pennsylvania counties, caseworkers fail to substantiate abuse if they cannot identify the perpetrator, as the current statute requires that abuse be committed by someone who falls within the statutory definition of perpetrator. This narrow definition can also prevent reports from being accepted for investigation.[65]

Building the foundation of child protection based on adult-driven versus child-centered policies is a significant shortcoming in Pennsylvania. I can recount too many cases where there was a clear medical diagnosis that the child was abused, but the child welfare investigation – driven by state law and practices – determined that abuse did not occur. In such cases, the child's injuries – that were medically diagnosed as child abuse – remain uncounted in official state statistics.[66]

Consider too that in so many of these unfounded cases – despite medical diagnosis – critical pieces of information to better protect this child going forward will not exist, and, where information might be retained, it likely won't be shared with the next doctor or child welfare investigator. Where a perpetrator is undetermined but abuse has occurred or in other cases where the report was unfounded, the records must be destroyed in a certain period of time.[67]

Pennsylvania's child abuse legislation requires revision. The legal definition of child physical abuse in Pennsylvania hinges on a guesstimate of what causes severe pain and what defines disability. This leads to unacceptable variability in physical abuse reporting. The definition of physical abuse should be buttressed by examples of injuries that are possibly abusive. The [definition of serious physical neglect] is so severe that Pennsylvania's child abuse data can't be meaningfully aggregated with data from across the county. This should be changed.[68]

---

[64] *Id.*

[65] *Id.*

[66] Dr. Maria D. McColgan, Testimony before the Task Force on Child Prot. (Philadelphia, Pa., Apr. 18, 2012) (on file with the J. State Gov't Comm'n).

[67] *Id.*

[68] Dr. David Turkewitz, Testimony before the Task Force on Child Prot. (Harrisburg, Pa., June 14, 2012) (on file with the J. State Gov't Comm'n).

[T]he stakes are too high for the unintended consequences of statutory language to diminish the fact that a child has been maltreated, and is recognized and counted as a child victim of maltreatment with the appropriate services provided as a result of that designation. The explosion of research linking these traumatic experiences of childhood to a lifetime disparity of health and well-being creates an even greater urgency for us to work together to address these statutory challenges.[69]

The single most important goal of reforms to child welfare law should be to achieve clarity! Our staff struggle on a daily basis with understanding obscure and confusing definitions in the Child Protective Services Law, including the very definition of child abuse and who can be considered a perpetrator. Furthermore, the words of the law and jurisprudence interpreting those words have arguably created loopholes allowing for abuse to occur yet not enabling child welfare agencies to investigate and make findings regarding that abuse.[70]

Words of Caution

Protecting children from abuse and neglect is not brain surgery – it is much more difficult. Brain surgeons have the advantage of a decade of specialized training and the use of the latest and most advanced technology. Front-line child protective service case workers often have only a bachelor's degree in the liberal arts and job tenure of three to five years. The latest technology in child protective service work is a cell phone and, if budgets allow, a laptop computer.[71]

First and most important, measure all of your decisions and suggestions for legislative reform against the questions of whether a change or changes will improve the protection offered to vulnerable and dependent children. While this seems obvious, I know that many well-intended legal reforms actually end up placing more rather than fewer children at risk for abuse and neglect.[72]

If our goal is to protect children who are in harm's way, we will be unlikely to achieve that goal by expanding the list of groups and individuals required to make reports. Whatever the advantage of mandatory reporting laws, mandating reporting does not increase services to families or protection to children.[73]

---

[69] Dr. Philip V. Scribano, Testimony before the Task Force on Child Prot. (Philadelphia, Pa., Apr. 18, 2012) (on file with the J. State Gov't Comm'n).

[70] Anne Marie Ambrose, Testimony before the Task Force on Child Prot. (Philadelphia, Pa., Apr. 18, 2012) (on file with the J. State Gov't Comm'n).

[71] Richard J. Gelles, Testimony before the Task Force on Child Prot. (Harrisburg, Pa., May 3, 2012) (on file with the J. State Gov't Comm'n).

[72] *Id.*

[73] *Id.*

The child protective service system is a complex system with many gates governed by federal and state regulations. Most importantly, the system is one where the primary task is to make hard decisions often with only soft data available. Each contemplated legislative change will involve numerous intended and unintended consequences. Protecting children must be the primary criterion to assess the cost and benefit of any proposed changes or revisions.[74]

[A]mendments to the CPSL over the past 35-plus years have generally *added* definitions of child abuse, required child protective services to do more, and have made changes – such as reporting when one has reason to suspect, rather than reason to believe – that would have medieval scholars scratching their heads.[75]

Local child protection agencies (here and across the country) have always had difficulty making judgments about child protection. Instead of making it easier for CPS workers to do their jobs, our General Assembly, over many decades, has made it harder. . . . When we increase the number of acts and omissions that we call child abuse, and require more mandatory reporting and mandatory investigations of them, we reduce child safety. This is the paradox of child protection.[76]

Drafters of child protection laws often imagine a call coming into a well-trained, experienced worker who can devote an unlimited amount of time to the call. The worker gets the facts, matches the call to the definitions in the statute, calculates who the perpetrator is, and makes a site visit. There she or he does a careful safety assessment and considers long term risks. The worker matches the child and family to an array of carefully crafted risk-management services, all aimed at promoting child safety and well-being. There is on-going, thoughtful monitoring of the case.[77]

Even if everything went like that, child protection would be difficult, and fraught with misjudgments. But, of course, that's not the way the system works. There is high turnover in child protective services units. Workers often lack experience. They don't handle a single case, but many cases. They have fewer risk-management tools than they need. Caseloads are too high for everyone. Legislation that requires sending more and more cases into such a system risks hurting the children who are supposed to be protected by it. When thousands of children who are not at serious risk are referred to child protective services, the losers are the children most at risk.[78]

---

[74] *Id.*

[75] Robert Schwartz, Testimony before the Task Force on Child Prot. (Harrisburg, Pa., May 3, 2012) (on file with the J. State Gov't Comm'n).

[76] *Id.*

[77] *Id.*

[78] *Id.*

The Definitions of Child Abuse and Serious Physical Injury

The definition of serious physical injury in the statute creates a bar so high that it often prevents the substantiation of serious physical abuse. The statute requires the child to experience "severe pain," which is a subjective and medically and developmentally inappropriate measurement. As a result, it is very difficult to substantiate physical abuse cases in Pennsylvania in comparison to other states. There is something wrong when a hospital makes a definitive diagnosis of child abuse yet the child welfare system cannot substantiate the report. A caseworker in one county told me that she was unable to substantiate a case according to the current law yet the criminal justice system was able to arrest the perpetrator nonetheless.[79]

We recommend a modification in the definition eliminating "severe pain" as criteria and instead focusing on serious physical injury and imminent threat of serious harm to define physical abuse.[80]

Recently, I cared for a 7-week-old infant who was brought to the Emergency Department because he wasn't moving his arm. He was noted to have a fracture of the humerus, the bone of the upper arm. On further workup we found other fractures, a bruise and a healing laceration in his mouth. The medical diagnosis was clearly inflicted injury. In family court, the defense attorney argued that this case, although likely inflicted injury, does not rise to the level of our state's definition of abuse because it did not lead to impairment of the child. He argued, "How could the child be impaired because he was only 7 weeks old and couldn't even hold a bottle yet." Therefore this child could not be considered impaired as a result of this injury. Remarkably the judge agreed and ruled that this was not child abuse and ordered that the child be returned home. We all appreciate and want to find the appropriate balance in safeguarding the rights of parents with protecting children, but this case and the high bar to determine a child has been abused illustrates, to me, that we've not yet struck the right balance. Even in this case of a clear medical diagnosis of abuse, our state's law raised enough confusion to rule against a legal definition of child abuse.[81]

Another element of our state definition of child abuse relates to the inclusion of "severe pain." As a physician I am a mandated reporter and so I often find myself making a call to ChildLine to report child abuse. And during the course of my report and the later investigation, I will be repeatedly asked "Did the child suffer severe pain?" This question is fraught with problems. Pain is subjective, meaning that an injury that one person might rate as causing severe 10 out of 10 pain, another person might rate the pain from a similar injury as a moderate 6 or 7. With children, this becomes even more difficult. I cannot determine with any certainty the level of pain a 7 week old, a 13 month old or often times even an older child is experiencing. For example, is a child who has bruises on her buttocks that make it uncomfortable to sit suffering severe pain? Or how about the infant with a femur fracture? When no one is touching or moving an injured

[79] Wolfe, *supra* note 63.
[80] *Id.*
[81] McColgan, *supra* note 66.

child, they can fall asleep, but that does not mean they are not experiencing pain. Nor does it mean that they have not suffered an abusive injury.[82]

Undetermined Perpetrators of Child Abuse

[A] 6 month old infant presented to the hospital with a sudden deterioration in functioning with coma, and was identified to have brain injury demonstrated as subdural hemorrhages on CT scan imaging of the head, retinal hemorrhages of the eyes, and rib fractures noted on initial chest X-ray. The treating physician was provided with a history of a fall from the bed as an explanation for this child's clinical presentation. The implausibility of this explanation, given the factors described, prompted the treating physician to have suspicion of child abuse and report to CPS. During the course of investigation, however, it was unclear which adult was the perpetrator, since there were multiple caregivers who were with the infant within the few hours prior to his deterioration. Could it be the uncle who was playing video games in the living room? Could it be the mother who stated she changed the child's diaper and placed him in a crib before leaving the apartment to run some errands? Could it be the father who stated he checked in on the infant after taking a break playing a video game with his brother and reported the infant seemed "okay"?[83]

During the course of the investigation, one may be able to narrow suspects; however, in many cases of child abuse, and in specific, abusive head trauma, there may not be an identified perpetrator, despite significant investigative efforts. I know that Dr. Berger has previously provided testimony regarding the research that we conducted in which we evaluated children with unequivocal abusive head trauma and demonstrated the significant increased rate of abuse during the recession compared to the preceding years. Part of that research also included evaluating the perpetrators of these cases and what we found was that, despite these cases being medically determined to be "unequivocal" abusive head trauma, over 25% had an undetermined perpetrator. As a result, for our patients in Pennsylvania, our current statutes which require that the perpetrator be known as a requirement to enter the case on the state child abuse registry, we would systematically underestimate many cases of child physical abuse.[84]

Who Can Be a Perpetrator of Child Abuse

Like many states, under Pennsylvania law there are limitations on those persons who can be considered a "perpetrator" of child abuse. In Pennsylvania, a parent, a paramour of a parent, an individual (over the age of 14) living in the same home as the child, or a person responsible for the welfare of a child can be considered a perpetrator. This is significant in that abusive acts against children, committed by persons not qualifying by such characteristics as a potential "perpetrator," will likely not be

[82] *Id.*
[83] Scribano, *supra* note 69.
[84] *Id.*

investigated by Child Protective Services, and the perpetrators will not be listed as such on the state's Child Abuse Registry. A baseball coach, member of the clergy, family member not living in the child's home are among those who might not be considered a perpetrator of child abuse under state law. We need to ask ourselves why that is and whether it remains the appropriate course going forward. The child beaten or sexually assaulted has suffered no less trauma, is no less a victim of child abuse because it was the uncle visiting from another state, the parish priest, or the community little league coach who inflicted the abuse. In recent months I have had dozens of conversations with knowledgeable professionals, about which if any of the Penn State officials were mandated reporters and whether Mr. Sandusky is even covered by the law. We need to eliminate that kind of confusion.[85]

Mandated Reporters – Who Should Report

The Field Center does not recommend extending the mandate to all adults for reporting child abuse. . . . In light of the Sandusky case, we would recommend adding additional classes of mandated reporters, such as sports coaches.[86]

General Protective Services – Lack of Tracking Data to Protect At-Risk Children

We may be the only state in the country that cannot provide a full data picture of our child welfare system. . . . We strongly urge the Task Force to recommend that Pennsylvania implement a Statewide Automated Child Welfare Information System or some other integrated statewide data collection system that can guide program implementation and provide accountability.[87]

GPS cases are not tracked and do not count in the data as child abuse reports, rendering those who are interested unable to compare Pennsylvania's data with that of other states. Of greater concern is that GPS reports are not maintained in the state's central registry and therefore may not be available if and when a subsequent report is made on the same child or family.[88]

The Philadelphia Department of Human Services conducted an analysis of subsequent reports for SFY2006 and SFY2009 for both CPS and GPS cases. In both years, GPS reports were substantially more likely than CPS reports to have a repeat incident within 18 months. The data using a DHS internally designed severity rating scale suggest that a substantial number of the subsequent reports were as serious or more serious than the initial reports received on cases.[89]

---

[85] Frank P. Cervone, Testimony before the Task Force on Child Prot. (Philadelphia, Pa., Apr. 18, 2012) (on file with the J. State Gov't Comm'n).

[86] Wolfe, *supra* note 63.

[87] Joan L. Benso, Testimony before the Task Force on Child Prot. (Harrisburg, Pa., May 3, 2012) (on file with the J. State Gov't Comm'n).

[88] Wolfe, *supra* note 63.

[89] *Id.*

GPS represents a catchall for cases that fail to meet the high bar for CPS. For example, reports of alleged sexual abuse that fail to meet the current strict criteria end up being classified as GPS cases. Ironically, many of these cases are serious enough to warrant a forensic interview at county Child Advocacy Centers.[90]

Although GPS cases are often referred to as "just neglect," they often represent some of the highest risk child welfare cases. The death of Philadelphia's Danieal Kelly is a case in point. With a history of no less than seven different reports of neglect, at age 14, Danieal died, weighing only 46 pounds at the time of her death. She was profoundly and fatally neglected. Child neglect constitutes close to 80% of reports nationally, yet these cases are virtually ignored by Pennsylvania's child protection system.[91]

Pennsylvania collects and retains no data about a child who may receive General Protective Services (GPS) – services offered since the 1990s to address circumstances where safety concerns exist but which were deemed to be non-abuse cases. So often, the child of a prior unfounded report or the recipient of GPS presents again, at a later date, in an emergency department or with a new pediatrician because so often these children do not have medical homes. The treating physicians and the child welfare workers seeing the child this time often will not have all the facts, and are left with the impression that this is the first time a child has experienced injuries that could be abuse related.[92]

An important metric in determining the quality of a child protective services system is the recidivism rate of children previously in the system due to child maltreatment concerns. . . . [W]e are unable to track children identified within GPS for the purpose of determining re-reports to the child protective services system. Ensuring that county data [are] included for state statistics on this population of children being evaluated for concerns of child maltreatment and/or need of protective services seems a critical goal for us to address so that this data gap is not hampering our ability to recognize all of the burden of child maltreatment in our state.[93]

Furthermore, if a child is reported within the CPS, if a prior report (or reports) was made through GPS, this CPS report is not considered a re-report. This compartmentalization of child protection, based upon the compartmentalization of our statutory language, significantly limits our ability to measure quality of our overall child protective services system. It also hampers our abilities to strategically position prevention interventions to reduce the risk of re-reports to GPS and/or CPS. . . . Our CPS and GPS activity needs to be coordinated in such a fashion as to provide the full picture of child protection.[94]

---

[90] *Id.*
[91] *Id.*
[92] McColgan, *supra* note 66.
[93] Scribano, *supra* note 69.
[94] *Id.*

Child Abuse by School Teachers and Employees

Over the past several years, cases involving educator misconduct generally have increased exponentially. Currently, the Department of Education, which serves as the prosecutor, has over 500 open cases of which approximately 144 involve sexual misconduct or physical abuse. . . . Currently, mandatory reporting by school entities is very limited and is thus insufficient to protect children.[95]

The CPSL sets forth a largely separate path for the definition of abusive events (note – not "child abuse!") that occur in schools, including different definitions of abuse, different types of evidence that may be considered, and different response mechanisms for both reporting and investigating cases. From my experience training on the Act for many years, and I believe for those who must administer the Act as mandated reporters and as investigators, this alternative pathway is confusing to almost everyone when one might engage on the subject! We recommend review of the historical rationale for these different statutory schema, with our presumption being that the distinctions are invalid, ineffective and troubling.[96]

Another area where reform is needed is the dual system for reporting and handling reports of child abuse and student abuse. Having two separate systems is confusing to county child welfare systems, as well as mandated reporters. This dual system should be streamlined into one system. This would also clarify mandatory reporters' obligations and ensure that abuse is reported in all circumstances, regardless of whether a school administrator deems it appropriate to report the abuse or whether it reached the higher standard of "serious physical injury" (an issue that I discussed earlier). To that end, the Child Protective Services Law should be amended to require that those mandated to report must do so themselves. The current student abuse schema in effect allows schools to set up a "quasi" review before a report is made and imparts unintentionally some degree of discretion on reporting that is not the intent of the law or the prerogative of the school.[97]

Multidisciplinary Investigative Teams and Children's Advocacy Centers

As Pennsylvania moves forward in the battle against child abuse we need to ensure that the practices put in place are in-line with national standards. At a minimum, every child involved in an abuse investigation should receive the benefits of a cohesive multidisciplinary team approach and access to a trained forensic interviewer either through a children's advocacy center or in the field. These basic principles will reduce the trauma that children and families experience and improve the quality of investigations. My dream for Pennsylvania is that one day we will be able to provide every child and family with access to a children's advocacy center which encompasses

---

[95] Carolyn Angelo, Written Testimony provided to the Task Force on Child Prot. (on file with the J. State Gov't Comm'n).

[96] Cervone, *supra* note 85.

[97] Ambrose, *supra* note 70.

child-friendly services at every level of the healing process and supports a strong, cohesive multidisciplinary team approach.[98]

There is nothing more powerful as evidence than the CAC video of a child victim explaining their abuse in detail, in living color. . . . As a result we routinely see defendants pleading guilty and taking mandatory and higher than mandatory sentences in our county. . . . CAC forensic interviews also allow us to have the innocent have the specter of suspicion removed quickly. CACs and Multidisciplinary Teams have resulted in police, prosecutors and CYS staff all working together, sitting around the same table, with every case staying on the list until the case is closed out.[99]

All Children and Youth agencies should establish referral relationships with regional Children's Advocacy Centers . . . a place where a suspected child sexual abuse victim can be evaluated in a child sensitive and collaborative manner designed to improve investigative and therapeutic outcomes.[100]

Research and 25 years of experience tell me that the Model of a Children's Advocacy Center makes a difference for prosecution, is more cost effective than disjointed investigations and ensures access to quality care for children.[101]

Collaboration and Information Sharing

After a physical abuse report, some families have ongoing involvement by CYF while others are immediately dropped, and this seems to be more caseworker-dependent than physical findings-dependent. If pediatricians had a better sense of what follow-up would be, they would have more faith in CYF follow through and, I believe, more likely to report.[102]

In cases of medical neglect, we must have a consistent response to children who are clearly high risk and suffering for their family's lack of attention BEFORE the child ends up with a stroke, or kidney failure, or death. Many of these families already had CYF involvement before my calls about medical concerns. What is CYF doing with the medical info we send them? There needs to be more attention to this, particularly as we know children with complex medical and/or developmental problems are at higher risk of abuse and neglect.[103]

---

[98] Kimberly Duffy, Testimony before the Task Force on Child Prot. (Harrisburg, Pa., May 14, 2012) (on file with the J. State Gov't Comm'n).

[99] Jeffrey D. Burkett, Testimony before the Task Force on Child Prot. (Mechanicsburg, Pa., Sept. 21, 2012) (on file with the J. State Gov't Comm'n).

[100] Turkewitz, *supra* note 68.

[101] Joddie Walker, Testimony before the Task Force on Child Prot. (Harrisburg, Pa., May 14, 2012) (on file with the J. State Gov't Comm'n).

[102] Dr. Amy Nevin, Testimony before the Task Force on Child Prot. (Pittsburgh, Pa., May 31, 2012) (on file with the J. State Gov't Comm'n).

[103] *Id.*

I love what I do. Being involved with such intimate details of a family's life is an enormous privilege. Families trust their doctor when she shows a true sense of caring for their child. Anything that threatens that family's trust threatens the child's access to appropriate primary care not only at our office but at any medical facility – be it another primary care physician or the ER. Maintaining relationships with the families is the safest way to learn and build on the strengths of the child and the family. Having a child protective system we can trust and reliably depend on is inherent in this equation.[104]

The Importance of Prevention of Child Abuse

Evidence based, fiscally responsible prevention programs should be accessible throughout Pennsylvania. . . . Pennsylvanians must move from a mindset that child abuse can be eliminated through the efforts of more vigilant local Children and Youth Services and law enforcement. Programs like the Front Porch program promote the concept of neighborhoods serving as safety nets for children. In York, we are coupling Front Porch training with promotion of parenting strategies designed to eliminate or at least dramatically reduce parental reliance on corporal punishment otherwise known as beating a child to achieve the right behaviors. When expressed like this, corporal punishment does not make sense and alternative discipline approaches have strong literature validation.[105]

Of course the very wise Benjamin Franklin stated that an ounce of prevention is worth a pound of cure. Well, with child abuse and neglect, an ounce of prevention is worth more like a hundred billion dollars worth of a cure. Recent estimates of direct and indirect costs of child maltreatment range between $104 and $124 billion dollars per year in the United States. We need to shift our focus from intervening after damage has been done to prevention before it occurs. We must send a message to all Pennsylvanians that prevention *is* possible and each and every one of us has a role to play.[106]

ChildLine

ChildLine lacks public awareness and problems with ChildLine operations must be rectified. In 2010, nearly 9% of the calls to ChildLine were abandoned or deflected.[107]

---

[104] *Id.*
[105] Turkewitz, *supra* note 68.
[106] McColgan, *supra* note 66.
[107] Turkewitz, *supra* note 68.

Training

We need to improve both training and confidence in the child welfare system for current mandated reporters before there is any consideration to further open the gates.[108]

Training of mandated reporters must be supported. Survey data in 2010 involving over 1200 Pennsylvania mandated reporters revealed that approximately 40% of mandated reporters lack any training or update since the 2007 child abuse reporting law. . . . Training for healthcare providers on recognition and management of abuse must not just be sustained but also expanded.[109]

[108] Wolfe, *supra* note 63.
[109] Turkewitz, *supra* note 68.

Definition of Child Abuse and Child Neglect in Pennsylvania

The Child Protective Services Law defines the term "child abuse" as follows:

> (i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
>
> (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
>
> (iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
>
> (iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.[110]

Within this definition of child abuse are several other defined terms and phrases, including "nonaccidental," "perpetrator," "recent acts or omissions," "serious physical injury," "serious mental injury" and "sexual abuse or exploitation." These terms are defined as follows:

> A nonaccidental injury is "[a]n injury that is the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk."[111]

> A perpetrator is "[a] person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent."[112]

---

[110] 23 Pa.C.S. § 6303(b)(1); 55 Pa. Code § 3490.4.

[111] 23 Pa.C.S. § 6303(a). If a child's injury is nonaccidental, then it is considered child abuse. To determine if an injury is nonaccidental, a criminal negligence standard is applied. *P.R. v. Department of Public Welfare*, 801 A.2d 478 (Pa. 2002). In addition, an intentional act occurs when a person's conscious object is to engage in the proscribed conduct or to cause the prohibited result. 18 Pa.C.S. § 302(b)(1).

[112] 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4. A paramour is "[a] person who is engaged in an ongoing intimate relationship with a parent of the child but is not married to and does not necessarily reside

Recent acts or omissions are "[a]cts or omissions committed within two years of the date of the report to the Department of Public Welfare or county agency."[113]

A serious physical injury causes a child severe pain or significantly impairs a child's physical functioning either temporarily or permanently.[114]

A serious mental injury is "[a] psychological condition . . . that . . . renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or . . . seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks."[115]

Sexual abuse or exploitation is (1) the employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct or simulation of sexually explicit conduct for the purpose of producing visual depiction, including photographing, videotaping, computer depicting and filming; or (2) rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, sexual abuse or sexual exploitation, if the offense is committed against a child.[116]

---

with the child's parent." 55 Pa. Code § 3490.4. A person responsible for the child's welfare is "[a] person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control." 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4. A person responsible for the child's welfare "does not include a person who is employed by or provides services or programs in any public or private school, intermediate unit or area vocational-technical school." 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4.

[113] 23 Pa.C.S. § 6303(a). The Public Welfare Code defines the phrase "recent act or failure to act" as "[a]n act or failure to act committed within 2 years of the date of the report of suspected child abuse to the Department [of Public Welfare of the Commonwealth] or county agency." 55 Pa. Code § 3490.4.

[114] 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4.

[115] 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4.

[116] 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4. The definition under the Public Welfare Code differs in several regards. First, the list of offenses is slightly different, and the statutory citation under the Crimes Code (18 Pa.C.S.) is specified: rape as defined by § 3121, statutory sexual assault as defined by § 3122.1, involuntary deviate sexual intercourse as defined by § 3123, sexual assault as defined by § 3124.1, aggravated indecent assault as defined by § 3125, indecent assault as defined by § 3126, indecent exposure as defined by § 3127, incest as defined by § 4302 and prostitution as defined by § 5902. Second, the definition includes exploitation, which includes any of the following: (1) looking at the sexual or other intimate parts of a child for the purpose of arousing or gratifying sexual desire in either person, (2) engaging or encouraging a child to look at the sexual or other intimate parts of another person for the purpose of arousing or gratifying sexual desire in any person involved or (3) engaging or encouraging a child to participate in sexually explicit conversation either in person, by telephone, by computer or by a computer aided device.

The term "serious physical neglect" is described in paragraph (1)(iv) of the definition of "child abuse" but is not separately defined in the statute. However, the Public Welfare Code uses this statutory description as the basis for the definition of the term in the regulations:

> A physical condition caused by the act or failure to act of a perpetrator which endangers the child's life or development or impairs the child's functioning and is the result of one of the following:
>
> (i) Prolonged or repeated lack of supervision.
>
> (ii) Failure to provide essentials of life, including adequate medical and dental care.

A child is not "deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."[117] In addition, a child is not deemed to be physically or mentally abused if the county children and youth social service agency investigates and determines that the child "has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion."[118] However, the agency must "closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health."[119]

Definition of Child Abuse and Child Neglect Under Federal Law

The Child Abuse Prevention and Treatment Act[120] defines "child abuse and neglect" as "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm[.]"[121] The term "sexual abuse" includes the following:

> A. the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or

---

[117] *Id.* § 6303(b)(2); 55 Pa. Code § 3490.4.

[118] 23 Pa.C.S. § 6303(b)(3); 55 Pa. Code § 3490.4.

[119] 23 Pa.C.S. § 6303(b)(3); 55 Pa. Code § 3490.4.

[120] The Child Abuse Prevention and Treatment Act (CAPTA) was originally signed into law on Jan. 31, 1974 (P.L. 93-247). CAPTA was reauthorized and amended in 1978, 1984, 1988, 1992, 1996 and 2003, with its most recent reauthorization of Dec. 20, 2010 by the CAPTA Reauthorization Act of 2010 (P.L. 111-320). CAPTA is codified as 42 U.S.C. §§ 5101 *et seq.* & 5116 *et seq.*

[121] CAPTA of 2010, § 3.

B. the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children[.][122]

Definition of Child Abuse and Child Neglect in Other States

Throughout the United States, child abuse is generally defined as physical injury,[123] mental injury or emotional abuse,[124] sexual abuse[125] and sexual exploitation[126] against a child, with 37 states including abandonment of a child as a form of child abuse.[127] In addition, states include some form of child neglect within their definition of child abuse, although each state defines child neglect somewhat differently. Terminology includes (1) negligent treatment; (2) maltreatment; (3) failure to provide adequate necessities; (4) failure to provide adequate food, shelter, clothing, education or medical care and (5) an inability or unwillingness to provide proper care, control, supervision or protection. Specifically, child neglect nationwide includes the following:

- The prenatal exposure to drugs, alcohol or controlled substances, absent a valid prescription.[128]
- The exposure of a child to illegal drugs.[129]
- The exposure of a child to illegal activities or sexual acts or materials that are not age-appropriate.[130]
- The failure to protect the child from abuse, abandonment or sexual exploitation.[131]
- The failure to stop mistreatment or abuse of the child by another person and prevent it from recurring.[132]

---

[122] *Id.* § 111.

[123] In every state except S.D., the definition of child abuse includes physical injury. The following states add the qualifier "non-accidental" to "physical injury": Ala., Conn., Ga., Haw., Idaho, Ill., Iowa, Ky., Mich., Minn., Miss., Mo., Nev., N.H., N.J., Ohio, Or., Utah, Vt., Va., Wis. & Wyo. Like Pa., the following states add the qualifiers "non-accidental" and "serious": Cal., N.Y., N.C. & Tex..

[124] In every state except Ga. and Wash., the definition of child abuse includes mental injury or emotional abuse. Ala. adds the qualifier "non-accidental." Like Pa., the qualifier "serious" is used in Cal., Idaho, Ind., N.C. & Or..

[125] In every state, the definition of child abuse includes sexual abuse.

[126] The definition of child abuse includes sexual exploitation in every state except Mo., N.J. & N.Y.

[127] Ariz., Ark., Cal., Colo., Conn., Fla., Ga., Idaho, Ill., Ind., Kan., Ky., La., Maine, Mass., Minn., Mont., Neb., Nev., N.H., N.J., N.M., N.Y., N.C., N.D., Ohio, Okla., R.I., S.C., S.D., Tenn., Tex., Utah, Vt., Va., W. Va. & Wyo.

[128] Ariz., Ark., Colo., Ill., Ind., La., Minn., N.D. & S.D.

[129] Iowa, Okla. & S.D.

[130] Okla.

[131] Ark.

- Alcohol or controlled substance abuse by a parent or caregiver, if the abuse in some manner adversely affects the child's health or safety.[133]

- Leaving a child who is six years of age or younger unattended in a motor vehicle.[134]

- Placing a child for adoption in violation of the law.[135]

- Knowingly allowing a sex offender to have custody or control of a child or unsupervised access to the child.[136]

States also provide that certain activities or circumstances do not constitute child abuse, including the following:

- The exercise of religious beliefs and religious healing.[137]

- Reasonable parental discipline.[138]

- Poverty or lack of adequate financial resources.[139]

- Appropriate restraint when exercised by an employee of specific agencies under certain conditions.[140]

- Child-rearing practices of the culture in which the child participates, including the work-related practices of agricultural communities.[141]

- Newborn relinquishment in accordance with the Abandoned Newborn Infant Protection Act and leaving a child in the care of an adult relative.[142]

---

[132] Colo.

[133] Del., Ky., Minn., N.Y., N.D. & R.I.

[134] Neb.

[135] Ga. & Ohio.

[136] Iowa.

[137] The following 34 states provide this exception: Ala., Alaska, Ariz., Cal., Colo., Conn., Del., Fla., Ga., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Maine, Mich., Minn., Miss., Mo., Mont., Nev., N.H., N.J., N.M., Ohio, Okla., Pa., Utah, Vt., Va., Wash. & Wyo.

[138] The following 17 states, in some manner, provide this exception: Ark., Cal., Colo., Fla., Ga., Ind., Minn., Miss., Mo., Ohio, Okla., Or., S.C., Tenn., Tex., Utah & Wash.

[139] Pa. cites environmental factors beyond parental control. The following 10 states specifically cite the lack of adequate financial resources as an exception to child abuse: Fla., Kan., La., Mass., N.H., N.D., Tex., Wash., W. Va. & Wis., with Fla. and Tex. qualifying the exception by providing that inadequate financial resources are an exception to child abuse unless services for relief were offered and rejected. Ariz. creates an exception for the unavailability of reasonable services to meet the child's needs.

[140] Ark.

[141] Colo.

[142] Ill.

- The use of specified reasonable force by a teacher, principal or school employee.[143]

- Self-defense, defense of others or actions taken to protect the child.[144]

- Consensual sex between two individuals of the opposite sex who are minors (or one individual is a minor and the other is an adult who is not more than five years older than the minor).[145]

- With respect to sexual abuse, acts intended for a valid medical purpose.[146]

- For specific cases, the refusal to consent to medical treatment for a child if the child has a life-threatening condition or if the treatment would be futile in saving the child's life.[147]

- A handicapping condition.[148]

- Exposure to domestic violence that is perpetrated against someone other than the child.[149]

- For specific cases involving the child's absence from school.[150]

Table 1 provides legal citations for each state's law regarding the definition of child abuse and child neglect.[151]

Definition of Perpetrators in Other States

Two issues are central to most state child abuse reporting statutes: the identity of the alleged abuser and who must report the suspected abuse.

---

[143] Minn.
[144] Mont. & Utah.
[145] Ga.
[146] Tenn.
[147] Okla. & Va.
[148] Mass. & Wash., with Wash. specifying an exception for the blindness, deafness, developmental disability or other handicap of the parent or child.
[149] Wash.
[150] S.C. & W. Va. S.C. specifies that a child's absence from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance and those efforts were unsuccessful because of the parents' refusal to cooperate. W. Va. provides an exception for the child's education when it is conducted within the state law (state law exempts private enrollment and homeschooling from the compulsory education requirement).
[151] *Infra* p. 358.

The definition of perpetrator varies widely from state to state. Pennsylvania defines a perpetrator as "[a] person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent."[152] Fourteen states make no distinction among perpetrators, so that anyone can be found to be a perpetrator of child abuse for purposes of mandated reporting laws.[153] Seven states have created a separate category for a perpetrator of child sexual abuse.[154]

Most state statutes do not provide for the reporting of abuse if it is committed by a third party or stranger. For example, Colorado, Texas and Wisconsin make that distinction most clearly, in that child protective services investigates suspected abuse of a child by an individual having care, custody and control of the child, while law enforcement investigates suspected child abuse by a third party or stranger to the child. Most state child protection statutes focus on child abuse and neglect that occurs within the child's home (*e.g.*, by a parent, guardian, another individual residing in the home or the paramour of a parent)[155] or in a situation where the child is under the care, custody and control of another person who is in a position of authority with respect to the child (*e.g.*, regarding a caretaker, custodian or provider of residential placement).

A number of states define a perpetrator in terms of a family or household relationship with a child, but again there is wide disparity nationwide. Several states reference a person who has care, custody or control of the child or a person who is responsible for the child's health, safety or welfare.[156] Most states specifically reference the child's parent,[157] guardian,[158] custodian[159] or foster parent[160] or a member of the

---

[152] 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4.

[153] Ala., Alaska, Colo., Conn., Idaho, La., Mass., Neb., N.H., N.D., Or., Tex., Wis. & Wyo.

[154] Ark., Cal., Del., Ind., Ohio, S.D. & Vt. S.D. limits the definition of a perpetrator to a parent, guardian or custodian for the purpose of reporting non-sexual child abuse, but for the purpose of reporting child sexual abuse, a perpetrator also includes any other person responsible for the child's care. The other six states provide that any person can be a perpetrator of child sexual abuse. In addition, Cal. provides for sexual abuse (1) by a child's parent, guardian or member of the child's household and (2) where the parent or guardian has failed to adequately protect the child from such abuse when the parent or guardian knew or reasonably should have known that the child was in danger of such abuse. Despite the creation of a separate category for a perpetrator of child sexual abuse, the definition of sexual abuse in these states have not been changed, despite the circumstances in which such abuse occurs.

[155] For example, the following states focus only on familial relationships: Cal., N.M., S.D. & Tenn.

[156] Del., Fla., Haw., Md., Mich., Minn., Mo., Mont., Nev., N.J., N.C., Okla., R.I., S.C., Vt., Va., Wash. & W. Va.

[157] Ark., Cal., Del., Fla., Ga., Ill., Ind., Iowa, Kan., Ky., Md., Mich., Minn., Miss., Mo., Mont., Nev., N.J., N.M., N.Y., N.C., Ohio, Okla., R.I., S.C., S.D., Tenn., Utah, Vt. & Va.

[158] Ark., Cal., Del., Fla., Ind., Iowa, Kan., Ky., Mich., Minn., Miss., Mo., Mont., Nev., N.J., N.M., N.Y., N.C., Ohio, Okla., R.I., S.C., S.D., Tenn., Vt. & W. Va.

[159] Ark., Del., Fla., Ind., Miss., N.M., N.C., Ohio, Okla., S.D. & W. Va.

[160] Ark., Iowa, Mont., N.C., Okla., R.I., S.C. & Vt.

child's household[161] or family.[162] Several states reference a child's caregiver or caretaker.[163] In addition, several states further define a perpetrator of child abuse as follows:

- A paramour of the child's parent.[164]
- A non-parent adult who (1) has substantial and regular contact with the child, (2) has a close personal relationship with the child's parent or an individual responsible for the child's health or welfare and (3) is not the child's parent or relative.[165]
- An individual exercising supervision over a child for any part of a 24-hour day or an individual who is responsible for the care, custody and control of the child who (based on a relationship with the child's parents or members of the child's household or family) has access to the child.[166]
- An adult who is legally responsible for the child.[167]
- An adult who has assumed the role or responsibility of the child's parent or guardian but who does not necessarily have legal custody of the child.[168]

States also define a perpetrator of child abuse where the perpetrator is not a member of the child's family or household but who nonetheless exercises care, custody or control of the child or is otherwise responsible for the child's health, safety or welfare. Several states specifically reference the following:

---

[161] Ark. (an adult, whether related or unrelated to the child), Del. (whether related or unrelated to the child and including individuals who previously lived in the household such as a paramour of a member of the child's household), Fla., Haw., Ill., Iowa, Md., Mich. (an adult), Mo., Mont. (an adult), Nev. (an adult), N.C. (an adult), Okla. (an adult), R.I. (an adult who has unsupervised access to the child) & Vt. (an adult who serves in a parental role).

[162] Del. (any individual related to the child by blood, marriage or adoption), Haw., Ill. (immediate family member), Md. (any individual related to the child by blood, marriage or adoption), Miss. (stepparent or relative), Nev. (stepparent with whom the child lives), N.J. (stepparent or adoptive or resource family parent), N.C. (an adult relative entrusted with the child's care) & Tenn.

[163] Fla., N.C. & Tenn.

[164] Ill.

[165] Mich.

[166] Mo.

[167] N.Y.

[168] S.C.

- An agent or employee of a public or private residential home or institution,[169] day care or child care facility,[170] school[171] or treatment facility (or other special facility).[172]

- A healthcare provider.[173]

- A law enforcement officer employed in any facility or service for children.[174]

- A sitter.[175]

- A member of the clergy.[176]

- A coach.[177]

- A resident of a foster home or a foster parent.[178]

- A resident of the home of a relative or other person responsible for the child's welfare.[179]

In addition, several states include other individuals. For example:

- Delaware specifically includes an instructor or any other individual having regular direct contact with the child through affiliation with a school, church or religious institution, health care facility, athletic or charitable organization, or any other organization, regardless of whether the individual is compensated or is a volunteer.[180]

- Illinois includes any other person responsible for the child's welfare at the time of the alleged abuse or neglect, or any person who came to know the child through an official capacity or position of trust, including recreational supervisors, members of the clergy, and

---

[169] Ark., Fla., Ill., Ind. (includes a residential child care facility), Iowa, Maine, Mich., Miss., Mont., Nev., N.Y., N.C., Ohio, Okla., R.I., S.C., Utah & Vt.

[170] Ark., Del., Fla., Ill., Ind., Iowa, Mich., Minn., Mont., Nev., N.Y., N.C., Ohio, Okla., R.I., S.C., Utah & Vt.

[171] Ark., Del., Fla., Ill., Ind., Mich., Minn., N.J., N.C., Ohio & Vt.

[172] Iowa (mental health center, residential treatment center, shelter care facility or detention center), Ohio (detention facility, shelter facility or children's crisis care facility) & Okla. (day treatment facility).

[173] Del., Ill., Iowa, Minn. (counselors) & Ohio.

[174] Fla.

[175] Del., Fla. (adult sitter or relative entrusted with the child's care) & Miss.

[176] Mich. & Minn. (whether paid or unpaid).

[177] Del., Minn. & Ohio.

[178] Ind., Mich., Miss., Ohio & Utah.

[179] Utah & Vt.

[180] Del. Code Ann. tit. 10, § 901(3)(d).

volunteers or support personnel in any setting where children may be subject to abuse or neglect.[181]

- Indiana includes certain child care ministries, a child caregiver, a member of the household of the child's noncustodial parent or an individual who has or intends to have direct ongoing contact with a child for whom the individual provides care and supervision.[182]

- New Jersey includes an institutional employee or volunteer who is responsible for the child's welfare.[183]

- Ohio includes an in-home aide and an employee or agent of a residential camp or day camp.[184]

Table 1 provides legal citations for each state's law regarding the definition of perpetrator.[185]

Unidentified or Multiple Perpetrators

States address the issue of unidentified or multiple perpetrators of child maltreatment differently. For example:

- In Alaska, the department must immediately notify the nearest law enforcement agency if the department is unable to determine who caused the harm to the child or whether the person who is believed to have caused the harm has responsibility for the child's welfare.[186]

- In Arkansas, if at any time before or during the investigation the department is unable to locate or identify the alleged offender because the alleged child maltreatment occurred more than five years ago or in another state, the department must consider the report unable to be completed and place the report in inactive status.[187]

- In North Dakota, upon determination by the department (or its designee) that a report implicates a person other than a person responsible for a child's welfare, the department may refer the report

[181] 325 Ill. Comp. Stat. 5/3.
[182] Ind. Code § 31-9-2-31.
[183] N.J. Stat. Ann. § 9:6-8.21.
[184] Ohio Rev. Code Ann. § 2151(B)(35)(a) & (b).
[185] *Infra* p. 358.
[186] Alaska Stat. § 47.17.020(c).
[187] Ark. Code Ann. § 12-18-619(c).

to an appropriate law enforcement agency for investigation and disposition.[188]

- In Wisconsin, if the county department or delegated agency cannot determine who abused or neglected the child, within 24 hours after receiving the report the agency or department must initiate a diligent investigation to determine if the child is in need of protection or services.[189]

Out-of-State Incidents and Perpetrators

States address the issue of out-of-state incidents and perpetrators of child maltreatment differently. For example:

- In Arkansas, if an alleged offender resides in another state and the incident occurred in another state or country, the Child Abuse Hotline documents receipt of the report, transfers the report to the Child Abuse Hotline of the state or country where the alleged offender resides or the incident occurred and, if child protection is an issue, forwards the report to the Department of Human Services or the equivalent governmental agency of the state or country where the alleged offender resides. If an incident occurred in Arkansas and the victim, offender or victim's parents no longer reside in Arkansas, the Child Abuse Hotline accepts the report and the Arkansas investigating agency contacts the other state and requests assistance in completing the investigation, including an interview with the out-of-state subject of the report. If the Child Abuse Hotline receives a report and the alleged offender is a resident of Arkansas and the report of child maltreatment or suspected child maltreatment in the state or country in which the act occurred would also be child maltreatment in Arkansas at the time the incident occurred, the Child Abuse Hotline refers the report to the appropriate investigating agency within the state so that the Arkansas investigative agency can investigate alone or in concert with the investigative agency of any other state or country that may be involved. The Arkansas investigating agency makes an investigative determination and provides notice to the alleged offender that, if the allegation is determined to be true, the offender's name will be placed in the Child Maltreatment Central Registry. The other state may also conduct an investigation in Arkansas that results in the offender's

[188] N.D. Cent. Code Ann. § 50-25.1-05.3.
[189] Wis. Stat. § 48.981(3)(c)(1)(a).

being named in a true report in that state and placed in the Child Maltreatment Central Registry of that state.[190]

- In California, investigative reports may be released to out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and date of birth or approximate age. The request must cite the safeguards that the requesting state has in place to prevent unlawful disclosure.[191]

- In Florida, if the report is of an instance of known or suspected child abuse, abandonment or neglect that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the central abuse hotline shall not accept the report or call for investigation, but shall transfer the information on the report to the appropriate state.[192]

- Maryland's reporting law applies to (1) suspected abuse or neglect that is alleged to have occurred in the state and (2) suspected abuse or neglect of a child who lives in the state, regardless of where the suspected abuse or neglect is alleged to have occurred. Additionally, if suspected abuse or neglect is alleged to have occurred outside of the state and the victim is currently a child who lives outside of the state, mandated reporters are required to report the suspected abuse or neglect to any local department of social services, which in turn is to promptly forward the report to the appropriate agency outside of the state that is authorized to receive and investigate reports of suspected abuse or neglect.[193]

- In Massachusetts, the department may send to, or receive from, any other state or country a protective alert containing any information about a child related to a substantiated report of child abuse or neglect if the department reasonably believes that the child has been or will be transported to another state or country.[194]

- In Missouri, if an individual required to report suspected instances of abuse or neglect has reason to believe that the victim is a resident of another state or was injured as a result of an act which occurred in another state, the person required to report may, in lieu of reporting

[190] Ark. Code Ann. § 12-18-303.
[191] Cal. Penal Code § 11167.5(b)(12).
[192] Fla. Stat. § 39.201(2)(d).
[193] Md. Code Ann., Fam. Law § 5-705.1.
[194] Mass. Gen. Laws ch. 119, § 51H.

to the Missouri division of family services, make a report to the child protection agency of the other state with the authority to receive such reports pursuant to the laws of the other state. If that agency accepts the report, no report is required to be made, but may be made, to the Missouri division of family services.[195]

- Montana's child protection law applies to a youth who is within Montana for any purpose, a person who is alleged to have abused or neglected a youth who is in Montana for any purpose, a youth or youth's parent or guardian who resides in Montana, or a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.[196]

- In Vermont, the department shall respond to reports of alleged neglect or abuse that occurred in Vermont and to out-of-state conduct when the child is a resident of or is present in Vermont.[197]

Minors as Perpetrators

States also address the issue of minors as perpetrators of child maltreatment differently. For example:

- With respect to the sexual behavior of minors, Arizona has no duty to report child maltreatment if the sexual contact or conduct involves only minors who are 14, 15, 16 or 17 years of age and nothing indicates that the contact or conduct is non-consensual.[198]

- In Arkansas, sexual abuse is generally defined as sexual intercourse, deviate sexual activity or sexual contact by forcible compulsion (or the attempt to engage in such action), based on the age of the perpetrator and victim. Sexual abuse occurs (1) by a person ten years of age or older to a person younger than 18 years of age, (2) between a person 18 years of age or older and a person (not the person's spouse) who is younger than 16 years of age or (3) between a person younger than 18 years of age and a sibling or caretaker.[199]

---

[195] Mo. Rev. Stat. § 210.115(7).
[196] Mont. Code Ann. § 41-3-103.
[197] Vt. Stat. Ann. tit. 33, § 4915(a).
[198] Ariz. Rev. Stat. Ann. § 13-3620(B).
[199] Ark. Code Ann. § 12-12-503(5).

- The Connecticut Attorney General issued an opinion interpreting the state's reporting requirements, concluding that a mandatory reporter is not required to make a report (absent other evidence of abuse) if the victim is at least 13 years of age and less than 16 years and the "perpetrator" is less than 21 years of age and more than two years older than the victim.[200]

- In Georgia, sexual abuse does not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision may not be deemed or construed to repeal any law concerning the age or capacity to consent.[201]

- In Washington, special investigative procedures and dispositions are in place for children under age 12 who commit sexual offenses.[202]

Task Force Deliberations

Throughout the course of its deliberations, the Task Force compiled a list of specific issues to address and consider in more detail regarding the definition of child abuse and the identity of the perpetrator of child abuse. Regarding the definition of child abuse, these issues included the non-accidental nature of the child's injuries, serious physical injury that causes severe pain for the child (including different pain thresholds based on the child's age and the child's development of tolerance for pain as a result of prior abuse), non-speaking or non-verbal child victims, the child's witnessing of an act of domestic violence as a form of abuse, the role of the child's assessment of pain, serious physical neglect of the child, corporal punishment used against the child, the use of an implement against the child, bruising as evidence of abuse, and the lack of public visibility of possible child abuse in the case of home-schooled or cyber-schooled children. Regarding the identity of the perpetrator, these issues included whether to expand the definition of perpetrator or whether a perpetrator should be defined as simply a family or household member or person responsible for the child's welfare, an investigation of a case involving an unknown or unidentified perpetrator, the interaction of language in the statute mandating reports of "any perpetrator" with definition of perpetrator, multiple individuals who may be the perpetrator of child abuse (where a single, specific perpetrator cannot be identified), out-of-state perpetrators, children under the age of 14 who may be a perpetrator, whether the statute should be "child-centered" instead of "perpetrator-centered" or "abuser-centered," and the separate decision to accept the child for services, instead of focusing on the identification of the perpetrator.

---

[200] Conn. Op. Att'y Gen. No. 2002-149 (2002 Conn. AG Lexis 33, Sept. 30, 2002).
[201] Ga. Code Ann. § 19-7-5(b)(3.1).
[202] *See generally* Wash. Rev. Code §§ 9a.44.010 through 9a.44.904 (sex offenses).

VOLUNTARY AND MANDATED REPORTERS OF CHILD ABUSE

Mandated Reporters in Pennsylvania

The Child Protective Services Law requires certain individuals who come into contact with a child to report (or cause a report to be made) when there is reasonable cause to suspect that the child is a victim of child abuse.[203] These individuals include the following:

> any licensed physician, osteopath, medical examiner, coroner, funeral director, dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, Christian Science practitioner, member of the clergy, school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker, mental health professional, peace officer or law enforcement official.[204]

If an individual is required to report in the capacity as a member of the staff of an institution, school, facility or agency, the individual must immediately notify the person in charge such entity (or the person's designated agent). Upon notification, the person or the designated agent assumes the responsibility and has the legal obligation to report (or cause a report to be made).[205]

---

[203] 23 Pa.C.S. § 6311(a), which specifically provides the following:

> A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made . . . when the person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator.

Id.; 55 Pa. Code § 3490.4 (set forth in (i) under the definition of required reporters). Exceptions are made regarding confidential communications involving attorneys and members of the clergy. 23 Pa.C.S. § 6311(a); 55 Pa. Code § 3490.4 (set forth in (ii) under the definition of required reporters). *See* 42 Pa.C.S. §§ 5916, 5943 & 5928. *Also see* 55 Pa. Code § 3490.14.

[204] 23 Pa.C.S. § 6311(b); 55 Pa. Code § 3490.4 (set forth in (iii) under the definition of required reporters).

[205] 23 Pa.C.S. § 6311(c); 55 Pa. Code § 3490.13(a). In addition, "[t]he person in charge or the designee may not make an independent determination of whether to report. The person in charge or the designee shall notify the employe when the report was made to ChildLine." *Id.* § 3490.13(b). Notwithstanding the foregoing, nothing prohibits an employee who is a required reporter from making a report directly to ChildLine. *Id.* § 3490.13(c).

An individual who willfully fails to comply with the foregoing requirements "commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation."[206]

Pennsylvania also provides additional requirements regarding students who are victims of abuse. In general:

> a school employee[207] who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before the school employee in the employee's professional or official capacity is a victim of serious bodily injury[208] or sexual abuse or sexual exploitation by a school employee shall immediately contact the administrator.[209]

The administrator must then immediately report this injury, abuse or exploitation to law enforcement officials and the appropriate district attorney.[210] However, if the administrator is the school employee who is accused of seriously injuring or sexually abusing or exploiting the student, the other school employee who suspects such injury, abuse or exploitation must immediately report to law enforcement officials and the appropriate district attorney.[211]

Neither an administrator who makes a report nor a school employee who contacts the administrator or makes a report as previously described are subject to civil or criminal liability arising out of the report.[212]

A school employee who willfully violates these provisions commits a summary offense.[213] An administrator who willfully violates these provisions commits a misdemeanor of the third degree.[214]

---

[206] 23 Pa.C.S. § 6319.

[207] A school employee is "[a]n individual employed by a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor and employees. The term excludes an individual who has no direct contact with students." *Id.* § 6303(a).

[208] The Child Protective Services Law introduces the term "serious bodily injury" with respect to students in public and private schools. The term is defined as "[b]odily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ." *Id.* § 6303(a); 55 Pa. Code § 3490.4. The necessary elements under this term (substantial risk of death, serious permanent disfigurement, protracted loss of impairment of function of a bodily member or organ) differ significantly from those under the term "serious physical injury" (severe pain, significant impairment of physical functioning).

[209] 23 Pa.C.S. § 6352(a)(1). An administrator is "[t]he person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor." *Id.* § 6351.

[210] *Id.* § 6353(a).

[211] *Id.* § 6352(a)(2).

[212] *Id.* §§ 6352(b) & 6353(c).

[213] *Id.* § 6352(c)(1). A school employee who violates these provisions after being sentenced for the summary offense commits a misdemeanor of the third degree. *Id.* § 6352(c)(2).

[214] *Id.* § 6353(d).

Furthermore, "[i]n addition to those persons and officials required to report suspected child abuse, any person may make such a report if that person has reasonable cause to suspect that a child is an abused child."[215]

Reporting Child Abuse in Other States

Any individual may report suspected child abuse. Of note is that 16 states specify that all persons are mandated reporters.[216] However, many states provide that certain professionals are mandated to report suspected child abuse. In 26 states, reports are to be made by identified professionals regardless of the circumstances in which they discover or suspect child abuse;[217] 15 states limit that responsibility to those situations where the professional encounters the suspected child abuse in the course of employment, professional or official duties.[218]

Mandated reporters can be divided into four broad categories: health care practitioners,[219] mental health professionals and social service providers,[220] school and child care employees[221] and members of law enforcement and the justice

---

[215] *Id.* § 6312.

[216] Del., Fla., Idaho, Ind., Ky., Neb., N.H., N.J., N.M., N.C., Okla., R.I., Tenn., Tex., Utah & Wyo. Alaska specifies that a mandatory reporter includes the parent, stepparent or guardian of the minor and any other person who has responsibility for the care or treatment of the minor.

[217] Ala., Alaska, Cal., Conn., Del., Ga., Idaho, Kan., Ky., Maine, Md., Mich., Minn., Miss., Neb., N.D., Ohio, Or., S.C., S.D., Tex., Vt., Va., Wash., W. Va. & Wis.

[218] Ariz., Ark., Colo., Haw., Ill., Iowa, La., Mass., Mo., Mont., Nev., N.H., N.M., N.Y. & Pa. Eight states do not explicitly make the distinction regarding when the professional encounters the suspected child abuse: Ind., N.J., N.C., Okla., R.I., Tenn., Utah & Wyo.

[219] Health care practitioners specified nationwide include acupuncturists, audiologists, chiropractors, Christian Science practitioners, dental hygienists and assistants, dentists, dieticians, doctors, emergency medical technicians, genetic counselors, home health aides, medical interns, medical residents, medical technicians, naturopathic physicians, nurses, occupational therapists, optometrists, osteopaths, paramedics, perfusionists, pharmacists, physical therapists, physicians, physician assistants, podiatrists, practitioners of the healing arts (including practitioners who rely solely on spiritual means for healing), certain public health employees, respiratory care practitioners, speech pathologists, surgeons, and other medical personnel who may be engaged in the admission, examination, care or treatment of individuals (such as professionals and administrative officers at hospitals, clinics, medical care facilities and sanitariums).

[220] Mental health professionals and social service providers specified nationwide include addiction counselors, behavioral health professionals, child abuse or sexual abuse victim advocates, child and family investigators, child safety center workers, child welfare agency personnel, counselors, clinical social workers or counselors, court-appointed special advocate program staff, creative arts therapists, crisis intervention and prevention counselors and workers, crisis line or hotline personnel, custodial officers, domestic abuse and violence victim advocates, domestic violence shelter workers, drug and alcohol counselors and workers, foster care facility employees or operators, home health aides, marriage and family therapists, mediators, mental health center employees or operators, music therapists, parenting coordinators, psychiatrists, psychologists, psychotherapists, rape crisis advocates, social service workers, social workers, social or public assistance workers and youth shelter workers.

[221] School and child care employees specified nationwide include child care providers, coaches or recreational program personnel, community or day care center workers, day camp or youth camp workers or administrators, foster care workers, instructional aides, residential or institutional workers, school board

system.[222] A number of states specify other professionals as mandated reporters, including the following:

- Members of the clergy.[223]
- Commercial film and photographic print processors and employees.[224]
- Computer technicians, electronic and information technology workers, and Internet and cellular service providers.[225]
- Animal control officers, veterinarians and humane society workers.[226]
- Firefighters or fire inspectors.[227]
- Public assistance workers.[228]
- Undertakers and funeral home directors and employees.[229]
- Municipal code enforcement officials.[230]
- Attorneys.[231]
- Homemakers.[232]
- First responders.[233]
- Athletic trainers.[234]
- Persons holding a safety-sensitive position.[235]
- Members of the Legislative Assembly.[236]

---

members or superintendants, school bus drivers or attendants, and school guidance counselors, librarians, nurses, officials and administrators, psychologists, teachers, and teachers' aides or assistants.

[222] Members of law enforcement and the justice system specified nationwide include attorneys ad litem, child fatality review team members, coroners, corrections officers, guardians ad litem for the child, judges, family relations counselors and workers, juvenile detention or shelter care facility workers, juvenile intake and assessment officers, law enforcement officers, mediators, medical examiners, parole officers, peace officers, probation officers, prosecuting attorneys, victim assistance workers, victim or witness coordinators, and employees of a court, correctional institution, law enforcement agency, county sheriff's department, county probation department or county welfare department.

[223] The 25 states specifying members of the clergy include Ala., Ariz., Ark., Cal., Colo., Conn., Ill., La., Maine, Mass., Mich., Minn., Miss., Mo., Mont., Nev., N.H., N.M., N.D., Or., Pa., S.C., Vt., W. Va. & Wis.

[224] Alaska, Cal., Colo., Ga., La., Maine, Mo., N.C., Okla., R.I. & S.C.

[225] Alaska, Ark., Ill., Mo., N.C., R.I., S.C. & S.D. In addition, Mich. provides confidentiality and immunity from civil liability for computer technicians reporting child pornography in the scope of their work. Mich. Comp. Laws § 750.145c(9).

[226] Cal., Colo., Ill., Maine, Ohio, S.C., Va. & W. Va.

[227] Cal., Colo., Kan., Maine, Mass. & Or.

[228] Cal.

[229] Ill. & S.C.

[230] Maine.

[231] Miss., Nev., Ohio & Or.

[232] Maine.

[233] Wis.

[234] Nev.

[235] S.D.

[236] Or.

Seventeen states specifically address the situation in which a staff member of an institution is a mandated reporter.[237] In nine of those states, reporting the child abuse to a superior absolves the staff person of any further responsibility to report.[238] The remaining eight states specifically provide that a report to a superior does not relieve the staff person of the individual responsibility to report to law enforcement officials or other appropriate entities.[239]

In addition, North Dakota requires an individual who has knowledge (or reasonable cause to suspect) that a child is abused or neglected, based on images of sexual conduct by a child discovered on a workplace computer, to make a report.[240]

Of note is that Federal law[241] requires those persons providing electronic communication services to make a report to the Cyber Tip Line at the National Center for Missing and Exploited Children. The technicians and service providers are not required to search for the illegal material, only to report it if they find it.

Table 2 provides legal citations for each state's law regarding mandated reporters of suspected child abuse,[242] while Table 3 provides legal citations for each state's law regarding voluntary reporters of suspected child abuse.[243]

Where to Report in Other States

Reporting of suspected child abuse varies widely. A number of states require reports to be made to the state department with jurisdiction over human services or children and family services (the name and specific jurisdiction of these departments also vary widely from state to state).[244]

---

[237] Alaska, Ga., Haw., Idaho, Ill., Ind., Ky., Maine, Md., Mass., Mich., Mo., N.Y., Va., Wash., W. Va. & Wis.

[238] Ga., Idaho, Maine, Md., Mass., Mo., N.Y., Va. & W. Va.

[239] Alaska, Haw., Ill., Ind. (unless, to the best of the staff person's belief, the individual in charge of the institution, or the individual's designated agent, has already made a report), Ky., Mich. (although only one institutional report is adequate to satisfy the reporting requirement), Wash. & Wis. (unless a report has already been made or will be made).

[240] N.D. Cent. Code Ann. § 50-25.1-03(3).

[241] 42 U.S.C. § 13032.

[242] *Infra* p. 359.

[243] *Infra* p. 360.

[244] Ark., Del., Fla., Iowa, Kan., Maine, Mass., Miss., Mo., Mont., N.Y., N.D., Okla., R.I. & W. Va. Several of these states specify additional requirements:

> Fla.: each report of known or suspected child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare must be made immediately to the central abuse hotline. The reports may be made on the single statewide toll-free telephone number or via fax, web-based chat, or web-based report. In addition, the reports or calls must be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.
>
> Ill.: a report concerning a serious injury or sexual abuse to a child must also be immediately transmitted to the appropriate local law enforcement agency.

Other states require reports to be made to the state, county or local social services department or to the appropriate law enforcement agency.[245] In addition:

- California requires the report to be made to any police department, sheriff's department, county probation department (if designated to receive mandated reports) or the county welfare department.[246]

Iowa: if the person making the report has reason to believe that immediate protection of the child is advisable, then that person must also make an oral report to an appropriate law enforcement agency.

Kan.: if the department is not open for business, a report must be made to the appropriate law enforcement agency, which must then, on the next day that the department is open for business, notify the department of the report received and any investigation initiated.

Maine: if the mandatory believes that the child abuse was not caused by a person responsible for the child, a report must be made to the district attorney's office.

Mass.: a mandatory reporter may also contact local law enforcement authorities or the child advocate about suspected child abuse or neglect).

N.H.: the department must immediately refer all cases involving specified child sexual or physical abuse to the local law enforcement agency, with a copy to be sent to the office of the county attorney.

N.J.: the department must immediately report all instances of suspected child abuse or neglect to the county prosecutor of the county in which the child resides.

W. Va.: serious physical abuse, sexual abuse or sexual assault must be immediately reported to the State Police and any law enforcement agency having jurisdiction to investigate the complaint.

[245] Colo., Conn., Ga., Haw., Idaho, Ind., Ky., La., Md., Mich., Minn., Neb., Nev., N.M., Ohio, Or., S.C., S.D., Tenn., Tex., Wash. & Wyo. Several of these states specify additional requirements:

Colo.: the county department of social services must immediately forward the report to the appropriate district attorney or law enforcement agency.

Ga.: if a report is made to the child welfare agency or independently discovered by the agency, and the agency has reasonable cause to believe the report is true or the report contains any allegation or evidence of child abuse, then the agency must immediately notify the appropriate police authority or district attorney.

Ky.: a report of child abuse or neglect allegedly committed by an individual other that the child's parent or guardian, or by an individual exercising custodial control or supervision of the child, must be referred to the Commonwealth's attorney, the county attorney, the local law enforcement agency or the State Police.

La.: if the alleged child abuser is a child's parent or caretaker (or their significant other), the report must be made to the local child protection unit of the Department of Children and Family Services; otherwise, the report is made to the local or state law enforcement agency.

S.D.: the report may also be made to the state's attorney of the county where the child resides or is present.

Tenn.: the report may also be made to the sheriff of the county where the child resides or the judge having juvenile jurisdiction over the child.

Tex.: the report may also be made to (1) the state agency that operates, licenses, certifies or registers the facility where the alleged child abuse or neglect occurred or (2) the agency designated by the court to be responsible for the protection of children.

[246] Cal. Penal Code § 11165.9.

- North Carolina requires the report to be made to the director of social services in the county where the child resides or is found, and if the report involves sexual abuse in a child care facility, the director must notify the State Bureau of Investigation.[247]

- Utah requires the report to be made to the nearest peace officer, law enforcement agency or division of child and family services.[248]

- In Wisconsin, a report must be made to the state or county department or a licensed child welfare agency under contract with the department, the sheriff's office or the local police department.[249]

Standards and Penalties in Other States

The standard for reporting suspected child abuse or neglect varies nationwide, although most states require a mandated reporter or a voluntary reporter to make a report when there is actual knowledge of or reasonable cause to suspect child abuse or neglect. Some states specifically provide that the suspected child abuse or neglect must appear to have been inflicted by non-accidental means.[250] Some states provide that suspected child abuse or neglect is reportable if a child is observed being subjected to conditions or circumstances that would reasonably result such abuse or neglect.[251]

Several states have other specific requirements regarding mandated reporters. For example:

- Connecticut provides that a mandated reporter must orally report within 12 hours, to be followed by a written report within 48 hours, and a report involving sexual abuse or serious physical abuse must be reported to the local law enforcement agency within 12 hours.[252]

- In Minnesota, a mandated reporter must report if he or she knows or has reason to believe that the child has been neglected or physically or sexually abused within the preceding three years.[253]

---

[247] N.C. Gen. Stat. Ann. § 7B-301.

[248] Utah Code Ann. § 62A-4a-403(1)(a). The peace officer or law enforcement officer must immediately notify the division, and if an initial report of abuse or neglect is made to the division, the division must immediately notify the appropriate local law enforcement agency. *Id.* § 62A-4a-403(1)(b).

[249] Wis. Stat. § 48.981(3).

[250] Ariz. & Conn.

[251] Ark., Colo., Idaho, Mo., Neb., Utah & W. Va. Similarly, Conn. provides the condition that the child is placed (1) at imminent risk of serious harm or (2) in serious danger of being abused or neglected. Haw. provides the condition that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future.

[252] Conn. Gen. Stat. §§ 17a-101b & 17a-101c.

[253] Minn. Stat. § 626.556 subd. 6(a).

- The standard for reporting in Wisconsin includes a reasonable belief that the child has been threatened with abuse or neglect and that the abuse or neglect will occur.[254]

The penalty for a mandated reporter's failure to report also varies widely varies. In Pennsylvania, if a person required to report or make a referral to the appropriate authorities willfully fails to do so, the person "commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation."[255] Most states classify such failure as some type of a misdemeanor, with different terms of imprisonment and different ranges of fines.[256] Some states specifically provide for proximate damages caused by the failure to report or interference with the making of a report,[257] costs and attorneys' fees,[258] sanctions or disciplinary action involving professional licensure[259] or mandatory participation in an educational and training program (with the program costs paid by the participants).[260]

Table 4 provides legal citations for each state's law regarding penalties and prohibitions for failure to report suspected child abuse.[261]

Task Force Deliberations

Throughout the course of its deliberations, the Task Force compiled a list of specific issues to address and consider in more detail regarding mandatory reporting and school or institutional abuse. Regarding mandatory reporting, these issues included the universal reporter requirement, the meaning of an "immediate" report, toll-free reporting, greater protections for mandatory reporters, increased penalties for the failure to report or to understand the magnitude of the failure to report, a false report in a custody dispute, and a health care practitioner's reluctance to diagnose because of the fear of litigation or

---

[254] Wis. Stat. § 48.981(2)(a).

[255] 23 Pa.C.S. § 6319.

[256] Fines can range from up to $500 to as much as $10,000 for the first violation. Del. mandates a civil penalty not to exceed $50,000 for subsequent violations. Ariz. also provides that if the failure to report involves surreptitious photographing, videotaping, filming or digitally recording, child prostitution, incest, furnishing harmful items to a minor over the Internet; sexual offenses or sexual exploitation of children, then the person commits a felony. Fla. classifies the filing of a false report as a felony, with a fine of up to $10,000 for each violation. Ill. provides that the second or any subsequent violation constitutes a felony. Additionally, Ill. classifies as a felony the act of preventing the discovery of an abused or neglected child by lawful authorities for the purpose of protecting or insulating a person or entity from arrest or prosecution. Ky. provides that the third or any subsequent violation constitutes a felony. Minn. provides that if a child dies because of the lack of medical care following the failure to report suspected child abuse or neglect, the person failing to report is guilty of a felony. N.J. classifies a person who knowingly fails to report an act of child abuse is a "disorderly person."

[257] Colo., Iowa, Mont. & Ohio (which provides for liability for compensatory and exemplary damages to the child who would have been the subject of the report if the report were made).

[258] Del.

[259] Ill. & Mass.

[260] Conn.

[261] *Infra* p. 361.

the demands of testifying in court. Regarding school or institutional abuse, these issues included dual reporting, the definition of serious bodily injury, the Clery Act requirements for colleges and universities,[262] direct reporting by a witness, and the elimination of the carve-out for suspected student abuse.

[262] Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Pub. L. 101-542, codified at 20 U.S.C. § 1092(f), with implementing regulations at 34 C.F.R. § 668.46.

BLANK

PAGE

General Protective Services in Pennsylvania

In contrast to child protective services,[263] general protective services are defined as the services and activities provided by each county children and youth social service agency for nonabuse cases requiring protective services.[264] Regulations specify that general protective services are:

> Services to prevent the potential for harm[265] to a child who meets one of the following conditions:
>
> (i) Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals.
>
> (ii) Has been placed for care or adoption in violation of law.
>
> (iii) Has been abandoned by his parents, guardian or other custodian.
>
> (iv) Is without a parent, guardian or legal custodian.
>
> (v) Is habitually and without justification truant from school while subject to compulsory school attendance.
>
> (vi) Has committed a specific act of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision.
>
> (vii) Is under 10 years of age and has committed a delinquent act.
>
> (viii) Has been formerly adjudicated dependent under section 6341 of the Juvenile Act (relating to adjudication), and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in subparagraph (vi).
>
> (ix) Has been referred under section 6323 of the Juvenile Act (relating to informal adjustment), and who commits an act which is defined as ungovernable in subparagraph (vi).[266]

---

[263] Child protective services are defined as "[t]hose services and activities provided by the Department of Public Welfare and each county [children and youth social service] agency for child abuse cases." 23 Pa.C.S. § 6303(a); 55 Pa. Code § 3490.4.

[264] 23 Pa.C.S. § 6303(a). Protective services are defined as the services and activities provided by the Department of Public Welfare and each county agency for children who are abused or are alleged to be in need of protection under the Child Protective Service Law. *Id. Also see* 55 Pa. Code § 3490.4.

[265] The phrase "potential for harm" is defined as "[l]ikely, if permitted to continue, to have a detrimental effect on the child's health, development or functioning." 55 Pa. Code § 3490.223. However, the phrase does not include "imminent risk," which is part of the definition of "child abuse." *Id.*

[266] 55 Pa. Code § 3490.223.

The Child Protective Services Law provides that "[t]he primary purpose of general protective services is to protect the rights and welfare of children so that they have an opportunity for healthy growth and development."[267] The statute specifies that "[i]mplicit in the county agency's protection of children is assistance to parents in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties more adequately."[268]

Each county agency is responsible for administering a program of general protective services to children and youth to:

(1) Keep children in their own homes, whenever possible.
(2) Prevent abuse, neglect and exploitation.
(3) Overcome problems that result in dependency.
(4) Provide temporary, substitute placement in a foster family home or residential child-care facility for a child in need of care.
(5) Reunite children and their families whenever possible when children are in temporary, substitute placement.
(6) Provide a permanent, legally assured family for a child in temporary, substitute care who cannot be returned to his own home.
(7) Provide services and care ordered by the court for children who have been adjudicated dependent.[269]

Within 60 days of receipt of a report regarding a child in need of protective services, an assessment must be completed and a decision made on whether to accept the family for service, with the county agency providing or arranging for services necessary to protect the child during the assessment period. In addition, each county agency must implement a State-approved risk assessment process in performance of its duties.[270]

Each county agency must make the following available for the prevention and treatment of child abuse and neglect: multidisciplinary teams, instruction and education for parenthood and parenting skills, protective and preventive social counseling, emergency caretaker services, emergency shelter care, emergency medical services, part-day services, out-of-home placement services, therapeutic activities for the child and family directed at alleviating conditions that present a risk to the safety and well-being of a child and any other services required by department regulations.[271]

The county agency must initiate the appropriate court proceedings "[i]f the county agency determines that protective services are in the best interest of a child and if an offer of those services is refused or if any other reason exists to warrant court action[.]"[272]

---

[267] *Id.* § 6374(a).
[268] *Id.* § 6374(b).
[269] *Id.* § 6373(a).
[270] *Id.* § 6375(c).
[271] *Id.* § 6375(f).
[272] *Id.* § 6375(j).

Components of Differential Response

Differential response refers to "a form of practice in child protective services that allows for more than one method of response to reports of child abuse and/or neglect."[273]

> Also called "dual track," "multiple track," or "alternative response," this approach recognizes the variation in the nature of reports and the concomitant value of responding differentially. Differential response has received increasing attention over the past decade as more jurisdictions have seen the value in differentiating their response to reports of child maltreatment. Moving away from an incident-based, adversarial investigation for all reports and toward a more family assessment-oriented approach for some reports, differential response offers services without having to investigate or substantiate the allegations.[274]

While differential response and traditional child protective services response have many things in common, there are also significant differences between them. Similarities include the following:

- A focus on the safety and well-being of the child.
- The promotion of permanency within the family whenever possible.
- A recognition of the authority of child protective services to make decisions about removal, out-of-home placement, and court involvement, when necessary.
- An acknowledgement that other community services may be more appropriate than child protective services in certain cases.[275]

However, traditional child protective services response involves an *investigative* process, whereas differential response systems use an *assessment* process. The main distinctions between the two approaches are set forth in the following chart.[276]

---

[273] Patricia Schene, *The Emergence of Differential Response*, 20 Protecting Children, nos. 2 & 3 (2005), at 4, *available at* http://www.americanhumane.org/assets/pdfs/children/differential-response/pc-20-2-3pdf.pdf (last accessed Oct. 15, 2012).

[274] *Id.*

[275] *Id.* at 5; U.S. Dep't of Health & Human Servs., Admin. for Children & Families, Child Welfare Info. Gateway, *Differential Response to Reports of Child Abuse and Neglect* (2008), at 3, *available at* http://www.childwelfare.gov/pubs/issue_briefs/differential_response (last accessed Oct. 15, 2012).

[276] Schene, *supra* note 273, at 5. However, all responses acknowledge the need to respond to changing family circumstances that challenge or promote child safety. *Id.*

	Assessment	Investigation
Focus	To understand the underlying conditions and factors that could jeopardize the child's safety as well as areas of family functioning that need to be strengthened	To understand what happened to the child in the incident being reported, who was responsible, and what steps need to be taken to ensure the child's safety
Type of maltreatment	Generally targets low- to moderate-risk cases	Under differential response, investigation is generally reserved for more serious reports that will likely involve court action and/or criminal charges; without differential response, investigation is used for all reports
Purpose	To engage parents, the extended family network and community partners, in a less adversarial approach, to recognize problems and participate in services and supports to address their needs	To determine "findings" related to allegations in the report and identify "perpetrators" and "victims"
Substantiation	Reports of child abuse or neglect are not substantiated, and therefore perpetrators and victims are not identified	A decision on substantiation of the allegations in the report is a key objective
Central registry	Alleged perpetrators' names are not entered into a state's central registry	Perpetrators' names, based on the findings, are entered into a state's central registry
Services	Voluntary services offered; if parents do not participate, the case is either closed or switched to another type of response	If a case is opened for services, a case plan is generally written and services are provided; families can be ordered by the court to participate in services if child protective services involves the court in the case

The core elements of differential response include the following:

- The use of multiple, discrete tracks of intervention when screening in and responding to maltreatment reports.

- The determination of track assignment by the presence of imminent danger, the level of risk, the number of previous reports, the source of the report and case characteristics, such as the type of alleged maltreatment and the age of the alleged victim.

- The ability to decrease or elevate original track assignments based on additional information gathered during the investigation or assessment phase.

- The provision of voluntary services for families who receive a non-investigatory response, meaning families can accept or refuse the offered services without consequence.

- The non-identification of perpetrators and victims for the alleged reports of maltreatment that receive a non-investigation response.

- The non-entry of the name of the alleged perpetrator into the central registry for those individuals who are served through a non-investigation track.[277]

Rationale Behind Differential Response

Dissatisfaction with the traditional approach of child protective services resulted from a number of factors, including the following:

- The prioritization of cases, based on their severity, given the limited resources available.

- The perception that the child protective services process is adversarial, accusatory and threatening, which may lead to the lack of parental cooperation.

- The low rate of services provided.

- Over time, evolving standards regarding what constitutes child maltreatment have made the range of family circumstances reported to county children and youth social service agencies too broad for a standardized approach.

- The difficulty in maintaining a standardized approach to accomplish two potentially contradictory objectives: sanctioning perpetrators of child maltreatment and providing services to families to remediate the child maltreatment.[278]

Implementation of a differential response system, coupled with the traditional approach of child protective services, increases an agency's flexibility in responding to families with different needs. Differential response, which analyzes "causes" and not just "symptoms," tends to diminish subsequent reports by providing increased services to

---

[277] Am. Humane Ass'n, *About Differential Response*, *available at* http://www.americanhumane.org/children/programs/differential-response/about-differential-response.html (last accessed Oct. 15, 2012).

[278] U.S. Dep't of Health & Human Servs., Admin. for Children & Families, *The National Study of Child Protective Services Systems and Reform Efforts: Literature Review* (Mar. 2001), at 2, *available at* http://aspe.hhs.gov/hsp/protective01/index.htm (last accessed Oct. 15, 2012).

families.[279] While the traditional approach is usually effective in resolving immediate safety issues, the underlying causes that put the child at risk are not normally addressed. Unless the child is removed from the home, incidents are likely to recur. Therefore:

> Although immediate safety issues are normally resolved before a case is closed in traditional investigatory practice, the underlying causes for those threats to safety are not. It is not uncommon to have subsequent reports on the same family. It is rare that the key criteria for closing a case is the achievement of clear outcomes in terms of changed behavior that could sustain protective parenting and child well-being over time.
>
> The response of CPS [child protective services] is, in sum, often seen as an adversarial investigation, leading to minimal services unless the situation is so severe that the child is removed from the home.[280]

General agreement exists on "the need for more careful assessment of what needs to change, which services and supports can contribute to those changes, and how parents can be engaged in pursuing those changes."[281] There is an increased "appreciation of the importance of engaging parents, involving extended family networks in protecting children, building on the strengths and motivations of parents to do a better job, and recognizing the enormous challenges many families face in sustaining healthy lives."[282] Accordingly, "[d]ifferential response offers the opportunity to address those challenges, use family strengths to make changes, leverage protective capacities, and engage parents and their extended familial and community networks more effectively."[283] Both parents and social workers express more satisfaction with the differential response process and results than with the traditional investigation:

> Differential response achieves a core objective of family-centered practice by providing interventions that more closely match the severity of the concern being reported and by engaging families in the assessment process, which results in more balanced assessment and planning for children.[284]

Different responses to child abuse and neglect represent more than simple policy variations; they are based on different philosophic approaches. Internationally, experts have identified two opposing positions in child welfare: family support orientation and child protection orientation. The child protection orientation is characterized by a "primary concern to protect children from abuse, usually from parents who are often considered morally flawed and legally culpable. The social work processes associated with this orientation are built around legislative and investigatory concerns, with the

---

[279] Wolfe, *supra* note 63.

[280] Schene, *supra* note 273, at 5.

[281] *Id.* at 5-6.

[282] *Id.* at 6.

[283] *Id.*

[284] Am. Humane Ass'n & Child Welfare League of Am., *National Study on Differential Response in Child Welfare* (Nov. 2006), at 9, *available at* http://www.americanhumane.org/assets/pdfs/children/pc-2006-national-study-differential-response.pdf (last accessed Oct. 15, 2012).

relationship between social workers and parents often becoming adversarial in nature."[285] The family support orientation is based on "a tendency to understand acts, or circumstances, thought of as harmful to children, in the contexts of psychological or social difficulties experienced by families."[286] Families are perceived as needing support, and services are provided to ensure successful parenting.

Demonstrated Outcomes

According to the latest data provided by the American Humane Association, "currently, 21 States and tribes have reorganized their CPS [child protective services] systems to implement differential response, with an additional 7 States contemplating such an innovation."[287] Using more stringent criteria, the National Quality Improvement Center on Differential Response in Child Protective Services enumerated 14 states that have enacted measures authorizing or requiring their child welfare agencies to introduce differential response approaches.[288] In crafting legislation to implement a differential response, consideration should be given to the following:

- Service gaps, in such cases as economic downturns, isolated or rural populations, inconsistencies in the availability of services or inadequate funding.

- Safety issues, with a proper assessment of current harm and future risk of harm.

- Family participation in services.

- Criteria for defining abuse and neglect and for determining levels of risk.

- The recurrence of abuse and neglect and the return of families into the child protective services and general protective services systems.

---

[285] Marie Connolly, *Differential Responses in Child Care and Protection: Innovative Approaches in Family-Centered Practice*, 20 Protecting Children, at 10 (*quoting* Trevor Spratt, 31 *The Influence of Child Protection Orientation on Child Welfare Practice*, British Journal of Social Work, at 934), *available at* http://www.americanhumane.org/assets/pdfs/children/protecting-children-journal/pc-20-2-3.pdf (last accessed Oct. 15, 2012).

[286] *Id.*

[287] Catherine Nolan, Jean Blankenship & Dori Sneddon, Research and Practice Advances in Differential Response, 26 Protecting Children, no. 3 (2012), at 4, *available at* http://www.differentialresponseqic.org /assets/docs/protecting-children-2012.pdf (last accessed Oct. 15, 2012).

[288] Ill., Ky., La., Minn., Mo., Nev., N.Y., N.C., Ohio, Okla., Tenn., Vt., Va. & Wyo. The Nat'l Quality Improvement Ctr. on Differential Response in Child Protective Servs., *Differential Response Approach in Child Protective Services: An Analysis of State Legislative Provisions*, *available at* http://www.differentialresponseqic.org/assets/docs/differential-response.pdf (last accessed Apr. 30, 2012).

- Cost savings and an assessment of savings regarding time and resources.

- Community resources.

- Other issues, such as confidentiality, disclosure of information and the involvement of key child welfare system stakeholders.[289]

An analysis of various states' differential response systems highlights that the number of families investigated with resulting identification on central registries decreased, the duration of family involvement with child protective services also decreased, the use of community services increased for families in pilot projects, and child safety was not compromised in the pilot sites.[290] Although there remain continuing problems regarding the adequacy of resources, such as staffing and funding, "overall, the evaluations of differential response systems have demonstrated positive response outcomes, particularly in terms of sustained child safety, improved family engagement, increased community involvement, and enhanced worker satisfaction."[291]

In implementing a differential response system, it must be clear when an assessment is performed and when an investigation is performed (and, consequently, staff must be trained to determine the appropriate response). Staff and supervisors must be clear as to how safety and risks will be assessed, how to engage parents to identify their needs and participate in services, how to follow up on voluntary involvement, and when and how to take another path if necessary for child safety.[292] Training should be caseworker-specific and supervisor-specific,[293] but training alone is insufficient for effective implementation. Also necessary are formal supervision (compliance-driven) and coaching (skills-oriented and aimed at the development of clinical judgment based on best practices).[294]

As differential response involves reliance on voluntary services to improve the family situation, the availability and delivery of community services becomes a crucial factor, though such services vary from community to community.[295] Increased access,

---

[289] *Id.*

[290] Literature Review, *supra* note 278, at 7.

[291] Child Welfare Info. Gateway, *supra* note 209, at 9. *Also see* Am. Humane Inst. of Applied Research Minn. Consultants, *Ohio Alternative Response Pilot Project* (on file with the J. State Gov't Comm'n) & Gary Siegel, *Worth the Investment? Analysis of Costs in a Differential Response Program*, 26 Protecting Children, no. 3, *available at* http://www.differentialresponseqic.org/assets/docs/protecting-children-2012.pdf (last accessed Sept. 4, 2012).

[292] Schene, *supra* note 273, at 7

[293] Kevin E. Brown, Stacy L. Cox & Nancy E. Mahoney, *"From Pie in the Sky" to the Reality of Implementation: Lessons Learned by the SOAR Consortium on the Journey to Differential Response*, 26 Protecting Children, no. 3, *available at* http://www.differentialresponseqic.org/assets/docs/protecting-children-2012.pdf (last accessed Sept. 4, 2012).

[294] Dean L. Fixcen, *et al., Implementation Research: A Synthesis of the Literature* (Univ. of S. Fla. 2005), available at http://ctndisseminationlibrary.org/PDF/nirnmonograph.pdf (last accessed Oct. 17, 2012).

[295] Literature Review, *supra* note 278, at 9.

additional training for service providers and better coordination are required. For example, child protective services must join with others to identify the needs and gaps in services so that families may access them in a timely manner, and community service providers must be sensitive to the need to address possible safety risks for family members. Therefore, greater coordination is necessary between child protective services and community service providers.[296]

Task Force Deliberations

Throughout the course of its deliberations, the Task Force compiled a list of specific issues to address and consider in more detail regarding differential response, including differential reporting versus differential response and inclusion of general protective services statistics in the national statistics for suspected child abuse and neglect.

The Task Force received testimony from several entities regarding differential response in the context of child protective services. Generally, the testimony highlighted nationwide efforts to move from one standard approach in investigating child abuse and neglect to a response that is tailored to varying levels of safety, risk and need for specific children and families. The investigative pathway is used for severe or extreme cases with consideration given to the need for law enforcement involvement, high-risk and immediate safety concerns, and the presence of imminent danger. The differential response often referred to as the assessment pathway is used for low- to moderate-risk cases and cases of neglect, which often involve poverty. Current law provides the general framework for implementation of a differential response system through the distinction between child protective services cases and general protective services cases.

By the end of 2011, more than 20 states had evaluated their differential response systems by comparing families that were investigated and those that received assessments. The result was that child safety was not compromised under a differential response system and that families receiving assessments were more likely to receive services, with the number of services received being greater and with families reporting satisfaction with the differential response. Additionally, differential response appeared to be cost-effective overall, due to reduced costs for case management and follow-up.[297]

The Task Force acknowledges the Bulletin No. 3490-12-01 of the Office of Children, Youth and Families, Pennsylvania Department of Public Welfare (issued April 13, 2012 and effective July 1, 2012), which specifies the requirements regarding response

---

[296] Schene, *supra* note 273, at 7.

[297] The Office of Children, Youth and Families within the Department of Public Welfare, in partnership with Casey Family Programs and Pennsylvania Partnerships for Children, has been reviewing the effectiveness of differential response systems based upon the available literature and research and has conducted conference calls with key leaders across the nation. It anticipates that it will develop recommendations to improve practice and implementation of an effective differential response system within the Commonwealth.

times for reports made to county children and youth social service agencies that are designated as general protective services reports. Response times are based on information gathered regarding the in-home safety assessment and management process and the risk assessment model and include the following:

- Immediate, where a present danger exists that meets the safety threshold (the condition has the potential to cause serious harm to the child, is specific and observable, is out-of-control, affects a vulnerable child, and is imminent).

- Priority -- within 24 hours, where an impending danger exists that meets the safety threshold or the information reported indicates that overall risk factors rated as high exist, which place the child in danger of future harm.

- Expedited -- within 3-7 calendar days, where the information reported indicates that overall risk factors rated as moderate exist, which place the child in danger of future harm.

- General/Other -- within 7-10 calendar days, where the information reported indicates that overall risk factors rated as low exist, which may place the child in danger of future harm.

INVESTIGATIONS AND DISPOSITION OF REPORTS

Complaints and Investigations in Pennsylvania

Upon receipt of a complaint of suspected child abuse, the Pennsylvania Department of Public Welfare must immediately transmit oral notice of the complaint to the appropriate county children and youth social service agency.[298] The department must also notify the county agency of any information from the statewide central register[299] or pending complaint file regarding a prior report or current investigation concerning a subject of the report.[300] If the complaint does not suggest suspected child abuse but rather a need for social services or other services or investigation, the department must "transmit the information to the county agency or other public agency for appropriate action."[301] The information is not considered a child abuse report unless the county agency has reasonable cause to suspect (after investigation) that abuse occurred.[302]

The county agency must (1) immediately commence an appropriate investigation to determine whether emergency protective custody is required or (2) commence an appropriate investigation and see the child within 24 hours of receipt of the report.[303] The investigation must include a determination of the following:

(1) The risk of harm to the child if he or she continues to remain in the existing home environment.
(2) The nature, extent and cause of any condition enumerated in the report.
(3) Any action necessary to provide for the safety of the child.[304]

---

[298] 23 Pa.C.S. § 6334(a).

[299] Section 6331 of the Child Protective Services Law established in the Department of Public Welfare a pending complaint file of child abuse reports under investigation, a statewide central register of child abuse consisting of founded and indicated reports, and a file of unfounded reports awaiting expunction. *See* notes 306, 307 & 308 for an explanation of founded, indicated and unfounded reports.

[300] 23 Pa.C.S. § 6334(a).

[301] *Id.* § 6334(b).

[302] *Id.*

[303] *Id.* § 6368(a).

[304] *Id.* During the investigation, the county agency must provide or arrange for services necessary to protect the child. *Id.*

The county agency's investigation must be completed within 60 days.[305] Before that time, the county agency must determine whether the report is founded,[306] indicated[307] or unfounded[308] and whether to accept the family for service.[309] If the complaint of suspected abuse is determined to be one that cannot be investigated because the individual accused of the abuse is not a perpetrator as specifically defined, but the complaint does suggest the need for investigation, the county agency must immediately transmit the information to the appropriate authorities, including the district attorney or other law enforcement official, in accordance with the established county protocols for investigative teams.[310]

Upon receipt of a report by a school administrator or employee as specified under the Child Protective Services Law, law enforcement officials must conduct an investigation in cooperation with the district attorney. A determination will then be made regarding what criminal charges, if any, will be filed.[311] If the law enforcement officials "have reasonable cause to suspect on the basis of initial review that there is evidence of serious bodily injury, sexual abuse or sexual exploitation committed by a school employee against a student," they must "notify the county agency in the county where the alleged abuse or injury occurred for the purpose of the agency conducting an investigation of the alleged abuse or injury."[312] The law enforcement officials and the county agency must advise each other of the status and findings of their respective investigations on an ongoing basis.[313]

Immediately after receiving a report, the county agency must notify the Department of Public Welfare of the receipt of the report. Among other things, the report must contain information regarding where the suspected abuse or injury occurred, the age and sex of the student, the nature and extent of the suspected abuse or injury, the name and home address of the school employee alleged to have committed the abuse or injury, and the source of the report to the county agency.[314]

---

[305] *Id.* § 6368(c).

[306] A founded report occurs when there is a judicial adjudication based on a finding that the child has been abused, which includes the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse. *Id.* § 6303(a).

[307] An indicated report occurs when there is substantial evidence of the alleged abuse, based on available medical evidence, the child protective service investigation or an admission of the acts of abuse by the perpetrator. *Id.*

[308] An unfounded report a report made under the Child Protective Services Law that is not a founded report or an indicated report. *Id.*

[309] *Id.* § 6368(c).

[310] *Id.* § 6368(d).

[311] *Id.* § 6353.1(a).

[312] *Id.* § 6353.1(b)(1).

[313] *Id.* § 6353.1(b)(4). In addition, the county agency must coordinate its investigation to the fullest extent possible with law enforcement officials. *Id.* § 6353.2(b).

[314] *Id.* § 6353.2(a).

The county agency's investigation to determine whether the report regarding the school employee is an indicated or unfounded report must be completed within 60 days.[315]

Investigations of Reports in Other States

Upon receipt of a report of suspected or known child abuse, an investigation or assessment may be required to be commenced immediately or within a specific period (such as 72 hours), frequently depending upon the nature of the allegation raised in the report. Specific time frames across the nation for the commencement of such an investigation or assessment include:

- Immediately.[316]
- Within two hours.[317]
- Within 24 hours.[318]

---

[315] *Id.* § 6353.2(c).

[316] Ariz., Cal., Fla. (if it appears that the immediate safety or well-being of a child is endangered, the family may flee or the child will be unavailable for purposes of conducting a child protective investigation), Ga. (or within 24 hours, if there is an allegation of severe abuse or neglect), Idaho (if the child is in immediate danger involving a life-threatening or emergency situation), Ill., Ind. (if law enforcement receives the initial report, the department believes that a child is in imminent danger of serious bodily harm, or the report alleges a child may be a victim of child abuse), Iowa (upon receipt of an oral report), Ky., La. (for high and intermediate risks), Minn. (if substantial child endangerment is alleged), Miss., Nev. (if the child is five years of age or younger, there is a high risk of serious harm to the child, the child has suffered a fatality, the child is living in a household in which another child has died, the child is seriously injured or the child has visible signs of physical abuse), N.H. (if it appears that the immediate safety or well-being of a child is endangered, the family may flee or the child disappear, or the facts otherwise warrant), N.C. (when abandonment is alleged or if evidence exists that the juvenile may have been abused or physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, in which case the local law enforcement agency must immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation), Okla. (but no later than 24 hours, if the child is in imminent danger of serious physical injury), R.I. (for emergency response and immediate response cases), S.D., Tenn. (for sexual abuse cases, if it appears that the immediate safety or well-being of a child is endangered, the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant), Tex. (in circumstances in which the death of the child or substantial bodily harm to the child will imminently result unless the department immediately intervenes), Utah, Va. (where the local department must, upon receipt of a complaint, report immediately to the attorney for the Commonwealth and the local law-enforcement agency) & Wis.

[317] Mass. (generally).

[318] Ark. (if severe maltreatment is alleged), Fla. (generally), Iowa (if an allegation concerns child abuse), Md. (for suspected physical or sexual abuse), N.J. (generally, but within two hours if law enforcement requests an immediate response, the child has died and a sibling remains under care of parent or guardian, the child is a boarder baby left at hospital or born drug-exposed, the child under age six is alone at the time of the report, the child requires medical attention at the time of the report, or the child is being seriously physically abused at the time of the report), N.Y., N.C. (when abuse is alleged), Ohio, R.I. (for routine response cases, if there is minimal risk of harm to the child), S.C., Tenn. (for sexual abuse cases not requiring an immediate investigation or assessment), Texas (for reports concerning children who appear to face an immediate risk of abuse or neglect that could result in death or serious harm), Wash. (if the child's welfare is endangered) & Wyo.

- Within 48 hours (2 days).[319]
- Within 72 hours.[320]
- Within 5 days.[321]

In Louisiana, in lieu of an investigation, a report of a low level of risk may be assessed promptly through an interview with the family to identify needs and available community resources. If during this assessment, it is determined that the child is at immediate substantial risk of harm, the local child protection unit must promptly conduct or participate in an intensive investigation.[322]

Reports are investigated by state, county or local social services department or by the appropriate law enforcement agency.[323] In California, the local law enforcement agency, county welfare department or probation department makes the investigation, all of which report to the supervisory agency as soon as possible after the initial report is received. In Connecticut, after the investigation has been completed and there exists reasonable cause to believe that sexual abuse or serious physical abuse of a child has occurred, the appropriate local law enforcement authority and the Chief State's Attorney (or the state's attorney for the judicial district where the child resides or the abuse or neglect occurred) must be notified. Illinois permits law enforcement personnel to investigate reports of suspected child abuse or neglect concurrently with the department.

The mandated completion periods for investigations or assessments, as expected, vary widely from state to state. Specific time frames across the nation include the following:

---

[319] Idaho (but law enforcement must be notified within 24 hours and the child seen within 48 hours if the child is not in immediate danger but there are clear allegations of physical or sexual abuse or medical neglect), Mass. (if there is no reasonable cause to believe that the child's health or safety is in immediate danger from abuse or neglect) & N.C. (for specified criminal investigations; if there is evidence that a juvenile may have been abused or physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian or caretaker).

[320] Ark. (generally), Colo., Conn. (but best efforts must be made to commence an investigation within two hours of receipt of the report if there is an imminent risk of physical harm to the child), Kan. (generally, but an investigation must commence the same day if there is reason to believe child has been seriously injured or is in immediate serious danger), Mo., Nev. (generally), N.H. (generally), N.C. (when neglect or dependency is alleged), Tex. (generally), Vt. & Wash. (if the child's welfare is not endangered).

[321] Ga. (if there is an allegation of a less severe nature than severe abuse or neglect), Idaho (but the family services worker's response must occur within three days, with the child seen within five days if the child may be in a vulnerable situation because of service needs that, if left unmet, may result in harm or if the child is without parental care), Ind. (but an assessment must be initiated within a reasonably prompt time, but not later than 5 days, after receipt of a report alleging child neglect or alleging that a child lives with a parent, guardian or custodian who is married to or lives with a person who has been convicted of neglect of a dependent or a battery offense or is required to register as a sex or violent offender), Md. (for suspected neglect or mental injury) & Minn. (if substantial child endangerment is not alleged).

[322] La. Child. Code Ann. art. 612(A)(3).

[323] Specific reports that require law enforcement agency investigations across the nation include the following: Ala. (reports involving disciplinary or corporal punishment committed in a school, kindergarten or state-operated child residential facility), Colo. (reports involving third parties or non-family members, whereas the county department investigates intrafamilial cases and the state department investigates institutional cases), Del. (reports involving crimes committed against the child), Fla. (reports involving allegations of criminal conduct) & Haw. (any report received by the department).

- 72 hours.[324]
- 5 days.[325]
- 10 days.[326]
- 15 days.[327]
- 20 days.[328]
- 30 days.[329]
- 45 days.[330]
- 60 days.[331]
- 90 days.[332]

Table 5 provides legal citations for each state's law regarding investigations of reports of suspected child abuse and neglect.[333]

Investigative Findings in Other States

Investigative findings regarding reports of suspected child abuse[334] are generally categorized as true, untrue or inconclusive, although the terminology and substantive components regarding these categories vary widely nationwide.[335] States may classify true reports as follows:

---

[324] Ky. & Miss. In Ky., within 72 hours, Health and Family Services must make a written report to the Commonwealth's or county attorney and the local enforcement agency or the State Police concerning the action that has been taken on the investigation. Ky. Rev. Stat. Ann. § 620.040(1)(c). Miss. requires the law enforcement agency and the Department of Human Services to file a preliminary report with the prosecutor's office within 24 hours and a final report with the district attorney's office within 72 hours. Miss. Code Ann. § 43-21-353(1).

[325] Mass. (generally).

[326] Md., if possible. An investigation not completed within 30 days must be completed within 60 days.

[327] Mass., if there is no reasonable cause to believe that the child's health or safety is in immediate danger from abuse or neglect.

[328] Iowa.

[329] Ark., Cal. & Mo. (status report).

[330] Ariz., Conn., Minn., S.C. (but a single extension of no more than 15 days may be granted for good cause shown), Vt. & Va.

[331] Fla., Haw., Ill., Mont., N.Y. (at which time a determination is made whether the report is "indicated" or "unfounded") & Tenn. (at which time a determination is made whether the report is "indicated" or "unfounded").

[332] Wash., unless the investigation is being conducted under a written protocol and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary.

[333] *Infra* p. 362.

[334] Instead of specifically referencing child abuse, Alaska uses the concept of a "child in need of aid."

[335] In S.C., *e.g.*, all initial reports are considered "suspected."

- Substantiated.[336]
- Indicated.[337]
- Founded.[338]
- Confirmed.[339]
- True.[340]
- Justified.[341]
- Recommended.[342]
- Evidence of abuse or neglect.[343]

In addition, several other states use the term "determination": Florida, Missouri and North Carolina provide for a "determination" of abuse or neglect, while Minnesota provides for a "determination" whether maltreatment occurred or whether child protective services are needed.

States may classify untrue reports as follows:

- Unsubstantiated.[344]
- Unfounded.[345]
- Ruled out.[346]
- Not indicated.[347]
- Not justified.[348]
- Screened out.[349]
- No evidence.[350]
- Without merit.[351]
- False.[352]

---

[336] Ariz., Cal., Del., Idaho, Ind., Maine (which also uses the term "indicated"), Mass., Mich., Neb., Nev., N.J., N.M., Okla., S.D., Tenn. (which also uses the term "indicated"), Tex., Utah, Vt., W. Va., Wis. & Wyo.

[337] In addition to Pa., these states include Ala., Ill., Maine (which also uses the term "substantiated"), Md., N.Y., R.I., S.C. & Tenn. (which also uses the term "substantiated").

[338] In addition to Pa., these states include Iowa, N.H., Or., Va. & Wash.

[339] Colo., Ga. & Haw.

[340] Ark.

[341] La.

[342] Conn.

[343] Miss.

[344] Ariz., Ark., Conn., Del., Haw., Idaho, Ind., Maine, Mass., Nev., N.M., S.D., Tenn. (which also uses the term "unfounded"), Tex., Utah, W. Va., Wis. & Wyo.

[345] In addition to Pa., these states include Cal., Colo., Ga., Ill., Iowa, Mont., Neb., N.H., N.J., N.Y., Or., R.I., S.C., Tenn. (which also uses the term "unsubstantiated") & Va.

[346] Md. & Okla.

[347] Ala.

[348] La.

[349] Wash.

[350] Miss.

[351] Utah.

[352] Fla. provides for a "false report," which is a report or suspected abuse, neglect or abandonment of a child that is maliciously made for the purpose of (1) harassing, embarrassing or harming another person; (2) personal financial gain for the reporting person; (3) acquiring custody of the child or (4) personal

Several states do not provide specific terms for the categories of true or untrue reports.[353]

An inconclusive report may be classified as follows:

- Inactive.[354]
- Inconclusive.[355]
- Unconfirmed.[356]
- Undetermined.[357]
- Unsubstantiated.[358]
- Screened out.[359]
- False.[360]
- Unfounded.[361]
- Unable to determine.[362]
- Unsupported.[363]
- Under investigation.[364]

Findings are based on a variety of different levels of proof, with "preponderance of the evidence" the most common.[365] Other levels of proof include the following:

- More likely that not.[366]
- Credible evidence.[367]
- Reasonable cause.[368]
- Evidence.[369]
- Probable cause.[370]

---

benefit for the reporting person in any other private dispute involving the child. A false report, however, does not include a report of suspected abuse, neglect or abandonment of a child that is made in good faith.

[353] Fla., Kan., Ky., N.D. & Ohio.

[354] Ark.

[355] Cal., La., Wash. (which also uses the term "unfounded") & W. Va.

[356] Ga.

[357] Ill.

[358] Md., Mich., Mont. & Okla.

[359] N.H.

[360] Tex.

[361] Wash. (which also uses the term "inconclusive").

[362] Or.

[363] Utah.

[364] Wyo.

[365] Ark., Colo., Del., Ind. (which also uses the standard "credible evidence"), Maine, Mich. (which also uses the standard "evidence"), Minn., Mo., Mont., Neb., S.C., Utah & Wyo.

[366] Cal. & Wash.

[367] Ala., Ga., Ill., Ind. (which also uses the standard "preponderance of the evidence"), Md., N.Y. & Okla.

[368] Conn., Or. & Vt.

[369] La., Mich. (which also uses the standard "preponderance of the evidence") & Miss.

[370] Ariz. & N.H.

In Idaho, an unsubstantiated report occurs when there is insufficient evidence or there are facts that indicate the report is erroneous.

Table 6 provides legal citations for each state's law regarding investigative findings for a report of suspected child abuse or neglect and the levels of proof that must be shown.[371]

Task Force Deliberations

Throughout the course of its deliberations, the Task Force compiled a list of specific issues to address and consider in more detail regarding investigations, including near fatalities; monitoring situations in which a child who is the subject of a previous report of child abuse or neglect is suddenly withdrawn from school or daycare and is isolated from other individuals; the ability of a licensing agency to inform the county children and youth social service agency of a complaint regarding a licensee; law enforcement concerns regarding the exchange of information; ongoing input by a reporter of suspected child abuse into an investigation; the availability of medical records regarding the child's previous injuries; access to previous ChildLine reports, investigations and family assessments; court confirmation regarding a founded report; the use of children's advocacy centers; the use of team investigative approaches; communication; coordination of efforts; and the staff of the county children and youth social service agency working with medical professionals to support a response to a report of suspected child abuse or neglect.

[371] *Infra* p. 363.

TEMPORARY OR EMERGENCY CUSTODY WITHOUT A COURT ORDER

Protective Custody in Pennsylvania

In Pennsylvania, a child may be taken into protective custody (1) as provided by 42 Pa.C.S. § 6324,[372] (2) by a physician examining or treating the child or by the director of a medical institution "where the child is being treated if protective custody is immediately necessary to protect the child" or (3) by a physician or the director of a hospital under the Newborn Protection Act[373] if the child is a newborn.[374] A child may not be held in protective custody for more than 24 hours unless the appropriate county agency is immediately notified and the agency obtains a court order permitting the child to be held in custody for a longer period.[375] Protective custody may not be maintained more than 72 hours without an informal hearing.[376]

In addition, pursuant to the provisions regarding taking a child into protective custody[377] and after receipt of a court order, the county agency must take the child into protective custody for protection from abuse; a county agency worker may not take custody of the child without judicial authorization based on the merits of the situation.[378]

---

[372] A child may be taken into custody (1) under a protective custody order removing the child from the home of the parent, guardian or custodian (after the court determines that allowing the child to remain in the home is contrary to the child's welfare) or (2) "[b]y a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his surroundings, and that his removal is necessary." 42 Pa.C.S. § 6324(1) & (3). *Also see* 237 Pa. Code § 1202(A)(1)(a).

[373] 23 Pa.C.S. Ch. 65.

[374] *Id.* § 6315(a); 55 Pa. Code § 3490.15(a). In addition, the Public Welfare Code specifies that the director of the medical institution (or the director's designee) or the physician "may take a child into protective custody if it is immediately necessary to protect the child from further serious physical injury, sexual abuse, or serious physical neglect[.]" Several examples of such maltreatment are provided:

> (1) Medical indications of repeated abuse, the existence of previous indicated or founded reports of child abuse, the seriousness of the child's condition, evidence of recent acts of abuse as opposed to old injuries, or statements of the child, or statements or actions by the parents indicating they are likely to be abusive toward the child.
>
> (2) There is medical evidence that the child is a victim of alleged child abuse and that the child's physical condition constitutes a medical emergency which requires immediate hospitalization to prevent death or serious physical impairment.
>
> (3) The parents, guardians or other custodians, after being advised that the child's physical condition constitutes a medical emergency will make no immediate arrangements for medically adequate alternative treatment.

[375] 23 Pa.C.S. § 6315(b); 55 Pa. Code § 3490.15(c); 237 Pa. Code § 1201(b).

[376] 23 Pa.C.S. § 6315(d); 55 Pa. Code § 3490.57(a).

[377] 23 Pa.C.S. § 6315.

[378] *Id.* § 6369.

Within 48 hours of taking a child into protective custody, the county children and youth social service agency must, among other things, (1) meet with the child's parents to assess their ability to assure the child's safety if the child is to be returned home; (2) meet with other individuals who may have information relating to the safety of the child in the home if the child is to be returned home; (3) determine if services could be provided to the family which would alleviate the conditions necessitating protective custody; and (4) provide or arrange for necessary services.[379]

Temporary or Emergency Custody in Other States

Temporary or emergency custody without a court order is authorized in certain situations. Generally, to merit such extraordinary actions, the situation must pose an imminent life-threatening and seriously injurious condition to the child. Protective custody for the at-risk child may be initiated by the following persons:

- Law enforcement officers, police officers or peace officers.[380]
- Physicians, health care practitioners or medical facility personnel.[381]
- State, county or local child protective services (child welfare) workers.[382]
- Juvenile court officers, juvenile services workers, certain probation and parole officers or other officers of the court.[383]

Temporary or emergency custody is usually of a short duration. The following lists some of the maximum general time periods for such custody, during which time a hearing must be held regarding the custody of the child:

- 4 hours.[384]
- 12 hours.[385]
- 24 hours.[386]

---

[379] 55 Pa. Code § 34990.57(f).

[380] Ala., Ariz., Ark., Cal., Colo., Conn. (as authorized by the Commissioner of Children and Families), Del., Fla., Haw., Idaho, Ill., Ind., Iowa, Kan., La., Miss., Mo., Mont., Neb., Nev., N.H., N.J., N.M., N.Y., N.C., Ohio, Or., S.C., Tex., Va., Wash., Wis. & Wyo.

[381] Ala., Ark., Conn., Del., Fla., Ga., Ill., Iowa, Mich., Mo., Nev., N.J., N.M., N.Y., N.D., Or. (counselors), S.C., Tenn., Utah, Va., Wash. & Wyo.

[382] Ala., Alaska, Ariz., Ark., Conn. (as authorized by the Commissioner or Children and Families), Fla., Ill., Ind. (caseworkers), Maine, Md., Mass., Miss., Mont., Nev., N.Y., N.C., Okla., Or., Tex., Va., W. Va., Wis. & Wyo.

[383] Ark., Ind., Iowa, La., Nev., N.H., N.J., Ohio, Or. & Tex.

[384] Del.

[385] Ariz. & N.C.

[386] Alaska, Fla., Ga., Miss., Mo., N.H., Nev. (for physicians), Or., Pa. & S.C.

- 48 hours (2 days).[387]
- 72 hours (3 days).[388]
- 96 hours.[389]

Several states provides other specific maximum time periods, after which a hearing must occur:

- In Michigan, the person in charge of the hospital where the child is brought for treatment may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court must order either the child's continued detention pending a preliminary hearing or the child's release to the his or her parent, guardian, or custodian.[390]

- In Montana, an abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided.[391]

- With respect to persons in charge of hospitals or similar institutions taking custody of an abused or maltreated child in New York, a child protection proceeding must commence on the next regular week day session of family court.[392]

- In Ohio, if an ex parte emergency order for taking a child into custody is issued, the court must hold a hearing to determine whether there is probable cause for the emergency order, and that hearing must be held before the end of the next business day after the day on which the emergency order is issued, but no later than 72 hours after the emergency order is issued.[393]

- In Tennessee, a person in charge of a hospital or similar institution, or a physician treating a child, may keep the child in custody until the next regular weekday session of the juvenile court.[394]

---

[387] Cal. (unless a dependency petition is filed), Colo., Idaho, Ill., Ind., Neb., N.M., Okla. (two judicial days), R.I. (for police or law enforcement officers), Wis. & Wyo.

[388] Ala., Ark., Haw., Kan., Ky., Maine, Mass., N.J., R.I. (for physicians or duly certified registered nurse practitioners), Utah, Vt., Va. & Wash.

[389] Conn. & N.D.

[390] Mich. Comp. Laws § 722.626(1).

[391] Mont. Code Ann. § 41-3-301(6).

[392] N.Y. Soc. Serv. § 417(2).

[393] Ohio Rev. Code Ann. § 2151.31(E).

[394] Tenn. Code Ann. § 37-1-608(b).

- In Texas, when a person takes a child into custody, that person must request an initial hearing to be held by no later than the first working day after the date the child is taken into possession.[395]

- A hearing must occur in West Virginia after the next two judicial days.[396]

Table 7 provides legal citations for each state's law regarding temporary or emergency custody for a child, without court order.[397]

[395] Tex. Fam. Code Ann. § 262.105(a)(3).
[396] W. Va. Code § 49-6-3(c).
[397] *Infra* p. 364.

Disposition of Reports in Pennsylvania

If the appropriate county children and youth social service agency determines that a report of suspected child abuse is an unfounded report,[398] the information concerning that report must be maintained for a period of one year. After one year has expired from the date that the Department of Public Welfare received the report, the report must be expunged[399] from the pending complaint file as soon as possible, but no later than 120 days after this one-year period.[400] If a report is determined to be an unfounded report, information that identifies the subjects of the report must be expunged from the pending complaint file.[401]

If the appropriate county children and youth social service agency determines that a report of suspected child abuse or regarding a school student is a founded or indicated report, "the information concerning that report of suspected child abuse shall be expunged immediately from the pending complaint file, and an appropriate entry shall be made in the Statewide central register."[402] In general, all information that identifies the subject of a founded or indicated child abuse report must be expunged when the subject child reaches the age of 23.[403] However, a subfile must be established in the Statewide central register to indefinitely retain the name of the perpetrator of child abuse or the school employee who is the subject of a founded or indicated report, but the subfile may not include identifying information regarding any other subject of the report.[404]

---

[398] A report is considered to be an unfounded report if the appropriate county children and youth social service agency conducts an investigation and

> does not determine within 60 days of the date of the initial report of the instance of suspected child abuse that the report is a founded report, an indicated report or an unfounded report, or unless within that same 60-day period court action has been initiated and is responsible for the delay . . . .

23 Pa.C.S. § 6337(b); 55 Pa. Code § 3490.34. In this case, "all information identifying the subjects of the report shall be expunged no later than 120 days following the expiration of one year after the date the report was received by the department." 23 Pa.C.S. § 6337(b). The agency must "advise the department that court action or an arrest has been initiated so that the pending complaint file is kept current regarding the status of all legal proceedings and expunction delayed." *Id.* No information, other than the foregoing (which may not include any identifying information on any subject of the report), may be retained by the department. *Id.* § 6337(a).

[399] The term "expunge" is defined as "[t]o strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise." *Id.* § 6303(a); 55 Pa. Code § 3490.4.

[400] 23 Pa.C.S. § 6337(a); 55 Pa. Code § 3490.34(d).

[401] 23 Pa.C.S. § 6337(c).

[402] *Id.* § 6338(a).

[403] *Id.* § 6338(b); 55 Pa. Code § 3490.39(a).

[404] 23 Pa.C.S. § 6338(c); 55 Pa. Code § 3490.39(c).

The Secretary of Public Welfare may amend or expunge any record under the Child Protective Services Law upon good cause shown and appropriate notice.[405] In addition, an individual named as a perpetrator in an indicated report of child abuse (and any school employee named) may request the amendment or expungement of the indicated report on the grounds that it is inaccurate or is being maintained inconsistent with the Child Protective Services Law. Such request must be made within 45 days of the notice regarding the status of the report.[406] If the Secretary of Public Welfare grants the request, proper notice must be given to specified persons, and the county children and youth social service agency and any subject of the report may file an administrative appeal.[407] If, however, the Secretary refuses the request or does not act within a reasonable time (which can be no later than 30 days after receipt of the request), the perpetrator or school employee has the right to an administrative hearing.[408]

If an investigation by the county children and youth social service agency reveals that a report is unfounded but the subjects of the report need services provided or arranged by the county agency, the county agency must retain those records, but the report "shall be expunged no later than 120 days following the expiration of one year after the termination or completion of services provided or arranged by the county agency."[409]

Expungement in Other States

Expungement of records varies greatly from state to state. A number of states do not address the topic of expungement of child maltreatment reports (and the disposition of these reports) explicitly in their child protection laws, instead relying on their other laws covering the general expungement of records.[410] In general, nine states expunge records when the child who is the subject of the report attains a certain age.[411] Another 11 states permit expungement after a specified time if no further reports are received,[412]

---

[405] 23 Pa.C.S. § 6341(a)(1).
[406] *Id.* § 6341(a)(2).
[407] *Id.* § 6341(b).
[408] *Id.* § 6341(c).
[409] *Id.* § 6341(f).
[410] Alaska, Idaho, Kan., Ky., N.M., N.D., Ohio, Okla., Or., Tenn., Tex. & Wis.
[411] For example:
Ariz.: 18 years of age, for a substantiated report occurring before September 1, 1999).
Del.: three or seven years, depending on the specific incident.
Fla.: 30 years of age.
Ind.: 24 years of age, under certain conditions.
La.: for reports that are "inconclusive" or "not justified," until the youngest child in the alleged victim's family turns 18 years of age or seven years from the date of the latest determination, whichever represents the longer period.
Mass.: 18 years of age or one year after the date of termination of services to the child or the child's family, whichever date occurs later.
Mich.: 18 years of age or 10 years after the investigation is commenced, whichever is later.
[412] For example:

while several states simply provide for the expungement of reports after a specified time.[413]

Ala.: five years.
Ark.: one year.
Conn.: five years.
Ill.: five years for certain indicated reports.
La.: 10 years for "justified" sexual abuse, but if a subsequent report is received during this time period, information from all reports will be maintained indefinitely.
Maine: 18 months after a finding of "unsubstantiated," but records may be kept or up to five years for the sole purpose of state and federal audits of the Medicaid program.
Md.: five years for "unsubstantiated" cases and 120 days for "ruled out" cases.
S.D.: three years for an "unsubstantiated" report.
Utah: one year for a "without merit" report and five years for an "unsubstantiated" report of "without merit" report following a court determination.
Va.: one year for an "unfounded" complaint or report, but a record may be retained for an additional period of up to two years if requested in writing by the person who is the subject of the complaint or report. The record of family assessments must be purged three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the same child or the person who is the subject of the report in that three-year period.
Wash.: for an "unfounded" or "inconclusive" report, within six years of completion of the investigation, unless a prior or subsequent "founded" report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child, before the records are destroyed.

[413] For example:
Ariz.: 25 years after the date of the report, for a substantiated report occurring on or after September 1, 1999.
Ga.: two years for an "unconfirmed" report.
Ill.: three years for certain unfounded reports and 12 months for other unfounded reports; 50 years for indicated reports involving more serious actions against the child, such as sexual abuse, torture and death.
Ind.: six months for an unsubstantiated report.
Mass.: one year if the allegation in the report cannot be substantiated, but information in an unsubstantiated report may be kept to assist in future risk and safety assessments of children and families.
Iowa: eight years for a founded report, but 30 years if the report involves sexual abuse.
Minn.: four years for a report resulting in "no determination"; 10 years after the date of the final entry in the case record for a report resulting in a "determination."
Mo.: five years for a report initiated by a mandated reporter where insufficient evidence of abuse or neglect is found; two years from the conclusion of the investigation for all other reports where insufficient evidence of abuse or neglect is found.
Mont.: 30 days after the end of the three-year period starting from the date the report was determined to be "unsubstantiated"; all records concerning a report determined to be "unfounded" must be destroyed within 30 days of the determination that the child has not suffered abuse or neglect.
N.H.: one year for a "screened out" report, three years for an "unfounded" report, and seven years for a "founded" report.
R.I.: three years after the determination that the person did not neglect or abuse the child.
S.C.: five years for an "unfounded" report and seven years after the date that services are terminated for an "indicated" report.
Va.: 25 years for a "founded" child sexual abuse report.
Wash.: three years from receipt of the report for a "screened out" report.
W. Va.: 30 years, unless there are pending proceedings with regard to a report.

Other states provide different thresholds for expungement. For example:

- California expunges the record of a person listed in the child abuse central index when the person reaches 100 years of age.[414]

- Michigan expunges the record of a central registry case when reliable information is received that the perpetrator of the abuse or neglect is dead.[415]

- Nebraska may amend, expunge or remove a report of child abuse or neglect from the central register at any time for good cause shown and upon notice to the subject of the report.[416]

- Nevada expunges a substantiated report not later than 10 years after the child who is the subject of the report reaches the age of 18 years.[417]

- New Jersey expunges all information if it is determined that the report, complaint or allegation of the incident was "unfounded."[418]

- New York expunges a record ten years after the 18th birthday of the youngest child named in the report but may, in any case and at any time, amend a record upon good cause shown and notice to the subjects of the report and other persons named in the report.[419]

- The North Carolina Social Services Commission adopts rules regarding the operation of the central registry and responsible individuals list, including procedures for correcting and expunging information.[420]

- South Dakota prohibits the adoption of any rule permitting the removal from the central registry for and neglect of a substantiated report involving a person who has been convicted of a violation of a laws regarding sex offenses, obscenity, indecency, aggravated incest, felony abuse or cruelty, if the victim of such crime was a child.[421]

- Vermont permits a person whose name has been placed on the registry for three or seven years (depending on whether such occurred before July 1, 2009 or on or after that date) to file a written

[414] Cal. Penal Code § 11169(f).
[415] Mich. Comp. Laws § 722.628(11).
[416] Neb. Rev. Stat. § 28-721.
[417] Nev. Rev. Stat. § 432.120(2).
[418] N.J. Stat. Ann. § 9:6-8.40a(1)(a).
[419] N.Y. Soc. Serv. Law § 422(6).
[420] N.C. Gen. Stat. § 7B-311(d).
[421] S.D. Codified Laws § 26-8A-12.

request to expunge the registry record. A person who was substantiated for behavior occurring before the person reached 10 years of age is expunged when the person reaches the age of 18, if the person has had no additional substantiated registry entries. In addition, a person substantiated for behavior occurring before the person reached 18 years of age and whose name has been listed on the registry for at least three years may file a written request to expunge the registry record.[422]

- In Wyoming, within six months all "unsubstantiated" reports classified as "under investigation" are reclassified as "substantiated" or expunged from the central registry, unless there is an open criminal investigation or criminal prosecution. Upon good cause shown and notice to the subject of the "under investigation" or "substantiated" report, a record in the central registry may be listed, amended, expunged or removed.[423]

In addition, almost all the states provide for a procedure for a person to challenge a listing in the registry for suspected child abuse or neglect.

Table 8 provides legal citations for each state's law regarding the expungement of records.[424]

Task Force Deliberations

Throughout the course of its deliberations, the Task Force compiled a list of specific issues to address and consider in more detail regarding expungement, including an indicated versus a founded report, unfounded reports, the deadline for an appeal, the treatment of a perpetrator by omission, the general process for expunging a record, the length of time that a record remains on the registry, who qualifies to be placed on the registry, and whether there should be different categories for child abuse and child neglect.

[422] Vt. Stat. Ann. tit. 33, §§ 4916c(a) & 4916d.
[423] Wyo. Stat. Ann. § 14-3-213(c) & (e).
[424] *Infra* p. 365.

BLANK

PAGE

Dependency Proceedings in Pennsylvania

At the informal hearing following the temporary or emergency custody of the child, if the court determines that protective custody should be continued and the child is alleged to be without proper parental care or control or is alleged to be a dependent child[425] the county children and youth social service agency must within 48 hours file a petition with the court alleging that the child is a dependent child.[426] After receipt of the court order stemming from the informal hearing, the county agency then takes the child into protective custody for protection from abuse.[427]

In general the county agency must "provide or contract with private or public agencies for the protection of the child at home whenever possible and those services necessary for adequate care of the child when placed in protective custody."[428] Although the county agency cannot compel the child's family to accept the services, it may initiate

---

[425] Under 42 Pa.C.S. § 6302, a dependent child is a child who:

(1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;

(2) has been placed for care or adoption in violation of law;

(3) has been abandoned by his parents, guardian, or other custodian;

(4) is without a parent, guardian, or legal custodian;

(5) while subject to compulsory school attendance is habitually and without justification truant from school;

(6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision;

(7) is under the age of ten years and has committed a delinquent act;

(8) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (6);

(9) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (6); or

(10) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

[426] 23 Pa.C.S. § 6315(d).

[427] *Id.* § 6369.

[428] *Id.* § 6370(a).

appropriate court proceedings following such non-acceptance if the best interests of the child require court action.[429] The county agency may petition the court for a finding of child abuse in a dependency or delinquency proceeding if, for example, the alleged perpetrator has access or poses a threat to the child.[430]

Under certain circumstances, the court must appoint a guardian ad litem, who must be an attorney at law, "to represent the legal interests and best interests of the child."[431] Among other things, the guardian ad litem must "[m]ake specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety."[432]

An informal hearing must be held within 72 hours after the child is placed in shelter care to determine whether such care is required, whether allowing the child to remain in the home is contrary to the child's welfare and whether reasonable efforts were made to prevent such placement.[433]

In general, a party is entitled to representation by legal counsel, and if the party is without financial resources or otherwise unable to employ counsel, the court will provide such counsel.[434] Legal counsel must be provided for a child who is alleged or has been found to be a dependent child in accordance with the Pennsylvania Rules of Juvenile Court Procedure.[435]

If the court finds that the child is a "dependent child," it must craft an order that is "best suited to the safety, protection and physical, mental, and moral welfare of the child" and may (1) permit the child to remain with his or her parents, guardian or other custodian, subject to prescribed conditions and limitations; (2) transfer temporary legal custody to a qualified relative of the child, an agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child, or a public agency authorized by law to receive and provide care for the child.[436]

Prior to the entry of an order that would remove a dependent child from his or her home, the court must find that continuation of the child in the home would be contrary to the welfare, safety or health of the child. The court must also determine whether (1) reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from the home, if the child has remained in the home pending such disposition; (2) the lack of preventive services (due to the

---

[429] *Id.* § 6370(a) & (b)(1).

[430] *Id.* § 6370(b)(2)(i).

[431] 42 Pa.C.S. § 6311(a).

[432] *Id.* § 6311(b)(7).

[433] *Id.* § 6332(a). In the case of emergency placement where services were not offered and could not have prevented the necessity of placement, it must be determined whether this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family. *Id.*

[434] *Id.* § 6337.

[435] *Id.* § 6337.1(a).

[436] *Id.* § 6351(a).

necessity for an emergency placement) was reasonable under the circumstances or (3) reasonable efforts are under way to make it possible for the child to return home. The court must analyze whether siblings should be placed together or whether joint placement is contrary to the safety or well-being of the child or any sibling.[437] The court must ensure visitation between the child and any sibling of the child, unless it finds that visitation is contrary to the safety or well-being of the child or any sibling.[438]

The court must conduct a permanency hearing to determine or review the child's permanency plan, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child.[439] At each permanency hearing, the court must determine all of the following:

> (1) The continuing necessity for and appropriateness of the placement.
>
> (2) The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.
>
> (3) The extent of progress made toward alleviating the circumstances which necessitated the original placement.
>
> (4) The appropriateness and feasibility of the current placement goal for the child.
>
> (5) The likely date by which the placement goal for the child might be achieved.
>
> (5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.
>
> (6) Whether the child is safe.
>
> (7) If the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child.
>
> (8) The services needed to assist a child who is 16 years of age or older to make the transition to independent living.
>
> (9) If the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:
>
> (i) the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;
>
> (ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or

[437] *Id.* § 6351(b).
[438] *Id.* § 6351(b.1).
[439] *Id.* § 6351(e)(1).

(iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames set forth in the permanency plan.

(10) If a sibling of a child has been removed from his home and is in a different placement setting than the child, whether reasonable efforts have been made to place the child and the sibling of the child together or whether such joint placement is contrary to the safety or well-being of the child or sibling.

(11) If the child has a sibling, whether visitation of the child with that sibling is occurring no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.[440]

Based on the evidence and findings at the permanency hearing, the court must determine whether the child should be returned home, placed for adoption, placed with a legal custodian or "fit and willing relative," or placed in another living arrangement.[441]

Finally, 237 Pa. Code Part I, Subpart B addresses dependency matters, and Chapter 13 provides regulations regarding pre-adjudicatory procedures, including venue, applications for a private petition, petitions, procedures following the filing of a petition, adjudicatory summons and notice procedures, and the preservation of testimony and evidence.

Dependency Proceedings in Other States

Coupled with their respective emergency or temporary custody provisions for at-risk children, the states provide their own statutory framework regarding the filing of a dependency petition and the adjudication of dependency. Table 9 provides legal citations for each state's law regarding dependency proceedings.[442]

[440] *Id.* § 6351(f).
[441] *Id.* § 6351(f.1).
[442] *Infra* p. 366.

CONFIDENTIALITY AND RELEASE OF INFORMATION

In Pennsylvania, reports under the Child Protective Services Law generally are confidential.[443] Such reports may only be made available to the following:[444]

(1) An authorized official of a county children and youth social service agency (or an authorized official of certain federal agencies or agencies of another state), multidisciplinary team members assigned to the case, and certain duly authorized persons.

(2) A physician examining or treating a child or the director (or his or her designee) of a medical institution where a child is being treated when there is a suspicion that the child is being abused or is in need of protective services.

(3) A guardian ad litem or court designated advocate for the child.

(4) An authorized official or agent of the Department of Public Welfare.

(5) A court of competent jurisdiction.

(6) A court of common pleas in connection with any matter involving custody of a child.

(7) A standing committee of the General Assembly pursuant to its legislative oversight functions.

(8) The Attorney General.

(9) Certain Federal auditors.

(10) Law enforcement officials of any jurisdiction, if the information is relevant to certain investigations.

---

[443] 23 Pa.C.S. § 6339, which was suspended by Pa. Rule of Juvenile Court Procedure No. 1800(9), adopted Aug, 21, 2006, insofar as it is inconsistent with Rule 1340(B)(1)(c), which provides for the disclosure of reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.

[444] 23 Pa.C.S. § 6340(a)(1)-(17); 55 Pa. Code § 3490.91(a).

(11) The district attorney (or his or her designee or other law enforcement official).

(12) Designated county officials.

(13) A mandated reporter of suspected child abuse who made a report of abuse involving the subject child.[445]

(14) Persons required to make reports regarding students in public and private schools.[446]

(15) A prospective adoptive parent, approved by an adoption agency, when considering adopting an abused child in the custody of a county agency.

(16) Appropriate officials of another county or state regarding an investigation related to child abuse or protective services when a family has moved to that county or state.

(17) Members of specified citizen review panels.

(18) A member of a specified child fatality or near fatality review team.

At any time and upon written request, a subject of a report may receive a copy of certain information contained in the Statewide central register or in a filed report.[447] Generally, the release of data that would identify the person who made a report of suspected child abuse or the person who cooperated in a subsequent investigation is prohibited, and law enforcement officials must treat all reporting sources as confidential informants.[448] Information maintained in the Statewide central register that was obtained from an investigating agency in relation to an appeal request may not be released to any person except an official of the Department of Public Welfare.[449] Finally, "[a] person who willfully releases or permits the release of data or information contained in the pending complaint file, the Statewide Central Register or the county agency records, to persons or agencies not permitted . . . to receive this information shall be guilty of a misdemeanor of the third degree."[450] In addition, that person will be denied access in the future to information that the person would otherwise be entitled to receive.[451]

---

[445] The information permitted to be released to the mandated reporter is limited to the final status of the child abuse report following the investigation (whether it be indicated, founded or unfounded), and any services provided, arranged for or to be provided by the county agency to protect the child. 23 Pa.C.S. § 6340(a)(12); 55 Pa. Code § 3490.91(a)(15).

[446] Such information is limited to the final status of the report following the investigation as to whether the report is indicated, founded or unfounded. 23 Pa.C.S § 6340(a)(13).

[447] *Id.* § 6340(b); 55 Pa. Code § 3490.91(a)(12).

[448] 23 Pa.C.S. § 6340(c).

[449] *Id.* § 6340(d).

[450] 55 Pa. Code § 3490.102.

[451] *Id.*

CHILDREN'S ADVOCACY CENTERS AND MULTIDISCIPLINARY INVESTIGATIVE TEAMS

Definition and Purpose of Children's Advocacy Centers (CACs)

Under the Child Protective Services Law, a children's advocacy center (CAC) is defined as follows:

> A local public agency in this Commonwealth or a not-for-profit entity incorporated in this Commonwealth which:
>
> (1) is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)); and
>
> (2) operates within this Commonwealth for the primary purpose of providing a child-focused, facility-based program dedicated to coordinating a formalized multidisciplinary response to suspected child abuse that, at a minimum, either onsite or through a partnership with another entity or entities, assists county agencies, investigative teams and law enforcement by providing services, including forensic interviews, medical evaluations, therapeutic interventions, victim support and advocacy, team case reviews and a system for case tracking.[452]

Generally, a county children and youth social service agency must convene a child fatality or near fatality team if a child dies or nearly dies as a result of child abuse. The team must "consist of at least six individuals who are broadly representative of the county where the team is established and who have expertise in prevention and treatment of child abuse." The team may include a representative of a children's advocacy center that provides services to children in the county, but the representative may not be an employee of the county children and youth social service agency.[453]

The team must (1) review the circumstances of the child's fatality or near fatality resulting from suspected or substantiated child abuse; (2) review the delivery of services to the abused child, the child's family and the perpetrator of the child abuse; (3) review

---

[452] *Id.* § 6303(a).

[453] *Id.* § 6365(d)(1). Other members of the team may include a staff person from the county agency; a member of the advisory committee of the county agency; a health care professional; a representative of a local school, educational program or child care or early childhood development program; a representative of law enforcement or the district attorney; an attorney trained in the legal representation of children or an individual trained as a court-appointed special advocate; a mental health professional; the county coroner or forensic pathologist; a representative of a local domestic violence program; a representative of a local drug and alcohol program; and an individual representing parents. *Id.*

relevant court records and documents related to the abused child and the child's family; (4) review the county agency's compliance with statutes and regulations and with relevant policies and procedures and (5) submit a final written report to the Department of Public Welfare and designated county officials.[454]

Testimony and Examples of Successful CACs and Multidisciplinary Investigative Teams

The Task Force received testimony from numerous witnesses regarding the challenges of the current criminal justice and child protective services systems and the extraordinary value of CACs as the single most important tool in the investigation of child abuse.

The Need to Involve Law Enforcement

Gina Maisto Smith, Esq., a former Philadelphia prosecutor who has 20 years of experience in investigating and prosecuting sex crimes and child abuse (as well as training police, investigators and prosecutors in the most difficult aspects of sex crime investigations), advised the Task Force that there were many allegations of child abuse that were called into the Philadelphia Department of Human Services (DHS) or ChildLine but were never reported to law enforcement. As an example of the system's failure to protect children, she spoke of DHS's failure to inform the police of a report by a child that a school counselor had touched her in inappropriate areas. The child subsequently self-reported the abuse to a police officer who was a trained child abuse investigator. The officer knew, based upon the child's statement, that the touching was a criminal offense. He also discovered that the school counselor had another complaint eight years earlier with a similar fact pattern. The offender was successfully prosecuted.

Multidisciplinary Investigative Teams (MDITs) Working Through CACs

Maisto Smith testified that sex crime investigations and prosecutions are very difficult, even more difficult than those involving homicides. Usually lacking clear evidence, they involve the word of an adult (at times a respected professional) against the word of a troubled child. That differential in power and perception creates enormous challenges for prosecutors. Concluding that good forensic interviewing is essential for prosecutions in the criminal justice system, she also emphatically stated her belief that the low number of substantiated cases of child abuse in the child protective services system is directly related to the inability of caseworkers to conduct good investigations.

---

[454] *Id.* § 6365(d)(4).

A multidisciplinary investigative team (MDIT), led by a district attorney and including child protective services staff, police and victims' services staff (all with expertise in child abuse and child sexual abuse), can collaborate with the CAC's medical staff as well as the forensic interviewer. Typically, such a team observes the forensic interview of the child victim via closed circuit television. The interview is conducted in a child-friendly environment, providing the child victim with comfort and privacy, with age-appropriate toys, games and activities. The MDIT approach ensures that the various disciplines work, pursuant to an agreed-to protocol, from the time of the initial report of abuse to ensure the most effective coordinated response possible for every child victim. Absent this collaboration, and in a number of counties in Pennsylvania at this time, both the child protective services and the criminal justice systems may separately subject the child to duplicative medical examinations and multiple lengthy interviews, forcing the child to recount and sometimes relive the abuse.

Obviously, the single CAC forensic interview reduces the potential trauma to children and families while respecting the rights and obligations of each agency to pursue their respective mandates. Children and youth administrators, police, county detectives and district attorneys testified that the gathering of evidence through a CAC is far superior to a scenario where a child protective services caseworker might be the first person to interview the victim as well as potential defendant.

CAC Services

A CAC facility also serves as the hub for the provision of medical and mental health examinations and treatment by pediatric specialists, victim advocacy and services, and human services for the child and family. CAC professionals testifying before the Task Force stressed the benefit of the facilitating continuity of care for the child among the many agencies that become involved in responding to a child victim.

The Child Advocacy Center of Children's Hospital of Pittsburgh of the University of Pittsburgh Medical Center (UPMC) provides comprehensive evaluations for children and adolescents who may be victims of neglect or physical or sexual abuse. Services include forensic interviews, psychosocial history-taking, medical examinations, support service referrals and behavior therapy. All staff members have expertise and experience in the area of child maltreatment; they include physicians, nurse practitioners and nurses, advocacy specialists, forensic interviewers, social workers and therapists.

Other CACs have partnered with area hospitals to obtain medical care for child victims. For example, the Gettysburg Hospital/Wellspan provides the Adams County Children's Advocacy Center with a sexual assault nurse examiner (SANE) with a pediatric subspecialty. Joddie Walker, Executive Director of the Adams County Children's Advocacy Center, told the Task Force that prior to the existence of the CAC, a child victim would not have received a timely medical examination by a qualified provider:

> It just didn't happen. I am sure as I sit here today, there are children in counties throughout this state that are either not receiving a comprehensive medical exam or are receiving exams by medical professionals who do not have the expertise to verify whether injuries were inflicted were inflicted, rising to the threshold of an opinion to state if it is child abuse. Children and Youth workers across the state are frustrated that Emergency Room doctors will not give such an opinion perhaps based on their inexperience or hesitancy to become a witness in an investigation.

The Children's Alliance of Philadelphia provides services exclusively for child victims of sexual abuse. Medical examinations and treatment of child victims are provided by the Children's Hospital of Philadelphia of the University of Pennsylvania. DHS social workers and police officers attend and observe forensic interviews. Monthly case conferences bring all members of the multidisciplinary team together to share information about cases. Representatives from many agencies (DHS child welfare social workers, police officers from the Special Victims Unit of the Police Department, prosecutors from the Office of the District Attorney, and medical and mental health professionals from hospitals and agencies in Philadelphia) collaborate on case investigations in partnership with the Children's Alliance.

CAC Challenges

Unfortunately, CACs exist in only 20 of Pennsylvania's 67 counties, with variant organizational structure and operations. Some CACs were founded and supported by health care institutions, such as the Children's Hospital of Pittsburgh of UPMC, Pinnacle Health's Children's Resource Center in Harrisburg and Lancaster General Hospital. Others were founded through the collaborative efforts of district attorneys, county children and youth social service agency administrators, victim assistance agencies, healthcare providers and municipal police departments. The Adams County Children's Advocacy Center is a free standing non-profit entity while the Bucks County Children's Advocacy Center is administered through the Network of Victim Assistance, the county's non-profit comprehensive victims' service organization.

Many CACs serve regions, not by design, but by necessity. For example, the Children's Resource Center in Harrisburg has served child victims from over 20 counties. Similarly, the CAC of the Children's Hospital of Pittsburgh of UPMC provides services to children in a broad region of western and northwestern Pennsylvania. This limited access poses very serious, as well as practical, problems for child abuse investigations. For example, prosecutors in Blair County must decide between a drive to Pittsburgh or Harrisburg to obtain CAC services for a child victim. The professionals who examine and interview the child, including physicians and nurses, must then travel for hours to testify at hearings throughout the criminal process and the civil child protective services process. Obviously, taking these specialized forensic interviewers and pediatric medical professionals on the road for extensive periods of time deprives them of the ability to serve and care for additional child victims.

CAC Funding

Lancaster County presented the best example of a highly functioning MDIT. District Attorney Craig W. Stedman testified that since the creation of the Lancaster County Children's Alliance (a CAC) six years ago, the office has had a 100% success rate in child sex abuse prosecutions. Those Pennsylvania district attorneys who are fortunate to have CACs in their communities have experienced similar success.

As a result, the Pennsylvania District Attorneys Association announced in August 2012 that CACs should be a funding priority when financial decisions are made regarding the $60 million endowment established by the National Collegiate Athletic Association to assist victims of child abuse as a result of the Sandusky scandal at Penn State University. Adams County District Attorney Shawn C. Wagner, president of the Association, noted that the lack of geographic reach and dedicated funding sources currently make it impossible for CACs to reach all victims of child abuse and child sexual abuse and their families. The lack of dedicated funding for CACs was a consistent theme of testimony from many witnesses appearing before the Task Force. As previously noted, some CACs are based in hospitals and receive financial support from these healthcare institutions; others are partially funded. The Department of Public Welfare's needs-based budgeting process is a source of partial funding for some programs, while some obtain grants from the Pennsylvania Commission on Crime and Delinquency and various foundations. All engage in fundraising activities.

In addition, Maisto Smith and other experts encouraged the Task Force to call for the expansion of CACs in the Commonwealth to provide expert forensic interviewing and expert pediatric medical examinations of child victims as well as a multidisciplinary investigation of the abuse. The Task Force was advised that CACs ensure a meaningful child protective services response to protect the child victim (and other children who may be at risk of injury), a successful prosecution and the provision of necessary medical, mental health, victim advocacy and services, and human services to the child victim and family.

Forensic Interviews and MDITs

The neutrality and non-leading nature of the questions asked by a skilled forensic interviewer and the fact that the entire interview is recorded and often videotaped frequently makes for devastating evidence. It is not uncommon for defendants who had protested their innocence for months to fold and plead guilty after being confronted with these tapes. This obviously spares the child the traumatic process of testifying in court about their abuse. At worst, the recording of the interview can provide strong corroborating evidence if a trial is necessary.

Jefferson County District Attorney Jeffrey Burkett testified before the Task Force on Child Protection and stated the following: "Nothing is more powerful as evidence than a child explaining [the] abuse in detail in living color." He noted that forensic interviews

also facilitate expedient exoneration of the innocent. Burkett also advised the Task Force that the cooperation of Children and Youth Services, law enforcement, and victims' services staff, supported by a CAC, is essential for an effective child protective services and law enforcement investigation.

Additionally, Dauphin County Chief Deputy District Attorney Sean McCormack spoke of the highly successful collaborative work of his county's MDIT. He explained that the joint assessment of cases often results in prosecutors supporting services to a family toward the goal of protecting children. Although not all cases proceed to prosecution, McCormack was adamant that all Pennsylvania counties should have MDITs and accessible CACs in order to best protect children from abuse and neglect. He also advised the Task Force of the critical importance of quality training for MDIT members.

General Findings

The Task Force acknowledges that a child should be protected after child abuse or neglect has been alleged, the child and the child's family should receive appropriate services, and the individual responsible for the child abuse or neglect should be appropriately identified and punished. However, prevention should be an equally important, if not greater, component regarding child protective services and general protective services. Therefore, the Task Force recognizes the importance of working with children, their families and those who have been entrusted to care for or supervise them "so that nothing bad happens to begin with."[455] The Task Force supports the use of evidence-based prevention programs.

The Need to Strengthen Families

Attempts have been made nationwide to reduce child maltreatment by strengthening families, teaching individuals how to become better parents and role models, and making services more accessible in times of crisis. These family support and family strengthening efforts are positive "interventions that are intended to improve a broad array of results in children's health, development and safety; parenting knowledge, attitudes and behaviors; parental resilience and mental health; overall family functioning; and family economic self-sufficiency."[456]

The Office of Child Abuse and Neglect at the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services has developed the Network to Action, "a public/private partnership to spark and support national action to prevent child maltreatment and promote well-being."[457] Diverse strategic projects have been highlighted by the Network for Action, including the Child Care Expansion Initiative (which addressed the role of training in advancing prevention efforts), the Child Welfare League of America's Child Welfare Standards of Excellence

[455] Callie Jones, *Child Abuse Prevention More Than Reporting Suspicions*, Sterling Journal-Advocate, *available at* http://www.cssp.org/media-center/news-clips/child-abuse-prevention-more-than-reporting-suspicions (last accessed Nov. 2, 2012).

[456] Steve Christian & Julie Poppe, *Protecting the Youngest: The Role of Early Care and Education in Preventing and Responding to Child Maltreatment* (Nat'l Conf. of State Legs., Sept. 2007), *available at* http://www.ncsl.org/print/cyf/protectingyoung.pdf (last accessed Nov. 2, 1012).

[457] U.S. Dep't of Health & Human Servs., Admin. for Children & Families, Children's Bureau, Office on Child Abuse & Neglect, *Collaboration*, *available at* https://cb100.acf.hhs.gov/cb_eBrochure_Network ForAction (last accessed Nov. 5, 2012).

for the prevention of child abuse and neglect, Building the Movement to Prevent Child Sexual Abuse, Collaborating for Respite (which is a strategy for building protective factors), the National Parent HelpLine® (to help parents who need advice or feel overwhelmed to receive emotional support from a trained advocate) and Period of PURPLE Crying Infant Abuse Prevention Program.[458]

Effective early prevention efforts have been proven to be "less costly to our nation and to individuals than trying to fix things later."[459] Six protective factors strengthen families and promote optimal child and youth development: nurturing and attachment, knowledge of parenting and child development, parental resilience, social connections, concrete supports for parents, and social and emotional competence of children.[460] The protective-factors approach has been recognized as one of the most promising in the area of child maltreatment prevention, but its effective application requires "more than individual practice and program changes."[461] The Strengthening Families Initiative of the Center for the Study of Social Policy "has identified three levers for change that help to create the incentives, capacity, and impetus for more programs to take on a protective-factors approach": parent partnerships (to ensure that prevention strategies are responsive to family needs and choices), professional development (to train individuals who work with children and families to develop common knowledge, goals and language), and policy and systems (to develop regulations and procedures that create broad and sustainable change).[462] A state or locality that is "interested in preventing child maltreatment and promoting well-being [is] encouraged to develop specific action plans around each of the levers."[463]

Early education and early intervention are critical, especially as "[c]hildren from birth to age 3 are uniquely vulnerable to maltreatment."[464] In addition, "[y]oung children who are abused or neglected are at high risk of experiencing serious developmental challenges, including behavioral difficulties and problems with memory and learning."[465] Therefore, consideration should be given to (1) recognize early care and education as a strategy to strengthen families and (2) "ensure that a family-strengthening approach is

---

[458] *Id.*, *Preventing Child Maltreatment and Promoting Well-Being: Network for Action*, *available at* http://friendsnrc.org/get-involved (last accessed Nov. 5, 2012). *Also see* U.S. Dep't of Health & Human Servs., *2012 Resource Guide -- Preventing Child Maltreatment and Promoting Well-Being: A Network for Action*, *available at* http://www.childwelfare.gov/pubs/guide2012/guide.pdf (last accessed Nov. 5, 2012).

[459] *2012 Resource Guide*, *supra* note 408, at i.

[460] *Id.* at 9-20. The *2012 Resource Guide* (1) includes tools and strategies for integrating the six factors into community programs and systems, (2) lists strategies to increase community awareness and promote the development of broad-based community partnerships and (3) analyzes the circumstances that cause child abuse, risk factors and consequences of child abuse and the ways to identify and report child maltreatment.

[461] *Id.* at 6.

[462] *Id.* at 6-7.

[463] *Id.* at 6.

[464] Steve Christian & Julie Poppe, *Protecting the Youngest: The Role of Early Care and Education in Preventing and Responding to Child Maltreatment* (Nat'l Conf. of State Legs., Sept. 2007), at 1, *available at* http://www.ncsl.org/Portals/1/documents/cyf/protectingyoung.pdf (last accessed Nov. 5, 2012). In 2004, "these children accounted for almost 30 percent of the victims of abuse or neglect" and "enter foster care in disproportionately higher numbers." *Id.*

[465] *Id.*

integrated into laws and policies that govern early childhood licensing, training, professional development, reimbursement and strategic planning[.]"[466]

Child Sexual Abuse Prevention

With child sexual abuse, educating children is important. For education to be successful, programs need to be tailored to a particular targeted group. Child sexual abuse prevention programs can be based on several models of prevention, but since child abuse has been more commonly recognized as a public health issue, "[t]he field of public health has been integral in changing the focus of anti-sexual violence prevention work from treating a person after they have been victimized to preventing violence from happening at all."[467]

The public health model, widely used in developing prevention programs across the country, classifies prevention efforts as primary, secondary and tertiary. Primary prevention of child abuse involves stopping it before it starts, with universal primary prevention efforts targeting a large group and selective primary prevention efforts directed towards those who are at risk for victimization or potential perpetrators. The main components of primary prevention of child sexual abuse are (1) teaching people about healthy relationships, identifying a situation that could become abusive, and protective policies that may be implemented; (2) teaching people what to do if they suspect the risk of child sexual abuse and (3) working to change social structures and norms that support the occurrence of child sexual abuse.[468]

Secondary prevention of child sexual abuse aims to reduce the potential short-term harm resulting from child sexual abuse, mostly by improving how individuals and social services respond to survivors of abuse. This includes "ensuring that survivors have access to services such as advocacy, health care, and/or legal support." Secondary prevention of child abuse involves (1) teaching possible responders such as doctors, teachers and parents how to screen for child sexual abuse and what to do if they suspect that abuse has occurred; (2) increasing awareness about social services available to abuse survivors and (3) reducing the stigma associated with child sexual abuse.[469]

Tertiary prevention of child sexual abuse consists of preventing further harm to a person already involved in a sexual abuse incident. Its two chief components are working with perpetrators to prevent them from re-offending and working with victims to prevent long-term problems.[470]

---

[466] *Id.*

[467] Nat'l Sexual Violence Res. Ctr., *Child Sexual Abuse Prevention*, at 1, *available at* http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Bulletin-Child-sexual-abuse-prevention.pdf (last accessed Nov. 5, 2012).

[468] *Id.*

[469] *Id.* at 1-2.

[470] *Id.* at 2.

The social-ecological model of sexual abuse prevention

> examines the multiple systems that surround an act of violence. It emphasizes the idea that child sexual abuse prevention and other types of violence prevention require changing norms, climate, and culture. Therefore, it addresses how we can promote both community change and individual behavior change. There are many factors that increase or decrease the risk of individual violence. These factors occur at the level of the individual, relationships, community and society.[471]

Several settings influence the degree of harm resulting from child sexual abuse: the characteristics of individuals, an occurrence that provokes an individual and community response, and characteristics of a community (e.g., social norms and community services).[472] Various systems can contribute to the occurrence of sexual violence and can also be used to facilitate prevention efforts. Recognizing the multiple factors that influence child sexual abuse, the social-ecological model of prevention comprises multiple components. According to this model, "the burden of prevention should be distributed among community members, organizations, and social structures[,]" such as individuals, perpetrators, advocates, parents, families, community members, researchers, the health care system, the criminal justice system, and local, state and federal governments.[473]

National organizations such as the National Sexual Violence Resource Center offer numerous materials on development and implementation of abuse prevention programs designed for different population groups. There are several types of programs that are commonly used to educate and engage adults in preventing child sexual abuse: (1) components of school-based programs to train teachers who will be instructing children and education/orientation sessions for parents and guardians; (2) stand-alone parent education programs, which are either community-based prevention education programs or home-visitation programs for families considered to be at high risk of abuse; (3) training for professionals who are mandated reporters, such as teachers and other school personnel, health care workers, law enforcement officers, and state agency employees working with children; (4) public education campaigns addressed to broader audiences and aimed at raising awareness about the problem and assisting the public in identifying signs of child abuse; (5) media campaigns and (6) social marketing campaigns that draw upon research and behavior change theory to develop strategies.[474]

---

[471] *Id.*

[472] *Id.*

[473] *Id.* at 2-4.

[474] Nat'l Sexual Violence Res. Ctr., *Child Sexual Abuse Prevention -- Programs for Adults*, at 3, *available at* http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Guide_Child-Sexual-Abuse-Prevention-programs-for-adults.pdf (last accessed Nov. 5, 2012).

Child abuse prevention programs designed for children have traditionally "applied a risk reduction approach – one that educates children about child sexual abuse and provides them with skills to repel and report abuse."[475] A variety of prevention programs are available for a wide range of children, from those very young to teenagers. Child abuse prevention programs targeting children have three main goals: to teach children to recognize sexual abuse, to give them the skills to avoid abuse, and to encourage them to report abuse in case they experience it.[476]

The most effective child sexual abuse prevention programs include children as physically active participants; combine the techniques of modeling, group discussion, and role-playing/rehearsal; tend to last for longer periods of time than less effective programs; are broken into multiple sessions; and incorporate parents into prevention efforts.[477] Though teaching children about risk and risk reduction is important, experts and advocates recognize that risk reduction alone will not stop sexual violence. Prevention programs designed for children are only one of the many components of a successful community effort to prevent child abuse. Ultimately, "[c]hanging the behavior of adults and communities, rather than the behavior of children, is the ideal way to prevent child sexual abuse."[478]

Child Abuse Prevention Teams

Local child abuse prevention teams play a major role in investigating child abuse and preventing further child abuse. Most experts agree that a crucial factor in child abuse prevention is cooperation between law enforcement agencies and child welfare agencies. Child abuse prevention teams that have been created in several localities are a promising tool in combating child abuse. One of the most comprehensive, well-organized teams operates in Lancaster County and is comprised of prosecutors, detectives, the county children and youth social services agency, the Lancaster County Children's Alliance, Lancaster General Hospital, and others.[479] Collaborative efforts of law enforcement officers, social workers and medical professionals ensure that a child victim receives the necessary help and that a child predator or abuser is stopped from re-victimizing or hurting the same child or another child.

---

[475] Nat'l Sexual Violence Res. Ctr., *Child Sexual Abuse Prevention – Programs for Children*, at 2, *available at* http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Guide_Child-Sexual-Abuse-Prevention-programs-for-children.pdf (last accessed Nov. 5, 2012).

[476] *Id.* at 3.

[477] *Id.* at 6.

[478] *Id.* at 3.

[479] Brett Hambright, *County Praised for Work on Abuse*, Intelligencer Journal & Lancaster New Era, *available at* http://lancasteronline.com/article/local/747667_County-praised-for-work-on-abuse.html (last accessed Nov. 7, 2012).

Legislative Efforts Nationwide

In their efforts to improve the law regarding child abuse and neglect, states over the last several legislative sessions have developed legislation in such areas as child fatality review, child protection, the judicial process, education, finance, foster care, investigations, kinship care, oversight and administration, prevention, treatment of abuse, training, reporting, safe haven for infants, and substance abuse.[480] Of particular note are past efforts to introduce (1) age-appropriate, research-supported child abuse prevention curricula in public schools; (2) mandatory child abuse prevention and identification training for school employees; (3) parenting skills training; (4) in-home support for at-risk, low-income families and children in child neglect cases in which poverty is considered to be a significant underlying cause of the neglect and in-home support appears likely to prevent removal; (5) crisis nurseries; (6) child abuse and neglect public awareness efforts and outreach; (7) respite care and (8) training of law enforcement on child abuse and neglect.

In 2005, Oregon passed "Aaron's Law," becoming the first state to allow specified persons to bring a civil action to secure damages in cases of child abduction involving the crime of custodial interference.[481] Oregon provides for the crime of custodial interference in the second degree: a person who, knowing or having reason to know that the person has no legal right to do so, takes, entices or keeps an individual from his or her lawful custodian or in violation of a valid joint custody order with intent to hold the individual permanently or for a protracted period.[482] Oregon further provides for the crime of custodian interference in the first degree, which involves the commission of the crime of custodial interference in the second degree and causing the individual to be removed from the state or exposing the individual to a substantial risk of illness or physical injury.[483]

---

[480] Nat'l Conf. of State Legs., *State Child Welfare Legislation, 2007-2008* (June 2009), *available at* http://www.ncsl.org/documents/cyf/childwelfare_legislation07_08.pdf (last accessed Nov. 5, 2012) and *State Child Welfare Legislation: 2009* (Feb. 2011), *available at* http://www.ncsl.org/documents/cyf/ChildWelfare_Leg_09.pdf (last accessed Nov. 5, 2012).

[481] These specified persons include a person who is 18 years of age or older and who has been taken, enticed or kept in violation of law and a person whose custodial rights have been adversely affected. *See* Or. Rev. Stat. § 30.868.

[482] *Id.* § 163.245(1).

[483] *Id.* § 163.257(1)(a).

The Pennsylvania Children's Trust Fund

The Task Force acknowledges the important role of the Pennsylvania Children's Trust Fund[484] (CTF), which is dedicated to funding community-based programs to prevent child abuse and neglect. A 15-member Board of Directors administers the fund, and the Deputy Secretary for Office of Child Development and Early Learning (OCDEL) serves as the Executive Director of the fund. Staff members within OCDEL carry out the duties and responsibilities of the fund's board. Fund grants "are intended to develop innovative and creative child abuse and neglect prevention programs. Specific emphasis for funding is placed on primary prevention programs, which focus on the prevention of abuse before it occurs for the first time."[485] OCDEL contracts with the Center for Schools and Communities, which provides statewide training and networking opportunities to program staff, offers technical assistance and monitoring (onsite as well as via mail, email and telephone to program supervisors and managers), and supports OCDEL through data collection, report preparation, site visits and monitoring, topical presentations, assistance with preparation of Requests for Proposals and application review.[486]

Child Exploitation Awareness Education

The Task Force also acknowledges the efforts of the Honorable Mauree A. Gingrich,[487] who introduced legislation amending the Public School Code of 1949 to add a new section regarding child exploitation awareness education. Under the bill, child exploitation includes child abduction and sexual abuse or exploitation.[488] The bill specifies that school districts must incorporate model age-appropriate child exploitation awareness education guidelines, to be developed by the Department of Education, into the existing health curriculum framework for students in kindergarten through eighth grade. Child exploitation awareness education may include, but need not be limited to, defining child exploitation, recognizing types of child exploitation and creating awareness of warning signs of child exploitation. A parent or legal guardian of a participating student may examine the instructional materials and may request that student be excused from all or part of the school program.

---

[484] Established by the act of Dec. 15, 1988 (P.L.1235, No.151), known as the Children's Trust Fund Act. Section 8 of the act provides that funds are generated from a $10 surcharge on all applications for marriage licenses and divorce complaints.

[485] Pa. Children's Trust Fund, About Children's Trust Fund, *available at* http://www.center-school.org/ctf/about.php (last accessed Nov. 7, 2012).

[486] *Id.*

[487] Pa. Rep., 101st Dist.

[488] H.R. 2318 (Printer's No. 4080, Prior Printer's No. 3385), which was reported from the House Education Committee as amended and received first consideration on September 25, 2012. No further legislative action was taken on the bill.

Boys to Men and Phenomenal Females

Although many laudable prevention efforts exist across the Commonwealth and nationwide, the Task Force specifically wishes to acknowledge the Boys to Men and Phenomenal Females program in Allegheny County. This multifaceted outreach program is "for adolescent males and females, including teen fathers and mothers, equipping them with life-skills education and redirecting them through carefully structured and extensively planned curricula and activities[.]"[489]

[489] Boys to Men & Phenomenal Females, *available at* http://www.jlc.org/resources/county-resource-guide/allegheny/boys-men-phenomenal-females (last accessed Nov. 19, 2012).

TABLES OF LEGAL CITATIONS NATIONWIDE

TABLE 1. Legal Citations Nationwide Regarding the Definition of Child Abuse and Perpetrator.

STATE	Definition of Child Abuse and Perpetrator
AL	Ala. Code §§ 26-14-1 & 26-14-7.2
AK	Alaska Stat. § 47.17.290
AZ	Ariz. Rev. Stat. Ann. §§ 8-201 & 13-3623
AR	Ark. Code Ann. § 12-18-103
CA	Cal. Welf. & Inst. Code § 300
CO	Colo. Rev. Stat. Ann. § 19-1-103
CT	Conn. Gen. Stat. § 46b-120
DE	Del. Code Ann. tit. 16, § 902 & tit. 10, § 901
FL	Fla. Stat. § 39.01
GA	Ga. Code Ann. § 19-7-5(b)
HI	Haw. Rev. Stat. §§ 350-1 & 587A-4
ID	Idaho Code Ann. § 16-1602
IL	325 Ill. Comp. Stat. 5/3
IN	Ind. Code §§ 31-9-2-31 & 31-34-1-2
IA	Iowa Code § 232-68
KS	Kan. Stat. Ann. § 38-2202
KY	Ky. Rev. Stat. Ann. § 600.020
LA	La. Child. Code Ann. art. 603
ME	Me. Rev. Stat. tit. 22, § 4002
MD	Md. Code Ann., Fam. Law § 5-701
MA	110 Mass. Code Regs. § 2.00
MI	Mich. Comp. Laws §§ 722.622 & 722.628(3)(c)
MN	Minn. Stat. §§ 609.341 & 626.556 subd. 2
MS	Miss. Code Ann. § 43-21-105
MO	Mo. Rev. Stat. § 210.110
MT	Mont. Code Ann. § 41-3-102
NE	Neb. Rev. Stat. § 28-710
NV	Nev. Rev. Stat. §§ 432B.020 & 432B.130
NH	N.H. Rev. Stat. Ann. § 169-C:3
NJ	N.J. Stat. Ann. §§ 9:6-8.9, 9:6-8.21 & 9:6-2
NM	N.M. Stat. Ann. § 32A-4-2
NY	N.Y. Soc. Serv. §§ 412 & 412-A
NC	N.C. Gen. Stat. Ann.§ 7B-101
ND	N.D. Cent. Code Ann. § 50-25.1-02
OH	Ohio Rev. Code Ann. §§ 2151.011 & 2151.031
OK	Okla. Stat. Ann. tit. 10A, § 1-1-105
OR	Or. Rev. Stat. §§ 419B.005 & 419B.010
PA	23 Pa. Cons. Stat. § 6303
RI	R.I. Gen. Laws Ann. § 40-11-2
SC	S.C. Code Ann. § 63-7-20
SD	S.D. Codified Laws § 26-8A-2
TN	Tenn. Code Ann. § 37-1-102
TX	Tex. Fam. Code Ann. §§ 261.001 & 261.103
UT	Utah Code Ann. §§ 62A-4a-101, 62A-4a-402 & 78A-6-105
VT	Vt. Stat. Ann. tit. 33, § 4912
VA	Va. Code Ann. §§ 16.1-228 & 63.2-100
WA	Wash. Rev. Code § 26.44.020
WV	W. Va. Code §§ 49-1-3 & 49-1-4
WI	Wis. Stat. §§ 48.02 & 48.981
WY	Wyo. Stat. Ann. § 14-3-202

TABLE 2. Legal Citations Nationwide Regarding Mandated Reporters of Suspected Child Abuse.

STATE	Mandated Reporters
AL	Ala. Code § 26-14-3
AK	Alaska Stat. § 47.17.020(a)
AZ	Ariz. Rev. Stat. Ann. §13-3620A
AR	Ark. Code Ann. §§ 5-27-604 & 12-18-402
CA	Cal. Penal Code § 11165.7(a)
CO	Colo. Rev. Stat. Ann. § 19-3-304(2) & (2.5)
CT	Conn. Gen. Stat. § 17a-101(b)
DE	Del. Code Ann. tit. 16, §§ 903 & 904
FL	Fla. Stat. § 39.201
GA	Ga. Code Ann. §§ 19-7-5(c) & 16-12-100(c)
HI	Haw. Rev. Stat. § 350-1.1(a)
ID	Idaho Code Ann. § 16-1605(1)
IL	325 Ill. Comp. Stat. 5/4, 5/4.1 & 5/4.5
IN	Ind. Code §§ 31-33-5-1 through 31-33-5-4
IA	Iowa Code § 232.69(1)
KS	Kan. Stat. Ann. § 38-2223(a)(1)
KY	Ky. Rev. Stat. Ann. § 620.030
LA	La. Child. Code Ann. art. 603(15)
ME	Me. Rev. Stat. tit. 22 § 4011-A
MD	Md. Code Ann., Fam. Law § 5-704
MA	Mass. Gen. Laws ch. 119, § 51A
MI	Mich. Comp. Laws § 722.623
MN	Minn. Stat. § 626.556 subd. 3
MS	Miss. Code Ann. § 43-21-353(1)
MO	Mo. Rev. Stat. §§ 210.115 & 568.110
MT	Mont. Code Ann. § 41-3-201(2)
NE	Neb. Rev. Stat. § 28-711
NV	Nev. Rev. Stat. § 432B.220(4)
NH	N.H. Rev. Stat. Ann. § 169-C:29
NJ	N.J. Stat. Ann. § 9:6-8.10
NM	N.M. Stat. Ann. § 32A-4-3
NY	N.Y. Soc. Serv. § 413
NC	N.C. Gen. Stat. Ann. §§ 7B-301 & 66-67.4
ND	N.D. Cent. Code Ann. § 50-25.1-03
OH	Ohio Rev. Code Ann. § 2151.421(A)
OK	Okla. Stat. Ann. tit. 10A, § 1-2-101(B) & tit.21, § 1021.4
OR	Or. Rev. Stat. § 419B.010(1)
PA	23 Pa. Cons. Stat. §§ 6311, 6352 & 6353
RI	R.I. Gen. Laws Ann. § 40-11-3
SC	S.C. Code Ann. §§ 16-3-850 & 63-7-310(A)
SD	S.D. Codified Laws §§ 22-22-24.18 & 26-8A-3
TN	Tenn. Code Ann. § 37-1-403(a)(1)
TX	Tex. Fam. Code Ann. § 261.001
UT	Utah Code Ann. § 62A-4a-403
VT	Vt. Stat. Ann. tit. 33, § 4913(a)
VA	Va. Code Ann. § 63.2-1509
WA	Wash. Rev. Code § 26.44.030
WV	W. Va. Code § 49-6A-2
WI	Wis. Stat. § 48.981(2)
WY	Wyo. Stat. Ann. § 14-3-205

TABLE 3. Legal Citations Nationwide Regarding Voluntary Reporters of Suspected Child Abuse.[490]

STATE	Voluntary Reporters
AL	Ala. Code § 26-14-4
AK	Alaska Stat. § 47.17.020(b)
AZ	Ariz. Rev. Stat. Ann. § 13-3620F
AR	Ark. Code Ann. § 12-18-401
CA	Cal. Penal Code § 11166(g)
CO	Colo. Rev. Stat. Ann. § 19-3-304(3)
CT	Conn. Gen. Stat. § 17a-103(a)
DE	*
FL	*
GA	Ga. Code Ann. § 19-7-5(d)
HI	Haw. Rev. Stat. § 350-1.3
ID	*
IL	325 Ill. Comp. Stat. 5/4
IN	*
IA	Iowa Code § 232.69(2)
KS	Kan. Stat. Ann. § 38-2223(a)(2)
KY	*
LA	La. Child. Code Ann. art. 609
ME	Me. Rev. Stat. tit. 22 § 4011-A
MD	Md. Code Ann., Fam. Law § 5-704.1
MA	Mass. Gen. Laws ch. 119, § 51A(f)
MI	Mich. Comp. Laws § 722.624
MN	Minn. Stat. § 626.556 subd. 3
MS	Miss. Code Ann. § 43-32-353(1)
MO	Mo. Rev. Stat. § 210.115(4)
MT	Mont. Code Ann. § 41-3-201(4)
NE	*
NV	Nev. Rev. Stat. § 432B.220(5)
NH	*
NJ	*
NM	*
NY	N.Y. Soc. Serv. § 414
NC	*
ND	N.D. Cent. Code Ann. § 50-25.1-03(2)
OH	Ohio Rev. Code Ann. § 2151.421(B)
OK	*
OR	Or. Rev. Stat. § 419B.015
PA	23 Pa. Cons. Stat. §§ 6312
RI	*
SC	S.C. Code Ann. § 63-7-310(C)
SD	S.D. Codified Laws § 26-8A-3
TN	*
TX	*
UT	*
VT	Vt. Stat. Ann. tit. 33, § 4913(c)
VA	Va. Code Ann. § 63.2-1510
WA	Wash. Rev. Code § 26.44.030
WV	W. Va. Code § 49-6A-2
WI	Wis. Stat. § 48.981
WY	*

[490] States marked with an * specify that all persons are mandatory reporters of suspected child abuse.

TABLE 4. Legal Citations Nationwide Regarding Penalties and Prohibitions for Failure to Report Suspected Child Abuse.

STATE	Penalties and Prohibitions
AL	Ala. Code § 26-14-13
AK	Alaska Stat. § 47.17.068
AZ	Ariz. Rev. Stat. Ann. § 13-3620O & P
AR	Ark. Code Ann. §§ 12-18-201, 12-18-202 & 12-18-206
CA	Cal. Penal Code § 11166(c) & (i)
CO	Colo. Rev. Stat. Ann. § 19-3-304(4)
CT	Conn. Gen. Stat. §§ 17a-101(d) & 17a-101a
DE	Del. Code Ann. tit. 16, § 914
FL	Fla. Stat. § 39.205
GA	Ga. Code Ann. § 19-7-5(h)
HI	Haw. Rev. Stat. § 350-1.2
ID	Idaho Code Ann. § 16-1605(4)
IL	325 Ill. Comp. Stat. 5/4 & 5/4.02
IN	Ind. Code § 31-33-22-1
IA	Iowa Code § 232.75
KS	Kan. Stat. Ann. § 38-2223(e)
KY	Ky. Rev. Stat. Ann. § 620.030(5)
LA	La. Rev. Stat. Ann. § 14:403(A)(1)
ME	Me. Rev. Stat. tit. 22 § 4009
MD	--
MA	Mass. Gen. Laws ch. 119, § 51A(c)
MI	Mich. Comp. Laws § 722.633
MN	Minn. Stat. § 626.556 subd. 6
MS	Miss. Code Ann. § 43-32-353(7)
MO	Mo. Rev. Stat. § 210.165
MT	Mont. Code Ann. § 41-3-207
NE	Neb. Rev. Stat. § 28-717
NV	Nev. Rev. Stat. § 432B.240
NH	N.H. Rev. Stat. Ann. § 169-C:39
NJ	N.J. Stat. Ann. § 9:6-8.14
NM	N.M. Stat. Ann. § 32A-4-3
NY	N.Y. Soc. Serv. § 420
NC	--
ND	N.D. Cent. Code Ann. § 50-25.1-13
OH	Ohio Rev. Code Ann. § 2151.421(M)
OK	Okla. Stat. Ann. tit. 10A, § 1-2-101(C)
OR	Or. Rev. Stat. § 419B.010(3)
PA	23 Pa. Cons. Stat. §§ 6311, 6352 & 6353
RI	R.I. Gen. Laws Ann. § 40-11-6.1
SC	S.C. Code Ann. § 63-7-410
SD	S.D. Codified Laws § 26-8A-3
TN	Tenn. Code Ann. §§ 37-1-412 & 37-1-615(a)
TX	Tex. Fam. Code Ann. § 261.109
UT	Utah Code Ann. § 62A-4a-411
VT	Vt. Stat. Ann. tit. 33, § 4913(f)
VA	Va. Code Ann. § 63.2-1509
WA	Wash. Rev. Code § 26.44.080
WV	W. Va. Code § 49-6A-8
WI	Wis. Stat. § 48.981(6)
WY	--

TABLE 5. Legal Citations Nationwide Regarding Investigations of Reports of Suspected Child Abuse or Neglect.

STATE	Investigations of Reports
AL	Ala. Code §§ 26-14-6.1 & 26-14-7
AK	Alaska Stat. §§ 47.10.020 & 47.17.033
AZ	Ariz. Rev. Stat. Ann. §§ 8-811 & 8-802 CHECK,
AR	Ark. Code Ann.§§ 12-18-501 *et seq.*, 12-18-601 *et seq.* & 12-18-801 *et seq.*
CA	Cal. Welf. & Inst. Code § 309 & Cal. Penal Code § 11166(j) & (k)
CO	Colo. Rev. Stat. Ann. § 19-3-308
CT	Conn. Gen. Stat. § 17a-101(b), (g)(a) & (j)
DE	Del. Code Ann. tit. 16, § 906
FL	Fla. Stat. §§ 39.201(2) & (5) & 39.301
GA	Ga. Code Ann. §§ 19-7-5 & 49-5-180
HI	Haw. Rev. Stat. § 350-2
ID	Idaho Code Ann. §§ 16-1616 to 16-1618
IL	325 Ill. Comp. Stat. 5/7.3 & 5/7.13
IN	Ind. Code §§ 31-33-8-1 & 31-33-8-2
IA	Iowa Code § 232.70
KS	Kan. Stat. Ann. § 38-2226
KY	Ky. Rev. Stat. Ann. § 620.040
LA	La. Child. Code Ann. arts. 610 & 612
ME	Me. Rev. Stat. tit. 22 § 4004
MD	Md. Code Ann., Fam. Law §§ 5-705.1 & 5-706
MA	Mass. Gen. Laws ch. 119, § 51A
MI	Mich. Comp. Laws § 722.623
MN	Minn. Stat. § 626.556 subds. 7, 10 & 10e
MS	Miss. Code Ann. § 43-21-353(1)
MO	Mo. Rev. Stat. § 210.145
MT	Mont. Code Ann. § 41-3-202
NE	Neb. Rev. Stat. § 28-713
NV	Nev. Rev. Stat. § 432B.260
NH	N.H. Rev. Stat. Ann. §§ 169-C:34 & 169-C:38
NJ	N.J. Stat. Ann. §§ 9:6-8.11, 9:6-8.29 & 9:6-8.36a
NM	N.M. Stat. Ann. § 32A-4-5
NY	N.Y. Soc. Serv. § 424
NC	N.C. Gen. Stat. Ann. § 7B-302 & 7B-307
ND	N.D. Cent. Code §§ 50-25.1-04 & 50-25.1-05.3
OH	Ohio Rev. Code Ann. § 2151.421(F)
OK	Okla. Stat. Ann. tit. 10A, § 1-2-102 & 1-2-105
OR	Or. Rev. Stat. §§ 419B.015 & 419B.017
PA	23 Pa. Cons. Stat. §§ 6334, 6353.1, 6353.2 & 6368
RI	R.I. Gen. Laws § 40-11-7 and in regulations
SC	S.C. Code Ann. §§ 63-7-310(B) & 63-7-920
SD	S.D. Codified Laws §§ 26-8A-8 & 26-8A-9
TN	Tenn. Code Ann. §§ 37-1-114 & 37-1-404
TX	Tex. Fam. Code Ann. § 261.105 & 261.301 and in regulations
UT	Utah Code Ann. §§ 62A-4a-202.3 & 62A-4a-409
VT	Vt. Stat. Ann. tit. 33, §§ 4915, 4915a & 4915b
VA	Va. Code Ann. §§ 63.2-1503, 1505 & 1506
WA	Wash. Rev. Code § 26.44.030
WV	W. Va. Code §§ 49-6A-5 & 49-6-3
WI	Wis. Stat. § 48.981
WY	Wyo. Stat. Ann. § 14-3-204

TABLE 6. Legal Citations Nationwide for Investigative Findings and Evidence Regarding Suspected Child Abuse or Neglect.

STATE	Investigative Findings and Evidence
AL	Ala. Code § 26-14-8
AK	--
AZ	Ariz. Rev. Stat. Ann. §§ 8-804, 8-804.01, 8-807 & 8-811
AR	Ark. Code Ann. § 12-18-701 *et seq.*
CA	Cal. Penal Code § 11165.12
CO	Colo. Rev. Stat. Ann. § 19-1-103(27)
CT	Conn. Gen. Stat. § 17a-101(g) & (k)
DE	Del. Code Ann. tit. 16, §§ 902(16), 923 & 924
FL	Fla. Stat. § 39.01
GA	Ga. Code Ann. § 49-5-180
HI	Haw. Rev. Stat. § 350-2
ID	Idaho Admin. Code § 16.06.01.552 *et seq.*
IL	325 Ill. Comp. Stat. 5/3
IN	Ind. Code §§ 31-33-8-12, 31-9-2-123 & 31-9-2-132
IA	Iowa Code § 232.71D
KS	--
KY	--
LA	La. Child. Code Ann. art. 615
ME	Me. Rev. Stat. tit. 22 § 4004
MD	Md. Code Ann., Fam. Law § 5-701
MA	Mass. Gen. Laws ch. 119, § 51F
MI	Mich. Comp. Laws §§ 722.622 & 722.628d
MN	Minn. Stat. § 626.556 subd. 10e
MS	*In regulations*
MO	Mo. Rev. Stat. § 210.152
MT	Mont. Code Ann. § 41-3-102
NE	Neb. Rev. Stat. §§ 28-720 & 28-720.01
NV	*In regulations*
NH	N.H. Rev. Stat. Ann. § 169-C:3
NJ	*In regulations*
NM	*In regulations*
NY	N.Y. Soc. Serv. §§ 412(6)-(7) & 424-d
NC	N.C. Gen. Stat. Ann. § 7B-320
ND	--
OH	--
OK	Okla. Stat. Ann. tit. 10A, § 1-1-105(37)
OR	*In regulations*
PA	23 Pa. Cons. Stat. § 6303(a)
RI	*In regulations*
SC	S.C. Code Ann. §§ 63-7-20 & 63-7-930
SD	S.D. Codified Laws § 26-8A-11
TN	Tenn. Code Ann. §§ 37-1-406(k) & 37-1-607(A)(1)(a)(iii)
TX	Tex. Fam. Code Ann. § 261.004
UT	Utah Code Ann. § 62A-4a-101(31), (36), (37) & (38)
VT	Vt. Stat. Ann. tit. 33, § 4912(10)
VA	--
WA	Wash. Rev. Code § 26.44.020
WV	W. Va. Code § 49-6A-9
WI	--
WY	Wyo. Stat. Ann. § 14-3-202

TABLE 7. Legal Citations Nationwide Regarding Temporary or Emergency Custody for a Child, Without a Court Order.

STATE	Temporary or Emergency Custody
AL	Ala. Code §§ 26-14-6 & 12-15-125 to 12-15-127
AK	--
AZ	Ariz. Rev. Stat. Ann. §§ 8-821
AR	Ark. Code Ann. §§ 12-18-1001 *et seq.*, 9-27-313 & 9-27-314
CA	Cal. Welf. & Inst. Code § 305 *et seq.*
CO	Colo. Rev. Stat. Ann. § 19-3-401 *et seq.*
CT	Conn. Gen. Stat. § 17a-101(f), (g)(e) & (g)(f)
DE	Del. Code Ann. tit. 16, § 907
FL	Fla. Stat. §§ 39.395, 39.401 & 39.406
GA	Ga. Code Ann. § 15-11-15
HI	Haw. Rev. Stat. §§ 587A-8 & 587A-9
ID	Idaho Code Ann. §§ 16-1608 & 16-1609
IL	325 Ill. Comp. Stat. 5/5 & 405 Ill. Comp. Stat.
IN	Ind. Code §§ 31-34-2-3 *et seq.* & 31-34-5 *et seq.*
IA	Iowa Code § 232.79
KS	Kan. Stat. Ann. § 38-2231
KY	Ky. Rev. Stat. Ann. § 620.060
LA	La. Child. Code Ann. art. 621
ME	Me. Rev. Stat. tit. 22 § 4023
MD	Md. Code Ann., Fam. Law §§ 5-709 & 5-710
MA	Mass. Gen. Laws ch. 119, §§ 23(a)(7) & 51B
MI	Mich. Comp. Laws § 722.626
MN	--
MS	Miss. Code Ann. §§ 43-21-301(3), 43-21-303 & 43-21-307
MO	Mo. Rev. Stat. § 210.125
MT	Mont. Code Ann. § 41-3-301
NE	Neb. Rev. Stat. § 43-248 & 43-250(2)
NV	Nev. Rev. Stat. §§ 432B.390, 432B.400 & 432B.470
NH	N.H. Rev. Stat. Ann. § 169-C:6
NJ	N.J. Stat. Ann. §§ 9:6-8.16 to 9:6-8.19
NM	N.M. Code §§ 32A-4-4, 32A-4-6 & 32A-4-7
NY	N.Y. Soc. Serv. § 417
NC	N.C. Gen. Stat. Ann. §§ 7B-500 & 7B-501
ND	N.D. Cent. Code § 50-25.1-07
OH	Ohio Rev. Code Ann. § 2151.31(A)(3) & (E)
OK	Okla. Stat. Ann. tit. 10A, §§ 1-2-105(D) & 1-4-203(A)
OR	Or. Rev. Stat. §§ 419B.150 & 419B.183
PA	23 Pa. Cons. Stat. §§ 6315 & 6369, 42 Pa. Cons. Stat. § 6324 & 237 Pa. Code Pt. 1, Subpt. B, Ch. 12
RI	R.I. Gen. Laws § 40-11-5
SC	S.C. Code Ann. §§ 63-7-620(A), 63-7-630 § 63-7-750
SD	S.D. Codified Laws §§ 26-7A-12 & 26-7A-13.1
TN	Tenn. Code Ann. §§ 37-1-113, 37-1-114 & 37-1-608
TX	Tex. Fam. Code Ann. § 262.105 *et seq.*
UT	Utah Code Ann. § 62A-4a-407
VT	Vt. Stat. Ann. tit. 33, §§ 5301, 5302 & 5307
VA	Va. Code Ann. § 63.2-1517
WA	Wash. Rev. Code §§ 26.44.050 & 26.44.056
WV	W. Va. Code § 49-6-3
WI	Wis. Stat. Ann. §§ 48.19 - 48.21
WY	Wyo. Stat. Ann. §§ 14-3-208 & 14-3-405

TABLE 8. Legal Citations Nationwide Regarding Expungement of Records.

STATE	Expungement of Records
AL	Ala. Code §§ 26-14-8, 41-9-645 & 41-9-646
AK	Alaska Stat. §§ 12.62.180 & 12.62.190
AZ	Ariz. Rev. Stat. Ann. §§ 8-804(C), (D) & (E)
AR	--
CA	Cal. Penal Code §§ 11169(f) & (g) & 11170(a)
CO	Colo. Rev. Stat. Ann. § 19-3-313.5(f)
CT	Conn. Gen. Stat. § 17a-101k-16
DE	Del. Code Ann. tit. 16, §§ 923 & 929
FL	Fla. Stat. § 39.202(7)
GA	Ga. Code Ann. § 49-5-184
HI	Haw. Rev. Stat. § 350-2(d)
ID	--
IL	325 Ill. Comp. Stat. 5/7.7 & 5/7.14
IN	Ind. Code §§ 31-33-7-6.5, 31-33-26-14, 31-33-26-15 & 31-39-8-4
IA	Iowa Code § 235A.18
KS	--
KY	--
LA	La. Child. Code Ann. art. 615 & 616.2
ME	Me. Rev. Stat. tit. 22 § 4008-A
MD	Md. Code Ann., Fam. Law § 5-707
MA	Mass. Gen. Laws ch. 119, § 51F
MI	Mich. Comp. Laws § 722.628
MN	--
MS	Miss. Code Ann. § 43-21-263
MO	Mo. Rev. Stat. § 210.152
MT	Mont. Code Ann. § 41-3-202(5)(b) & (c)
NE	Neb. Rev. Stat. § 28-721
NV	Nev. Rev. Stat. § 432.120
NH	N.H. Rev. Stat. Ann. §§ 169-C:35 & 169-C:35-a
NJ	N.J. Stat. Ann. § 9:6-8.40a
NM	--
NY	N.Y. Soc. Serv. § 422(6)
NC	N.C. Gen. Stat. Ann. § 7B-311(d)
ND	--
OH	--
OK	Okla. Stat. Ann. tit. 10A, § 1-2-108
OR	--
PA	23 Pa. Cons. Stat. §§ 6337, 6338 & 6341
RI	R.I. Gen. Laws §§ 40-11-3 & 40-11-13.1
SC	S.C. Code Ann. §§ 63-7-940 & 63-7-1960
SD	S.D. Codified Laws §§ 26-8A-11 & 26-8A-12
TN	Tenn. Code Ann. §§ 37-1-406 & 37-1-606
TX	--
UT	Utah Code Ann. § 62A-4a-1008
VT	Vt. Stat. Ann. tit. 33, §§ 4916c & 4916d
VA	Va. Code Ann. § 63.2-1514
WA	Wash. Rev. Code § 26.44.031
WV	W. Va. Code § 49-6A-5
WI	--
WY	Wyo. Stat. Ann. § 14-3-213

TABLE 9. Legal Citations Nationwide Regarding Dependency Proceedings.

STATE	Dependency Proceedings
AL	Ala. Code § 12-15-129 *et seq.*
AK	Alaska Stat § 47.10.005 *et seq.*
AZ	Ariz. Rev. Stat. Ann. § 8-844
AR	Ark. Code Ann. § 9-27-301 *et seq.*
CA	Cal. Welf. & Inst. Code §§ 315 & 319
CO	Colo. Rev. Stat. Ann. §§ 19-3-312 & 19-3-501 *et seq.*
CT	Conn. Gen. Stat. § 46b-129
DE	Del. Code Ann. tit. 10, §§ 1003, 1004 & 1009(a) & (b)
FL	Fla. Stat. §§ 39.301(b) & 39-501
GA	Ga. Code Ann. § 15-11-35 *et seq.*
HI	Haw. Rev. Stat. § 587A-1 *et seq.*
ID	Idaho Code Ann. §§ 16-1610 to 16-1615 & 16-1619 *et seq.*
IL	405 Ill. Comp. Stat. 2.13 *et seq.*
IN	Ind. Code §§ 31-33-14-1 & 31-34-9 *et seq.*
IA	Iowa Code § 232.78
KS	Kan. Stat. Ann. § 38-2242 *et seq.*
KY	Ky. Rev. Stat. Ann. § 620.070 *et seq.*
LA	La. Child. Code Ann. arts. 619, 620, 624, 626 & 632 *et seq.*
ME	Me. Rev. Stat. tit. 22, § 4032
MD	Md. Code Ann., Fam. Law § 5-710
MA	Mass. Gen. Laws ch. 119, § 24
MI	Mich. Comp. Laws § 722.628d
MN	Minn. Stat. § 626.556 subd. 10
MS	Miss. Code Ann. § 43-21-357
MO	Mo. Rev. Stat. §§ 210.125 & 211.031
MT	Mont. Code Ann. §41-3-422 & 41-3-427
NE	Neb. Rev. Stat. § 43-250(2) & 43-271
NV	Nev. Rev. Stat. § 432B.500 *et seq.*
NH	N.H. Rev. Stat. Ann. §§ 169-C:6 & 169-C:7
NJ	N.J. Stat. Ann. §§ 9:6-5 & 9:6-8.34
NM	N.M. Code § 32A-4-15
NY	N.Y. Soc. Serv. § 424
NC	N.C. Gen. Stat. Ann. § 7B-403
ND	--
OH	Ohio Rev. Code Ann. §§ 2151.27 & 2151.314
OK	Okla. Stat. Ann. tit. 10A, § 1-4-201 *et seq.*
OR	Or. Rev. Stat. §§ 419B.183 & 419B.185
PA	23 Pa. Cons. Stat. §§ 6315(d), 6369 & 6370; 42 Pa. Cons. Stat. §§ 6311, 6332, 6337, 6337.1 & 6351 & 237 Pa. Code Pt. I, Subpt. B, Ch. 13
RI	R.I. Gen. Laws § 40-11-7.1
SC	S.C. Code Ann. § 63-7-1660
SD	S.D. Codified Laws §§ 26-7A-10 & 26-7A-13 *et seq.*
TN	Tenn. Code Ann. § 37-1-117
TX	Tex. Fam. Code Ann. §§ 262.101-262.103
UT	Utah Code Ann. §§ 78A-6-304 & 78A-6-306
VT	Vt. Stat. Ann. tit. 33, §§ 5505-5510
VA	Va. Code Ann. § 16.1-251
WA	Wash. Rev. Code §§ 13.34.050 & 13.34.062
WV	W. Va. Code § 49-6-1
WI	Wis. Stat. Ann. §§ 48.08, 48.19-48.21 & 48.25
WY	Wyo. Stat. Ann. §§ 14-3-12 & 14-3-409

MASTER TABLE OF CITATIONS

This table summarizes the legal citations for each state's laws regarding the information set forth in Tables 1-9.

STATE	Legal Authority	Legal Citations (Sections)		
AL	Ala. Code	12-15-125 12-15-126 12-15-127 12-15-129 *et seq.* 26-14-1	26-14-3 26-14-4 26-14-6 26-14-6.1 26-14-7	26-14-7.2 26-14-8 26-14-13 41-9-645 41-9-646
AK	Alaska Stat.	12.62.180 12.62.190 47.10.005 *et seq.*	47.17.020 47.17.033	47.17.068 47.17.290
AZ	Ariz. Rev. Stat. Ann.	8-201 8-802 8-804 8-804.01	8-807 8-811 8-821	8-844 13-3620 13-3623
AR	Ark. Code Ann.	5-27-604 9-27-310 *et seq.* 9-27-313 9-27-314 12-18-103	12-18-201 12-18-202 12-18-206 12-18-401 12-18-402	12-18-501 *et seq.* 12-18-601 *et seq.* 12-18-701 *et seq.* 12-18-801 *et seq.* 12-18-1001 *et seq.*
CA	Cal. Penal Code	11165.7 11165.9	11165.12 11166	11169 11170
	Cal. Welf. & Inst. Code	300 305 *et seq.*	309 315	319
CO	Colo. Rev. Stat. Ann.	19-1-103 19-3-304 19-3-308	19-3-312 19-3-313.5	19-3-401 19-3-501 *et seq.*
CT	Conn. Gen. Stat.	17a-101 17a-101a 17a-101b	17a-101c 17a-101k-16 17a-103(a)	46b-120 46b-129
DE	Del. Code Ann. tit. 10	901 1003	1004	1009
	Del. Code Ann. tit. 16	902 903 904	906 907 914	923 924 929
FL	Fla. Stat.	39.01 39.201 39.202	39.205 39.301 39.395	39.401 39.406 39.501
GA	Ga. Code Ann.	15-11-15 15-11-35 *et seq.*	16-12-100 19-7-5	49-5-180 49-5-184
HI	Haw. Rev. Stat.	350-1 350-1.1(a) 350-1.2	350-1.3 350-2 587A-1 *et seq.*	587A-4 587A-8 587A-9
ID	Idaho Admin. Code	16.06.01.552 *et seq.*		

STATE	Legal Authority	Legal Citations (Sections)		
	Idaho Code Ann.	16-1602 16-1605 16-1608 16-1609 16-1610	16-1611 16-1612 16-1613 16-1614 16-1615	16-1616 16-1617 16-1618 16-1619 *et seq.*
IL	325 Ill. Comp. Stat.	5/3 5/4 5/4.02 5/4.1	5/4.5 5/5 5/7.3	5/7/7 5/7.13 5/7.14
	405 Ill. Comp. Stat.	2.13 *et seq.*		
IN	Ind. Code	31-9-2-31 31-9-2-123 31-9-2-132 31-33-5-1 31-33-5-2 31-33-5-3 31-33-5-4	31-33-7-6.5 31-33-8-1 31-33-8-2 31-33-8-12 31-33-14-1 31-33-22-1 31-33-26-14	31-33-26-15 31-34-1-2 31-39-8-4 31-34-2-3 *et seq.* 31-34-5 *et seq.* 31-34-9 *et seq.*
IA	Iowa Code	232-68 232.69 232.70	232.71D 232.75 232.78	232.79 235A.18
KS	Kan. Stat. Ann.	38-2202 38-2223	28-2226 28-2231	38-2242 *et seq.*
KY	Ky. Rev. Stat. Ann.	600.020 620.030	620.040 620.060	620.070 *et seq.*
LA	La. Child. Code Ann. (articlcs)	603 609 610 612	615 616.2 619 620	621 624 626 632 *et seq.*
	La. Rcv. Stat. Ann.	14:403		
ME	Me. Rcv. Stat. tit. 22	4002 4004 4008-A	4009 4011-A	4023 4032
MD	Md. Code Ann., Fam. Law	5-701 5-704 5-704.1	5-705.1 5-706 5-707	5-709 5-710
MA	Mass. Gen. Laws ch. 119	23 24	51A 51B	51F
	110 Mass. Code Regs.	2.00		
MI	Mich. Comp. Laws	722.622 722.623 722.624	722.626 722.628 722.628d	722.633 750.145c
MN	Minn. Stat.	609.341	626.556	
MS	Miss. Code Ann.	43-21-105 43-21-263 43-21-301	43-21-303 43-21-307 43-21-353	43-21-357 43-32-353
MO	Mo. Rev. Stat.	210.110 210.115 210.125	210.145 210.152 210.165	211.031 568.110
MT	Mont. Code Ann.	41-3-102 41-3-201 41-3-202	41-3-207 41-3-301	41-3-422 41-3-427
NE	Neb. Rev. Stat.	28-710 28-711 28-713 28-717	28-720 28-720.01 28-721	43-248 43-250 43-271

STATE	Legal Authority	Legal Citations (Sections)		
TX	Tex. Fam. Code Ann.	261.001 261.004 261.103 261.105	261.109 261.301 262.101	262.102 262.103 262.105 *et seq.*
UT	Utah Code Ann.	62A-4a-101 62A-4a-202.3 62A-4a-402 62A-4a-403	62A-4a-407 62A-4a-409 62A-4a-411 62A-4a-1008	78A-6-105 78A-6-304 78A-6-306
VT	Vt. Stat. Ann. tit. 33	4912 4913 4915 4915a 4915b 4916c	4916d 5301 5302 5307 5505	5506 5507 5508 5509 5510
VA	Va. Code Ann.	16.1-228 16.1-251 63.2-100 63.2-1503	63.2-1505 63.2-1506 63.2-1509	63.2-1510 63.2-1514 63.2-1517
WA	Wash. Rev. Code	Chapter 9a.44 13.34.050 13.34.062	26.44.020 26.44.030 26.44.031	26.44.050 26.44.056 26.44.080
WV	W. Va. Code	49-1-3 49-1-4 49-6A-2	49-6A-5 49-6A-8 49-6A-9	49-6-1 49-6-3
WI	Wis. Stat.	48.02 48.08 48.19	48.20 48.21	48.25 48.981
WY	Wyo. Stat. Ann.	14-3-12 14-3-202 14-3-204	14-3-205 14-3-208 14-3-213	14-3-405 14-3-409

TITLE 23
DOMESTIC RELATIONS

PART VII
ABUSE OF FAMILY

CHAPTER 63
CHILD PROTECTIVE SERVICES

Subchapter

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

§ 6301. Short title of chapter.

This chapter shall be known and may be cited as the Child Protective Services Law.

§ 6302. Findings and purpose of chapter.

(a) Findings.--Abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment.

(b) Purpose.--It is the purpose of this chapter to encourage more complete reporting of suspected child abuse; to the extent permitted by this chapter, to involve law enforcement agencies in responding to child abuse; and to establish in each county protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk.

(c) Effect on rights of parents.--This chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children.

§ 6303. Definitions.

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accept for service." Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

"Child." Includes a newborn.

"Child-care services." Child day-care centers, group and family day-care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, early intervention and drug and alcohol services for children; and other child-care services which are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

"Child protective services." Those services and activities provided by the Department of Public Welfare and each county agency for child abuse cases.

"Children's advocacy center." A local public agency in this Commonwealth or a not-for-profit entity incorporated in this Commonwealth which:

(1) is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)); and

(2) operates within this Commonwealth for the primary purpose of providing a child-focused, facility-based program dedicated to coordinating a formalized multidisciplinary response to suspected child abuse that, at a minimum, either onsite or through a partnership with another entity or entities, assists county agencies, investigative teams and law enforcement by providing services, including forensic interviews, medical evaluations, therapeutic interventions, victim support and advocacy, team case reviews and a system for case tracking.

"Cooperation with an investigation or assessment." Includes, but is not limited to, a school or school district which permits authorized personnel from the Department of Public Welfare or county agency to interview a student while the student is in attendance at school.

"County agency." The county children and youth social service agency established pursuant to section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the Department of Public Welfare under Article IX of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Department." The Department of Public Welfare of the Commonwealth.

"Expunge." To strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise.

"Family members." Spouses, parents and children or other persons related by consanguinity or affinity.

"Founded report." A child abuse report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.

"Founded report for school employee." A report under Subchapter C.1 (relating to students in public and private schools) if there has been any judicial adjudication based on a finding that the victim has suffered serious bodily injury or sexual abuse or exploitation, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegations of the report.

"General protective services." Those services and activities provided by each county agency for nonabuse cases requiring protective services, as defined by the Department of Public Welfare in regulations.

"Indicated report." A child abuse report made pursuant to this chapter if an investigation by the county agency or the Department of Public Welfare determines that substantial evidence of the alleged abuse exists based on any of the following:

(1) Available medical evidence.

(2) The child protective service investigation.

(3) An admission of the acts of abuse by the perpetrator.

"Indicated report for school employee." A report made under Subchapter C.1 (relating to students in public and private schools) if an investigation by the county agency determines that substantial evidence of serious bodily injury or sexual abuse or exploitation exists based on any of the following:

(1) Available medical evidence.

(2) The county agency's investigation.

(3) An admission of the acts of abuse by the school employee.

"Individual residing in the same home as the child." An individual who is 14 years of age or older and who resides in the same home as the child.

"Near fatality." An act that, as certified by a physician, places a child in serious or critical condition.

"Newborn." As defined in section 6502 (relating to definitions).

"Nonaccidental." An injury that is the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk.

"Perpetrator." A person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

"Person responsible for the child's welfare." A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in any public or private school, intermediate unit or area vocational-technical school.

"Private agency." A children and youth social service agency subject to the requirements of 55 Pa. Code Ch. 3680 (relating to administration and operation of a children and youth social service agency).

"Protective services." Those services and activities provided by the Department of Public Welfare and each county agency for children who are abused or are alleged to be in need of protection under this chapter.

"Recent acts or omissions." Acts or omissions committed within two years of the date of the report to the Department of Public Welfare or county agency.

"Resource family." A family which provides temporary foster or kinship care for children who need out-of-home placement and may eventually provide permanency for those children, including an adoptive family.

"Risk assessment." A Commonwealth-approved systematic process that assesses a child's need for protection or services based on the risk of harm to the child.

"School employee." An individual employed by a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor and employees. The term excludes an individual who has no direct contact with students.

"Secretary." The Secretary of Public Welfare of the Commonwealth.

"Serious bodily injury." Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.

"Serious mental injury." A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

(1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or

(2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

"Serious physical injury." An injury that:

(1) causes a child severe pain; or

(2) significantly impairs a child's physical functioning, either temporarily or permanently.

"Sexual abuse or exploitation." Any of the following:

(1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct.

(2) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in simulation of sexually explicit conduct for the purpose of producing visual depiction, including photographing, videotaping, computer depicting and filming.

(3) Any of the following offenses committed against a child:

(i) Rape.

(ii) Sexual assault.

(iii) Involuntary deviate sexual intercourse.

(iv) Aggravated indecent assault.

(v) Molestation.

(vi) Incest.

(vii) Indecent exposure.

(viii) Prostitution.

(ix) Sexual abuse.

(x) Sexual exploitation.

"Student." An individual enrolled in a public or private school, intermediate unit or area vocational-technical school who is under 18 years of age.

"Subject of the report." Any child, parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator or school employee named in a report made to the Department of Public Welfare or a county agency under this chapter.

"Substantial evidence." Evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.

"Substantiated child abuse." Child abuse as to which there is an indicated report or founded report.

"Under investigation." A child abuse report pursuant to this chapter which is being investigated to determine whether it is "founded," "indicated" or "unfounded."

"Unfounded report." Any report made pursuant to this chapter unless the report is a "founded report" or an "indicated report."

(b) Child abuse.--

(1) The term "child abuse" shall mean any of the following:

(i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

(3) If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate.

SUBCHAPTER B
PROVISIONS AND RESPONSIBILITIES FOR REPORTING SUSPECTED CHILD ABUSE

Sec.

§ 6311. Persons required to report suspected child abuse.

(a) General rule.--A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when the person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator. Except with respect to

confidential communications made to a member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), and except with respect to confidential communications made to an attorney which are protected by 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or 5928 (relating to confidential communications to attorney), the privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

(b) Enumeration of persons required to report.--Persons required to report under subsection (a) include, but are not limited to, any licensed physician, osteopath, medical examiner, coroner, funeral director, dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, Christian Science practitioner, member of the clergy, school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker, mental health professional, peace officer or law enforcement official.

(c) Staff members of institutions, etc.--Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.

(d) Civil action for discrimination against person filing report.--Any person who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, makes or causes the report to be made and, as a result thereof, is discharged from his employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, may commence an action in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred for appropriate relief. If the court finds that the person is an individual who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, made or caused to be made a report of suspected child abuse and, as a result thereof, was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, it may issue an order granting appropriate relief, including, but not limited to, reinstatement with back pay. The department may intervene in any action commenced under this subsection.

§ 6312. Persons permitted to report suspected child abuse.

In addition to those persons and officials required to report suspected child abuse, any person may make such a report if that person has reasonable cause to suspect that a child is an abused child.

§ 6313. Reporting procedure.

(a) General rule.--Reports from persons required to report under section 6311 (relating to persons required to report suspected child abuse) shall be made immediately by telephone and in writing within 48 hours after the oral report.

(b) Oral reports.--Oral reports shall be made to the department pursuant to Subchapter C (relating to powers and duties of department) and may be made to the appropriate county agency. When oral reports of suspected child abuse are initially received at the county agency, the protective services staff shall, after seeing to the immediate safety of the child and other children in the home, immediately notify the department of the receipt of the report, which is to be held in the pending complaint file as provided in Subchapter C. The initial child abuse report summary

shall be supplemented with a written report when a determination is made as to whether a report of suspected child abuse is a founded report, an unfounded report or an indicated report.

(c) Written reports.--Written reports from persons required to report under section 6311 shall be made to the appropriate county agency in a manner and on forms the department prescribes by regulation. The written reports shall include the following information if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the person or persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by that person or persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Any other information which the department may require by regulation.

(d) Failure to confirm oral report.--The failure of a person reporting cases of suspected child abuse to confirm an oral report in writing within 48 hours shall not relieve the county agency from any duties prescribed by this chapter. In such event, the county agency shall proceed as if a written report were actually made.

§ 6314. Photographs, medical tests and X-rays of child subject to report.

A person or official required to report cases of suspected child abuse may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county agency at the time the written report is sent or as soon thereafter as possible. The county agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 6315. Taking child into protective custody.

(a) General rule.--A child may be taken into protective custody:

(1) As provided by 42 Pa.C.S. § 6324 (relating to taking into custody).

(2) By a physician examining or treating the child or by the director, or a person specifically designated in writing by the director, of any hospital or other medical institution where the child is being treated if protective custody is immediately necessary to protect the child under this chapter.

(3) By a physician or the director, or a person specifically designated by the director, of a hospital pursuant to Chapter 65 (relating to newborn protection) if the child is a newborn.

(b) Duration of custody.--No child may be held in protective custody for more than 24 hours unless the appropriate county agency is immediately notified that the child has been taken into custody and the county agency obtains an order from a court of competent jurisdiction permitting the child to be held in custody for a longer period. Each court shall insure that a judge is available 24 hours a day, 365 days a year to accept and decide the actions brought by a county agency under this subsection within the 24-hour period.

(c) Notice of custody.--

(1) Except as provided in paragraph (2), an individual taking a child into protective custody under this chapter shall immediately, and within 24 hours in writing, notify the parent, guardian or other custodian of the child of the whereabouts of the child, unless prohibited by court order, and the reasons for the need to take the child into protective custody and shall immediately notify the appropriate county agency in order that proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) may be initiated, if appropriate.

(2) In the case of a newborn taken into protective custody pursuant to subsection (a)(3), the county agency shall within 24 hours make diligent efforts to notify a parent, guardian, custodian or other family member of the whereabouts of the newborn, unless prohibited by court order, and the reasons for the need to take the newborn into protective custody.

(d) Informal hearing.--In no case shall protective custody under this chapter be maintained longer than 72 hours without an informal hearing under 42 Pa.C.S. § 6332 (relating to informal hearing). If, at the hearing, it is determined that protective custody shall be continued and the child is alleged to be without proper parental care or control or is alleged to be a dependent child under 42 Pa.C.S. § 6302 (relating to definitions), the county agency shall within 48 hours file a petition with the court under 42 Pa.C.S. Ch. 63 alleging that the child is a dependent child.

(e) Place of detention.--No child taken into protective custody under this chapter may be detained during the protective custody except in an appropriate medical facility, foster home or other appropriate facility approved by the department for this purpose.

(f) Conference with parent or other custodian.--A conference between the parent, guardian or other custodian of the child taken into temporary protective custody pursuant to this section and the employee designated by the county agency to be responsible for the child shall be held within 48 hours of the time that the child is taken into custody for the purpose of:

(1) Explaining to the parent, guardian or other custodian the reasons for the temporary detention of the child and the whereabouts of the child, unless prohibited by court order.

(2) Expediting, wherever possible, the return of the child to the custody of the parent, guardian or other custodian where custody is no longer necessary.

(3) Explaining to the parent, guardian or other custodian the rights provided for under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights).

§ 6316. Admission to private and public hospitals.

(a) General rule.--Children appearing to suffer any physical or mental condition which may constitute child abuse shall be admitted to, treated and maintained in facilities of private and public hospitals on the basis of medical need and shall not be refused or deprived in any way of proper medical treatment and care.

(a.1) Newborns.--A newborn taken into protective custody pursuant to section 6315(a)(3) (relating to taking child into protective custody) shall be admitted to, treated and maintained in facilities of public and private hospitals on the basis of medical need and shall not be refused or deprived in any way of proper medical treatment and care. Once a newborn is taken into protective custody pursuant to section 6315(a)(3), the newborn shall be considered immediately eligible for Medicaid for payment of medical services provided. Until otherwise provided by court order, the county agency shall assume the responsibility for making decisions regarding the newborn's medical care.

(b) Failure of hospital to admit child or newborn.--The failure of a hospital to admit and properly treat and care for a child pursuant to subsection (a) or (a.1) shall be cause for the department to order immediate admittance, treatment and care by the hospital which shall be enforceable, if necessary, by the prompt institution of a civil action by the department. The child, through an attorney, shall also have the additional and independent right to seek immediate injunctive relief and institute an appropriate civil action for damages against the hospital.

§ 6317. Mandatory reporting and postmortem investigation of deaths.

A person or official required to report cases of suspected child abuse, including employees of a county agency, who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. The coroner shall accept the report for investigation and shall report his finding to the police, the district attorney, the appropriate county agency and, if the report is made by a hospital, the hospital.

§ 6318. Immunity from liability.

(a) General rule.--A person, hospital, institution, school, facility, agency or agency employee that participates in good faith in the making of a report, whether required or not, cooperating with an investigation, including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse, the taking of photographs or the removal or keeping of a child pursuant to section 6315 (relating to taking child into protective custody), and any official or employee of a county agency who refers a report of suspected abuse to law enforcement authorities or provides services under this chapter, shall have immunity from civil and criminal liability that might otherwise result by reason of those actions.

(b) Presumption of good faith.--For the purpose of any civil or criminal proceeding, the good faith of a person required to report pursuant to section 6311 (relating to persons required to report suspected child abuse) and of any person required to make a referral to law enforcement officers under this chapter shall be presumed.

§ 6319. Penalties for failure to report or to refer.

A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities who willfully fails to do so commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation.

SUBCHAPTER C
POWERS AND DUTIES OF DEPARTMENT

Sec.

§ 6331. Establishment of pending complaint file, Statewide central register and file of unfounded reports.

There shall be established in the department:

(1) A pending complaint file of child abuse reports under investigation and a file of reports under investigation pursuant to Subchapter C.1 (relating to students in public and private schools).

(2) A Statewide central register of child abuse which shall consist of founded and indicated reports.

(3) A file of unfounded reports awaiting expunction.

§ 6332. Establishment of Statewide toll-free telephone number.

(a) General rule.--The department shall establish a single Statewide toll-free telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse. A county agency shall use the Statewide toll-free telephone number for determining the existence of prior founded or indicated reports of child abuse in the Statewide central register or reports under investigation in the pending complaint file.

(b) Limitation on use.--A county agency may only request and receive information pursuant to this subsection either on its own behalf because it has received a report of suspected child abuse or on behalf of a physician examining or treating a child or on behalf of the director or a person specifically designated in writing by the director of any hospital or other medical institution where a child is being treated, where the physician or the director or a person specifically designated in writing by the director suspects the child of being an abused child.

§ 6333. Continuous availability of department.

The department shall be capable of receiving oral reports of child abuse made pursuant to this chapter, reports under section 6353.2 (relating to responsibilities of county agency) and report summaries of child abuse from county agencies and shall be capable of immediately identifying prior reports of child abuse and prior reports of abuse or injury under Subchapter C.1 (relating to students in public and private schools) in the Statewide central register and reports under investigation in the pending complaint file and of monitoring the provision of child protective services 24 hours a day, seven days a week.

§ 6334. Disposition of complaints received.

(a) Notice to county agency.--Upon receipt of a complaint of suspected child abuse, the department shall immediately transmit orally to the appropriate county agency notice that the complaint of suspected child abuse has been received and the substance of the complaint. If the Statewide central register or the pending complaint file contains information indicating a prior report or a current investigation concerning a subject of the report, the department shall immediately notify the appropriate county agency of this fact. The appropriate county agency shall mean the agency in the county where the suspected child abuse occurred. If the residency of the subjects is a factor that requires the cooperation of more than one county agency, the department shall develop regulations to ensure the cooperation of those agencies in carrying out the requirements of this chapter.

(b) Referral for services or investigation.--If the complaint received does not suggest suspected child abuse but does suggest a need for social services or other services or investigation, the department shall transmit the information to the county agency or other public agency for appropriate action. The information shall not be considered a child abuse report unless the agency to which the information was referred has reasonable cause to suspect after investigation that abuse occurred. If the agency has reasonable cause to suspect that abuse occurred, the agency shall notify the department, and the initial complaint shall be considered to have been a child abuse report.

(c) Recording in pending complaint file.--Upon receipt of a complaint of suspected child abuse, the department shall maintain a record of the complaint of suspected child abuse in the pending complaint file. Upon receipt of a report under section 6353.2 (relating to responsibilities of county agency), the department shall maintain a record of the report in the report file under section 6331 (relating to establishment of pending complaint file, Statewide central register and file of unfounded reports).

(d) Incidents occurring outside of this Commonwealth.--

(1) A report of suspected child abuse occurring in another state where the child victim is identified as a resident of this Commonwealth and the other state child protective services agency cannot investigate the report because of statutory or policy limitations shall be assigned as a general protective services report to the county of the child's residence or as determined by the department.

(2) In addition to complying with the other requirements of this chapter and applicable regulations, a copy of the report shall be provided to the other state's child protective services agency and, when applicable under Pennsylvania law, to law enforcement officials where the incident occurred.

(3) Reports and information under this subsection shall be provided within seven calendar days of completion of the general protective services assessment under section 6375 (relating to county agency requirements for general protective services).

§ 6335. Information in pending complaint and unfounded report files.

(a) Information authorized.--The information contained in the pending complaint file shall be limited to the information required in sections 6313(c) (relating to reporting procedure) and 6353.2 (relating to responsibilities of county agency). The information contained in the file for unfounded reports shall be limited to the information required by section 6336 (relating to information in Statewide central register).

(b) Access to information.--Except as provided in sections 6332 (relating to establishment of Statewide toll-free telephone number), 6334 (relating to disposition of complaints received), 6340 (relating to release of information in confidential reports) and 6342 (relating to studies of data in records), no person, other than an employee of the department in the course of official duties in connection with the responsibilities of the department under this chapter, shall at any time have access to any information in the pending complaint file or Statewide central register. Information in the file of unfounded reports shall be available only to employees of the department pursuant to this subsection, to subjects of a report or law enforcement officials pursuant to section 6340 and to the Office of Attorney General pursuant to section 6345 (relating to audits by Attorney General) until the reports are expunged pursuant to section 6337 (relating to disposition of unfounded reports).

§ 6336. Information in Statewide central register.

(a) Information authorized.--The Statewide central register shall include and shall be limited to the following information:

(1) The names, Social Security numbers, age and sex of the subjects of the reports.

(2) The date or dates and the nature and extent of the alleged instances of suspected child abuse.

(3) The home addresses of the subjects of the report.

(4) The county in which the suspected abuse occurred.

(5) Family composition.

(6) The name and relationship to the abused child of other persons named in the report.

(7) Factors contributing to the abuse.

(8) The source of the report.

(9) Services planned or provided.

(10) Whether the report is a founded report or an indicated report.

(11) Information obtained by the department in relation to a perpetrator's or school employee's request to release, amend or expunge information retained by the department or the county agency.

(12) The progress of any legal proceedings brought on the basis of the report of suspected child abuse.

(13) Whether a criminal investigation has been undertaken and the result of the investigation and of any criminal prosecution.

No information other than that permitted in this subsection shall be retained in the Statewide central register.

(b) Type of information released.--Except as provided in sections 6334 (relating to disposition of complaints received), 6335 (relating to information in pending complaint and unfounded report files), 6340 (relating to release of information in confidential reports) and 6342 (relating to studies of data in records), persons receiving information from the Statewide central register or pending complaint file may be informed only as to:

(1) Whether the report is a founded or indicated abuse or is under investigation.

(2) The number of such reports.

(3) The nature and extent of the alleged or actual instances of suspected child abuse.

(4) The county in which the reports are investigated.

(5) Any other information available which would further the purposes of this chapter.

(c) Limitation on release of information.--Except as provided in sections 6334, 6335, 6340 and 6342, no information shall be released from the Statewide central register or pending complaint file unless pursuant to section 6332 (relating to establishment of Statewide toll-free telephone number) and unless the department has positively identified the representative of the county agency requesting the information and the department has inquired into and is satisfied that the representative has a legitimate need, within the scope of official duties and the provisions of section 6332, to obtain the information. Information in the Statewide central register or pending complaint file shall not be released for any purpose or to any individual not specified in section 6340.

§ 6337. Disposition of unfounded reports.

(a) General rule.--When a report of suspected child abuse is determined by the appropriate county agency to be an unfounded report, the information concerning that report of suspected child abuse shall be maintained for a period of one year. Following the expiration of one year after the date the report was received by the department, the report shall be expunged from the pending complaint file, as soon as possible, but no later than 120 days after the one-year period following the date the report was received by the department, and no information other than that

authorized by subsection (b), which shall not include any identifying information on any subject of the report, shall be retained by the department.

(b) Absence of other determination.--If an investigation of a report of suspected child abuse conducted by the appropriate county agency pursuant to this chapter does not determine within 60 days of the date of the initial report of the instance of suspected child abuse that the report is a founded report, an indicated report or an unfounded report, or unless within that same 60-day period court action has been initiated and is responsible for the delay, the report shall be considered to be an unfounded report, and all information identifying the subjects of the report shall be expunged no later than 120 days following the expiration of one year after the date the report was received by the department. The agency shall advise the department that court action or an arrest has been initiated so that the pending complaint file is kept current regarding the status of all legal proceedings and expunction delayed.

(c) Expunction of information.--All information identifying the subjects of any report of suspected child abuse and of any report under Subchapter C.1 (relating to students in public and private schools) determined to be an unfounded report shall be expunged from the pending complaint file pursuant to this section. The expunction shall be mandated and guaranteed by the department.

§ 6338. Disposition of founded and indicated reports.

(a) General rule.--When a report of suspected child abuse or a report under Subchapter C.1 (relating to students in public and private schools) is determined by the appropriate county agency to be a founded report or an indicated report, the information concerning that report of suspected child abuse shall be expunged immediately from the pending complaint file, and an appropriate entry shall be made in the Statewide central register. Notice of the determination must be given to the subjects of the report, other than the abused child, and to the parent or guardian of the affected child or student along with an explanation of the implications of the determination. Notice given to perpetrators of child abuse and to school employees who are subjects of indicated reports for school employees or founded reports for school employees shall include notice that their ability to obtain employment in a child-care facility or program or a public or private school may be adversely affected by entry of the report in the Statewide central register. The notice shall also inform the recipient of his right, within 45 days after being notified of the status of the report, to appeal an indicated report, and his right to a hearing if the request is denied.

(b) Expunction of information when child attains 23 years of age.--Except as provided in subsection (c), all information which identifies the subjects of founded and indicated child abuse reports shall be expunged when the subject child reaches the age of 23. The expunction shall be mandated and guaranteed by the department.

(c) Retention of information.--A subfile shall be established in the Statewide central register to indefinitely retain the names of perpetrators of child abuse and school employees who are subjects of founded or indicated reports only if the individual's Social Security number or date of birth is known to the department. The subfile shall not include identifying information regarding other subjects of the report.

§ 6339. Confidentiality of reports.

Except as otherwise provided in this subchapter, reports made pursuant to this chapter, including, but not limited to, report summaries of child abuse and written reports made pursuant to section 6313(b) and (c) (relating to reporting procedure) as well as any other information obtained, reports written or photographs or X-rays taken concerning alleged instances of child abuse in the possession of the department or a county agency shall be confidential.

§ 6340. Release of information in confidential reports.

(a) General rule.--Reports specified in section 6339 (relating to confidentiality of reports) shall only be made available to:

(1) An authorized official of a county agency, of a Federal agency that has a need for such information to carry out its responsibilities under law to protect children from abuse and neglect or of an agency of another state that performs protective services analogous to those services performed by county agencies or the department in the course of the official's duties, multidisciplinary team members assigned to the case and duly authorized persons providing services pursuant to section 6370(a) (relating to voluntary or court-ordered services; findings of child abuse).

(2) A physician examining or treating a child or the director or a person specifically designated in writing by the director of any hospital or other medical institution where a child is being treated when the physician or the director or the designee of the director suspects the child of being an abused child or a child alleged to be in need of protection under this chapter.

(3) A guardian ad litem or court designated advocate for the child.

(4) An authorized official or agent of the department in accordance with department regulations or in accordance with the conduct of a performance audit as authorized by section 6343 (relating to investigating performance of county agency).

(5) A court of competent jurisdiction, including a magisterial district judge, a judge of the Philadelphia Municipal Court and a judge of the Pittsburgh Magistrates Court, pursuant to court order or subpoena in a criminal matter involving a charge of child abuse under section 6303(b) (relating to definitions). Disclosure through testimony shall be subject to the restrictions of subsection (c).

(5.1) A court of common pleas in connection with any matter involving custody of a child. The department shall provide to the court any reports and files which the court considers relevant.

(6) A standing committee of the General Assembly, as specified in section 6384 (relating to legislative oversight).

(7) The Attorney General.

(8) Federal auditors if required for Federal financial participation in funding of agencies except that Federal auditors may not remove identifiable reports or copies thereof from the department or county agencies.

(9) Law enforcement officials of any jurisdiction, as long as the information is relevant in the course of investigating cases of:

(i) Homicide or other criminal offense set forth in section 6344(c) (relating to information relating to prospective child-care personnel), sexual abuse, sexual exploitation, serious bodily injury or serious physical injury perpetrated by persons whether or not related to the victim.

(ii) Child abuse perpetrated by persons who are not family members.

(iii) Repeated physical injury to a child under circumstances which indicate that the child's health, safety or welfare is harmed or threatened.

(iv) A missing child report.

(10) The district attorney or his designee or other law enforcement official, as set forth in the county protocols for investigative teams required in section 6365(c) (relating to services for prevention, investigation and treatment of child abuse), shall receive, immediately after the county agency has ensured the safety of the child, reports of abuse, either orally or in writing, according to regulations promulgated by the department, from the county agency in which the initial report of suspected child abuse or initial inquiry into the report gives evidence that the abuse is:

(i) a criminal offense set forth in section 6344(c), not including an offense under 18 Pa.C.S. § 4304 (relating to endangering welfare of children) or an equivalent crime under

Federal law or the law of another state, sexual abuse, sexual exploitation or serious bodily injury perpetrated by persons, whether or not related to the victim;

(ii) child abuse perpetrated by persons who are not family members; or

(iii) serious physical injury involving extensive and severe bruising, burns, broken bones, lacerations, internal bleeding, shaken baby syndrome or choking or an injury that significantly impairs a child's physical functioning, either temporarily or permanently.

(11) Designated county officials, in reviewing the competence of the county agency or its employees pursuant to this chapter. Officials under this paragraph are limited to the following:

(i) The board of commissioners in counties other than counties of the first class.

(ii) Mayor in a city of the first class under the act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act.

(iii) An individual serving as a county chief executive as designated by a county home rule charter or optional plan form of government pursuant to the act of April 13, 1972 (P.L.184, No.62), known as the Home Rule Charter and Optional Plans Law.

(12) A mandated reporter of suspected child abuse as defined in section 6311 (relating to persons required to report suspected child abuse) who made a report of abuse involving the subject child, but the information permitted to be released to the mandated reporter shall be limited to the following:

(i) The final status of the child abuse report following the investigation, whether it be indicated, founded or unfounded.

(ii) Any services provided, arranged for or to be provided by the county agency to protect the child.

(13) Persons required to make reports under Subchapter C.1 (relating to students in public and private schools). Information under this paragraph shall be limited to the final status of the report following the investigation as to whether the report is indicated, founded or unfounded.

(14) A prospective adoptive parent, approved by an adoption agency, when considering adopting an abused child in the custody of a county agency. The county agency having custody of the child and the adoption agency shall determine the scope and detail of information which must be provided so that the prospective parent may make an informed decision to adopt.

(15) Appropriate officials of another county or state regarding an investigation related to child abuse or protective services when a family has moved to that county or state. Reports under this paragraph shall include general protective service reports and related information. Reports and information under this paragraph shall be provided within seven calendar days. The department shall promulgate regulations as necessary to carry out the purposes of this paragraph.

(16) Members of citizen review panels convened pursuant to section 6343.1 (relating to citizen review panels), provided that such members shall not disclose to any person or government official any identifying information about any specific child protective services case with respect to which the panel is provided information.

(17) A member of a child fatality or near fatality review team under section 6365(d).

(b) Release of information to subject of report.--At any time and upon written request, a subject of a report may receive a copy of all information, except that prohibited from being disclosed by subsection (c), contained in the Statewide central register or in any report filed pursuant to section 6313 (relating to reporting procedure).

(c) Protecting identity of person making report.--Except for reports pursuant to subsection (a)(9) and (10), the release of data that would identify the person who made a report of suspected child abuse or the person who cooperated in a subsequent investigation is prohibited unless the secretary finds that the release will not be detrimental to the safety of that person. Law enforcement officials shall treat all reporting sources as confidential informants.

(d) Exclusion of administrative information.--Information maintained in the Statewide central register which was obtained from an investigating agency in relation to an appeal request shall not be released to any person except a department official, as provided by regulation.

§ 6341. Amendment or expunction of information.

(a) General rule.--At any time:

(1) The secretary may amend or expunge any record under this chapter upon good cause shown and notice to the appropriate subjects of the report.

(2) Any person named as a perpetrator, and any school employee named, in an indicated report of child abuse may, within 45 days of being notified of the status of the report, request the secretary to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.

(b) Review of grant of request.--If the secretary grants the request under subsection (a)(2), the Statewide central register, appropriate county agency, appropriate law enforcement officials and all subjects shall be so advised of the decision. The county agency and any subject have 45 days in which to file an administrative appeal with the secretary. If an administrative appeal is received, the secretary or his designated agent shall schedule a hearing pursuant to Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, and attending departmental regulations. If no administrative appeal is received within the designated time period, the Statewide central register shall comply with the decision of the secretary and advise the county agency to amend or expunge the information in their records so that the records are consistent at both the State and local levels.

(c) Review of refusal of request.--If the secretary refuses the request under subsection (a)(2) or does not act within a reasonable time, but in no event later than 30 days after receipt of the request, the perpetrator or school employee shall have the right to a hearing before the secretary or a designated agent of the secretary to determine whether the summary of the indicated report in the Statewide central register should be amended or expunged on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with this chapter. The perpetrator or school employee shall have 45 days from the date of the letter giving notice of the decision to deny the request in which to request a hearing. The appropriate county agency and appropriate law enforcement officials shall be given notice of the hearing. The burden of proof in the hearing shall be on the appropriate county agency. The department shall assist the county agency as necessary.

(d) Stay of proceedings.--Any administrative appeal proceeding pursuant to subsection (b) shall be automatically stayed upon notice to the department by either of the parties when there is a pending criminal proceeding or a dependency or delinquency proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters), including any appeal thereof, involving the same factual circumstances as the administrative appeal.

(e) Order.--The secretary or designated agent may make any appropriate order respecting the amendment or expunction of such records to make them accurate or consistent with the requirements of this chapter.

(f) Notice of expunction.--Written notice of an expunction of any child abuse record made pursuant to the provisions of this chapter shall be served upon the subject of the record who was responsible for the abuse or injury and the appropriate county agency. Except as provided in this subsection, the county agency, upon receipt of the notice, shall take appropriate, similar action in regard to the local child abuse and school employee records and inform, for the same purpose, the

appropriate coroner if that officer has received reports pursuant to section 6367 (relating to reports to department and coroner). Whenever the county agency investigation reveals, within 60 days of receipt of the report of suspected child abuse, that the report is unfounded but that the subjects need services provided or arranged by the county agency, the county agency shall retain those records and shall specifically identify that the report was an unfounded report of suspected child abuse. An unfounded report regarding subjects who receive services shall be expunged no later than 120 days following the expiration of one year after the termination or completion of services provided or arranged by the county agency.

§ 6342. Studies of data in records.

(a) Studies.--The department may conduct or authorize the conducting of studies of the data contained in the pending complaint file and the Statewide central register and county agencies and distribute the results of the studies. No study may contain the name or other information by which a subject of a report could be identified. The department may allow Federal auditors access to nonidentifiable duplicates of reports in the pending complaint file and the Statewide central register if required for Federal financial participation in funding of agencies.

(b) Data form.--The department shall develop a data form to facilitate the collection of statistical and demographic information from a child fatality or near fatality review team and a county agency, which can be incorporated into a study conducted by the department.

§ 6343. Investigating performance of county agency.

(a) General rule.--If, within 30 days from the date of an initial report of suspected child abuse, the appropriate county agency has not investigated the report and informed the department that the report is an indicated report or an unfounded report or unless within that same 30-day period the report is determined to be a founded report, the department shall have the authority to begin an inquiry into the performance of the county agency which inquiry may include a performance audit of the county agency as provided in subsection (b). On the basis of that inquiry, the department shall take appropriate action to require that the provisions of this chapter be strictly followed, which action may include, without limitation, the institution of appropriate legal action and the withholding of reimbursement for all or part of the activities of the county agency. The department shall determine in its review whether the county agency has sufficiently documented reasons why the investigation has not been completed in the 30-day period.

(b) Performance audit.--Notwithstanding any other provision of this chapter, the secretary or a designee of the secretary may direct, at their discretion, and after reasonable notice to the county agency, a performance audit of any activity engaged in pursuant to this chapter.

(c) Department reviews and reports of child fatalities and near fatalities.--

(1) The department shall conduct a child fatality and near fatality review and provide a written report on any child fatality or near fatality, if child abuse is suspected. The department shall summarize:

(i) the circumstances of the child's fatality or near fatality;

(ii) the nature and extent of its review;

(iii) statutory and regulatory compliance by the county agency in the county where:

(A) the fatality or near fatality occurred; and

(B) the child resided within the 16 months preceding the fatality or near fatality;

(iv) its findings; and

(v) recommendations for reducing the likelihood of future child fatalities and near fatalities resulting from child abuse.

(2) The department's child fatality or near fatality review shall be commenced immediately upon receipt of a report to the department that a child died or nearly died as a result of suspected child abuse. The department shall provide assistance and relevant information to the child fatality or near fatality review team and attempt to coordinate its fact-

finding efforts and interviews with the team to avoid duplication. The department's child fatality or near fatality review and report shall be completed as soon as possible but no later than six months from receipt of the initial report of the child fatality or near fatality.

(3) Prior to completing its report, the department may release the following information to the public concerning a child who died or nearly died as a result of suspected or substantiated child abuse:

(i) The identity of the child.

(ii) If the child was in the custody of a public or private agency, the identity of the agency.

(iii) The identity of the public or private agency under contract with a county agency to provide services to the child and the child's family in the child's home prior to the child's death or near fatality.

(iv) A description of services provided under subparagraph (iii).

(v) The identity of the county agency that convened a child fatality or near fatality review team with respect to the child.

(4) Upon completion of the review and report, the department's child fatality or near fatality report shall be made available to the county agency, the child fatality or near fatality review team and designated county officials under section 6340(a)(11) (relating to release of information in confidential reports). The report shall be made available, upon request, to other individuals to whom confidential reports may be released, as specified by section 6340. The department's report shall be made available to the public, but identifying information shall be removed from the contents of the report except for disclosure of: the identity of a deceased child; if the child was in the custody of a public or private agency, the identity of the agency; the identity of the public or private agency under contract with a county agency to provide services to the child and the child's family in the child's home prior to the child's death or near fatality; and the identity of any county agency that convened a child fatality or near fatality review team in respect to the child. The report shall not be released to the public if the district attorney certifies that release of the report may compromise a pending criminal investigation or proceeding. Certification by the district attorney shall stay the release of the report for a period of 60 days, at which time the report shall be released unless a new certification is made by the district attorney.

§ 6343.1. Citizen review panels.

(a) Establishment.--The department shall establish a minimum of three citizen review panels. The department may designate a child fatality or near fatality review team under section 6365(d) (relating to services for prevention, investigation and treatment of child abuse) as a citizen review panel as long as the team has the capacity to perform as a citizen review panel.

(b) Function.--The panels shall examine all of the following:

(1) Policies, procedures and practices of State and local agencies and, where appropriate, specific cases to evaluate the extent to which State and local child protective services system agencies are effectively discharging their child protection responsibilities under section 106(b) of the Child Abuse Prevention and Treatment Act (Public Law 93-247, 42 U.S.C. § 5106a(b)).

(2) Other criteria the panel considers important to ensure the protection of children, including:

(i) a review of the extent to which the State and local child protective services system is coordinated with the foster care and adoption programs established under Part E of Title IV of the Social Security Act (49 Stat. 620, 42 U.S.C. § 670 et seq.); and

(ii) a review of child fatalities and near fatalities, including, but not limited to, a review of any child fatality or near fatality involving a child in the custody of a public or private agency where there is no report of suspected child abuse and the cause of death is neither the result of child abuse nor natural causes.

(c) Membership.--The panels shall be composed of volunteer members who represent the community, including members who have expertise in the prevention and treatment of child abuse and neglect.

(d) Meetings.--Each citizen review panel shall meet not less than once every three months.

(e) Reports.--The department shall issue an annual report summarizing the activities and recommendations of the panels and summarizing the department response to the recommendations.

§ 6344. Information relating to prospective child-care personnel.

(a) Applicability.--This section applies to all prospective employees of child-care services, prospective foster parents, prospective adoptive parents, prospective self-employed family day-care providers and other persons seeking to provide child-care services under contract with a child-care facility or program. This section also applies to individuals 14 years of age or older who reside in the home of a prospective foster parent for at least 30 days in a calendar year or who reside in the home of a prospective adoptive parent for at least 30 days in a calendar year. This section does not apply to administrative or other support personnel unless their duties will involve direct contact with children.

(b) Information submitted by prospective employees.--Administrators of child-care services shall require applicants to submit with their applications the following information obtained within the preceding one-year period:

(1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information), a report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the State Police central repository contains no such information relating to that person. The criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).

(2) A certification from the department as to whether the applicant is named in the central register as the perpetrator of a founded report of child abuse, indicated report of child abuse, founded report for school employee or indicated report for school employee.

(3) A report of Federal criminal history record information. The applicant shall submit a full set of fingerprints in a manner prescribed by the department. The Commonwealth shall submit the fingerprints to the Federal Bureau of Investigation in order to obtain a report of Federal criminal history record information and serve as intermediary for the purposes of this section.

For the purposes of this subsection, an applicant may submit a copy of the information required under paragraphs (1) and (2) with an application for employment. Administrators shall maintain a copy of the required information and shall require applicants to produce the original document prior to employment.

(b.1) Information submitted by certain prospective employees.--(Expired).

(c) Grounds for denying employment.--

(1) In no case shall an administrator hire an applicant where the department has verified that the applicant is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section.

(2) In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of one or more of the following offenses under Title 18 (relating to crimes and offenses) or an equivalent crime under Federal law or the law of another state:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

The attempt, solicitation or conspiracy to commit any of the offenses set forth in this paragraph.

(3) In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of a felony offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, committed within the five-year period immediately preceding verification under this section.

(d) Prospective adoptive or foster parents.--With regard to prospective adoptive or prospective foster parents, the following shall apply:

(1) In the course of causing an investigation to be made pursuant to section 2535(a) (relating to investigation), an agency or person designated by the court to conduct the investigation shall require prospective adoptive parents and any individual over the age of 18 years residing in the home to submit the information set forth in subsection (b) for review in accordance with this section. If a prospective adoptive parent, or any individual over 18 years of age residing in the home, has resided outside this Commonwealth at any time within the previous five-year period, the agency or person designated by the court shall require that person to submit a certification obtained within the previous one-year period from the Statewide central registry, or its equivalent in each state in which the person has resided within the previous five-year period, as to whether the person is named as a perpetrator of child abuse. If the certification shows that the person is named as a perpetrator of child abuse within the previous five-year period, the agency or person designated by the court shall forward the certification to the department for review. The agency or person designated by the court shall not approve the prospective adoptive parent if the department determines that the person is named as the equivalent of a perpetrator of a founded report of child abuse within the previous five-year period.

(2) In the course of approving a prospective foster parent, a foster family care agency shall require prospective foster parents and any individual over the age of 18 years residing in

the home to submit the information set forth in subsection (b) for review by the foster family care agency in accordance with this section. If a prospective foster parent, or any individual over 18 years of age residing in the home, has resided outside this Commonwealth at any time within the previous five-year period, the foster family care agency shall require that person to submit a certification obtained within the previous one-year period from the Statewide central registry, or its equivalent in each state in which the person has resided within the previous five-year period, as to whether the person is named as a perpetrator of child abuse. If the certification shows that the person is named as a perpetrator of child abuse within the previous five-year period, the foster family care agency shall forward the certification to the department for review. The foster family care agency shall not approve the prospective foster parent if the department determines that the person is named as the equivalent of a perpetrator of a founded report of child abuse within the previous five-year period. In addition, the foster family care agency shall consider the following when assessing the ability of applicants for approval as foster parents:

(i) The ability to provide care, nurturing and supervision to children.

(ii) Mental and emotional well-being. If there is a question regarding the mental or emotional stability of a family member which might have a negative effect on a foster child, the foster family care agency shall require a psychological evaluation of that person before approving the foster family home.

(iii) Supportive community ties with family, friends and neighbors.

(iv) Existing family relationships, attitudes and expectations regarding the applicant's own children and parent/child relationships, especially as they might affect a foster child.

(v) Ability of the applicant to accept a foster child's relationship with his own parents.

(vi) The applicant's ability to care for children with special needs.

(vii) Number and characteristics of foster children best suited to the foster family.

(viii) Ability of the applicant to work in partnership with a foster family care agency. This subparagraph shall not be construed to preclude an applicant from advocating on the part of a child.

(3) Foster parents and any individual over 18 years of age residing in the home shall be required to submit the information set forth in subsection (b) every 24 months following approval for review by the foster family care agency in accordance with subsection (c).

(4) Foster parents shall be required to report, within 48 hours, any change in information required pursuant to subsection (b) about themselves and any individuals over the age of 18 years residing in the home for review by the foster family care agency in accordance with subsection (c).

(5) Foster parents shall be required to report any other change in the foster family household composition within 30 days of the change for review by the foster family care agency. If any individual over 18 years of age, who has resided outside this Commonwealth at any time within the previous five-year period, begins residing in the home of an approved foster family, that individual shall, within 30 days of beginning residence, submit to the foster family care agency a certification obtained within the previous one-year period from the Statewide central registry, or its equivalent in each state in which the person has resided within the previous five-year period, as to whether the person is named as a perpetrator of child abuse. If the certification shows that the person is named as a perpetrator of child abuse within the previous five-year period, the foster family care agency shall forward the certification to the department for review. If the department determines that the person is named as the equivalent of a perpetrator of a founded report of child abuse within the previous five-year period and the person does not cease residing in the home immediately, the foster child or children shall immediately be removed from the home without a hearing.

(6) In cases where foster parents knowingly fail to submit the material information required in paragraphs (3), (4) and (5) such that it would disqualify them as foster parents, the child shall immediately be removed from the home without a hearing.

(7) An approved foster parent shall not be considered an employee for any purpose, including, but not limited to, liability, unemployment compensation, workers' compensation or other employee benefits provided by the county agency.

(8) The department shall require information based upon certain criteria for foster and adoptive parent applications. The criteria shall include, but not be limited to, information provided by the applicant or other sources in the following areas:

(i) Previous addresses within the last ten years.

(ii) Criminal history background clearance generated by the process outlined in this section.

(iii) Child abuse clearance generated by the process outlined in this section.

(iv) Composition of the resident family unit.

(v) Protection from abuse orders filed by or against either parent, provided that such orders are accessible to the county or private agency.

(vi) Details of any proceedings brought in family court, provided that such records in such proceedings are accessible to the county or private agency.

(vii) Drug-related or alcohol-related arrests, if criminal charges or judicial proceedings are pending, and any convictions or hospitalizations within the last five years. If the applicant provides information regarding convictions or hospitalizations in that five-year period, then information on the prior five years shall be requested related to any additional convictions or hospitalizations.

(viii) Evidence of financial stability, including income verification, employment history, current liens and bankruptcy findings within the last ten years.

(ix) Number of and ages of foster children and other dependents currently placed in the home.

(x) Detailed information regarding children with special needs currently living in the home.

(xi) Previous history as a foster parent, including number and types of children served.

(xii) Related education, training or personal experience working with foster children or the child welfare system.

(d.1) Establishment of a resource family registry.--

(1) The department shall establish a registry of resource family applicants.

(2) The foster family care agency or adoption agency shall register all resource family applicants on the resource family registry in accordance with subsection (d.2).

(3) The foster family care agency or adoption agency shall register all resource families that are approved on the effective date of this subsection within six months of the effective date of this subsection.

(4) Any resource family that is voluntarily registered on the foster parent registry shall be maintained on the resource family registry mandated under this section.

(d.2) Information in the resource family registry.--

(1) The resource family registry shall include, but not be limited to, the following:

(i) The name, Social Security number, date of birth, sex, marital status, race and ethnicity of the applicants.

(ii) The date or dates of the resource family application.

(iii) The current and previous home addresses of the applicants.

(iv) The county of residence of the applicants.

(v) The name, date of birth, Social Security number and relationship of all household members.

(vi) The name, address and telephone number of all current and previous foster family care agency or adoption agency affiliations.

(vii) The foster family care agency or adoption agency disposition related to the approval or disapproval of the applicants and the date and basis for the disposition.

(viii) The type of care the resource family will provide.

(ix) The number of children that may be placed in the resource family home.

(x) The age, race, gender and level of special needs of children that may be placed in the resource family home.

(xi) The ability of the resource family to provide care for sibling groups.

(xii) The date and reason for any closure of the resource family home.

(xiii) The appeal activity initiated by a resource family applicant or an approved resource family and the basis for the appeal. This subparagraph shall not be construed to limit legitimate appeals.

(xiv) The status and disposition of all appeal-related activities. This subparagraph shall not be construed to limit legitimate appeals.

(2) The information maintained in the resource family registry may be released to the following individuals when the department has positively identified the individual requesting the information and the department, except in the case of subparagraphs (iii) and (iv), has inquired into whether and if it is satisfied that the individual has a legitimate need within the scope of the individual's official duties to obtain the information:

(i) An authorized official of a county or private agency, a Federal agency or an agency of another state who performs resource family approvals or the department in the course of the official's duties.

(ii) A guardian ad litem or court-designated advocate for a child. The information is limited to the information related to the resource family with whom the child resides.

(iii) A court of competent jurisdiction, including a district justice, a judge of the Municipal Court of Philadelphia or a judge of the Pittsburgh Magistrates Court, pursuant to court order or subpoena in a criminal matter involving a charge of child abuse under Chapter 63 (relating to child protective services).

(iv) A court of competent jurisdiction in connection with any matter involving custody of a child. The department shall provide to the court any files that the court considers relevant.

(v) The Attorney General.

(vi) Federal auditors, if required for Federal financial participation in funding of agencies, except that Federal auditors may not remove identifiable information or copies thereof from the department or county or private agencies.

(vii) Law enforcement agents of any jurisdiction, as long as the information is relevant in the course of investigating crimes involving the resource family.

(viii) Appropriate officials of a private agency or another county or state regarding a resource family that has applied to become a resource family for that agency, county or state.

(3) At any time and upon written request, a resource family may receive a copy of all information pertaining to that resource family contained in the resource family registry.

(e) Self-employed family day-care providers.--Self-employed family day-care providers who apply for a certificate of registration with the department shall submit with their registration application the information set forth under subsection (b) for review in accordance with this section.

(f) Submissions by operators of child-care services.--The department shall require persons seeking to operate child-care services to submit the information set forth in subsection (b) for review in accordance with this section.

(g) Regulations.--The department shall promulgate the regulations necessary to carry out this section. These regulations shall:

(1) Set forth criteria for unsuitability for employment in a child-care service in relation to criminal history record information which may include criminal history record information in addition to that set forth above. The criteria shall be reasonably related to the prevention of child abuse.

(2) Set forth sanctions for administrators who willfully hire applicants in violation of this section or in violation of the regulations promulgated under this section.

(h) Fees.--The department may charge a fee not to exceed $10 in order to conduct the certification as required in subsection (b)(2), except that no fee shall be charged to an individual who makes the request in order to apply to become a volunteer with an affiliate of Big Brothers of America or Big Sisters of America or with a rape crisis center or domestic violence shelter.

(i) Time limit for certification.--The department shall comply with certification requests no later than 14 days from the receipt of the request.

(j) Voluntary certification of child caretakers.--The department shall develop a procedure for the voluntary certification of child caretakers to allow persons to apply to the department for a certificate indicating the person has met the requirements of subsection (b). The department shall also provide for the biennial recertification of child caretakers.

(k) Existing or transferred employees.--A person employed in child-care services on July 1, 2008, shall not be required to obtain the information required in subsection (b) as a condition of continued employment. A person who has once obtained the information required under subsection (b) may transfer to another child-care service established and supervised by the same organization and shall not be required to obtain additional reports before making the transfer.

(l) Temporary employees under special programs.--The requirements of this section do not apply to employees of child-care services who meet all the following requirements:

(1) They are under 21 years of age.

(2) They are employed for periods of 90 days or less.

(3) They are a part of a job development or job training program funded, in whole or in part, by public or private sources.

Once employment of a person who meets these conditions extends beyond 90 days, all requirements of this section shall take effect.

(m) Provisional employees for limited periods.--Notwithstanding subsection (b), administrators may employ applicants on a provisional basis for a single period not to exceed 30 days or, for out-of-State applicants, a period of 90 days, if all of the following conditions are met:

(1) The applicant has applied for the information required under subsection (b) and the applicant provides a copy of the appropriate completed request forms to the administrator.

(2) The administrator has no knowledge of information pertaining to the applicant which would disqualify him from employment pursuant to subsection (c).

(3) The applicant swears or affirms in writing that he is not disqualified from employment pursuant to subsection (c).

(4) If the information obtained pursuant to subsection (b) reveals that the applicant is disqualified from employment pursuant to subsection (c), the applicant shall be immediately dismissed by the administrator.

(5) The administrator requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a permanent employee.

(n) Confidentiality.--The information provided and compiled under this section, including, but not limited to, the names, addresses and telephone numbers of applicants and foster and adoptive parents, shall be confidential and shall not be subject to the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law. This information shall not be released except as permitted by the department through regulation.

(o) Use of information.--A foster family care agency may not approve a prospective foster parent if the prospective foster parent or an individual 14 years of age or older who resides for at least 30 days in a calendar year with the prospective foster parent meets either of the following:

(1) Is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section.

(2) Has been found guilty of an offense listed in subsection (c)(2).

(p) Use of information.--A prospective adoptive parent may not be approved if the prospective adoptive parent or an individual 14 years of age or older who resides for at least 30 days in a calendar year with the prospective adoptive parent meets either of the following:

(1) Is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section.

(2) Has been found guilty of an offense listed in subsection (c)(2).

§ 6344.1. Information relating to family day-care home residents.

(a) General rule.--In addition to the requirements of section 6344 (relating to information relating to prospective child-care personnel), an individual who applies to the department for a registration certificate to operate a family day-care home shall include criminal history record and child abuse record information required under section 6344(b) for every individual 18 years of age or older who resides in the home for at least 30 days in a calendar year.

(b) Required information.--Child abuse record information required under subsection (a) shall include certification by the department as to whether the applicant is named in the central register as the perpetrator of a founded report, indicated report, founded report for school employee or indicated report for school employee.

(c) Effect on registration.--The department shall refuse to issue or renew a registration certificate or shall revoke a registration certificate if the family day-care home provider or individual 18 years of age or older who has resided in the home for at least 30 days in a calendar year:

(1) is named in the central register on child abuse established under Chapter 63 (relating to child protective services) as the perpetrator of a founded report committed within the immediately preceding five-year period; or

(2) has been convicted of an offense enumerated in section 6344(c).

(d) Regulations.--The department shall promulgate regulations to administer this section.

§ 6344.2. Information relating to other persons having contact with children.

(a) Applicability.--This section applies to prospective employees applying to engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training. Such persons include social service workers, hospital personnel, mental health professionals, members of the clergy, counselors, librarians and doctors.

(b) Investigation.--Employers, administrators or supervisors shall require an applicant to submit to all requirements set forth in section 6344(b) (relating to information relating to prospective child-care personnel). An employer, administrator, supervisor or other person responsible for employment decisions regarding an applicable prospective employee under this section that intentionally fails to require the submissions before hiring that individual commits a misdemeanor of the third degree.

(c) Grounds for denial.--Each applicant shall be subject to the requirements of section 6344(c).

(d) Departmental treatment of information.--Information provided and compiled under this section by the department shall be confidential and shall not be subject to the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law. This information shall not be released except as permitted by the department through regulation. The department may charge a fee to conduct a certification as required by section 6344(b)(2) in accordance with the provisions of section 6344(h). The department shall promulgate regulations necessary to carry out this subsection.

§ 6345. Audits by Attorney General.

The Attorney General shall conduct a mandated audit done randomly but at least once during each year on an unannounced basis to ensure that the expunction requirements of this chapter are being fully and properly conducted.

§ 6346. Cooperation of other agencies.

(a) General rule.--The secretary may request and shall receive from Commonwealth agencies, political subdivisions, an authorized agency or any other agency providing services under the local protective services plan any assistance and data that will enable the department and the county agency to fulfill their responsibilities properly, including law enforcement personnel when assistance is needed in conducting an investigation or an assessment of risk to the child. School districts shall cooperate with the department and the agency by providing them upon request with the information as is consistent with law.

(b) Willful failure to cooperate.--Any agency, school district or facility or any person acting on behalf of an agency, school district or facility that violates this section by willfully failing to cooperate with the department or a county agency when investigating a report of suspected child abuse or a report under Subchapter C.1 (relating to students in public and private schools) or when assessing risk to a child commits a summary offense for a first violation and a misdemeanor of the third degree for subsequent violations.

(c) Cooperation of county agency and law enforcement agencies.--Consistent with the provisions of this chapter, the county agency and law enforcement agencies shall cooperate and coordinate, to the fullest extent possible, their efforts to respond to and investigate reports of suspected child abuse and to reports under Subchapter C.1.

(d) Advice to county agency.--Whenever a report of suspected child abuse is referred from a county agency to a law enforcement agency pursuant to section 6340(a)(9) and (10) (relating to release of information in confidential reports), as soon as possible, and without jeopardizing the criminal investigation or prosecution, the law enforcement agency shall advise the county agency as to whether a criminal investigation has been undertaken and the results of the investigation and of any criminal prosecution. The county agency shall ensure that the information is referred to the Statewide central register.

§ 6347. Reports to Governor and General Assembly.

(a) General rule.--No later than May 1 of every year, the secretary shall prepare and transmit to the Governor and the General Assembly a report on the operations of the central register of child abuse and child protective services provided by county agencies. The report shall include a full statistical analysis of the reports of suspected child abuse made to the department and the reports under Subchapter C.1 (relating to students in public and private schools), together with a report on the implementation of this chapter and its total cost to the Commonwealth, the evaluation of the secretary of services offered under this chapter and recommendations for repeal or for additional legislation to fulfill the purposes of this chapter. All such recommendations should contain an estimate of increased or decreased costs resulting therefrom. The report shall

also include an explanation of services provided to children who were the subjects of founded or indicated reports while receiving child-care services. The department shall also describe its actions in respect to the perpetrators of the abuse.

(b) Reports from county agencies.--To assist the department in preparing its annual report and the quarterly reports required under subsection (c), each county agency shall submit a quarterly report to the department, including, at a minimum, the following information, on an aggregate basis, regarding general protective services, child protective services and action under Subchapter C.1:

(1) The number of referrals received and referrals accepted.

(2) The number of children over whom the agency maintains continuing supervision.

(3) The number of cases which have been closed by the agency.

(4) The services provided to children and their families.

(5) A summary of the findings with nonidentifying information about each case of child abuse or neglect which has resulted in a child fatality or near fatality.

(c) Quarterly reports.--The department shall prepare and transmit to the Governor and the General Assembly a quarterly report that includes a summary of the findings with nonidentifying information about each case of child abuse or neglect that has resulted in a child fatality or near fatality. One of the quarterly reports may be included within the annual report required under subsection (a).

§ 6348. Regulations.

The department shall adopt regulations necessary to implement this chapter.

§ 6349. Penalties.

(a) Failure to amend or expunge information.--

(1) A person or official authorized to keep the records mentioned in section 6337 (relating to disposition of unfounded reports) or 6338 (relating to disposition of founded and indicated reports) who willfully fails to amend or expunge the information when required commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

(2) A person who willfully fails to obey a final order of the secretary or designated agent of the secretary to amend or expunge the summary of the report in the Statewide central register or the contents of any report filed pursuant to section 6313 (relating to reporting procedure) commits a summary offense.

(b) Unauthorized release of information.--A person who willfully releases or permits the release of any information contained in the pending complaint file, the Statewide central register or the county agency records required by this chapter to persons or agencies not permitted by this chapter to receive that information commits a misdemeanor of the third degree. Law enforcement agencies shall insure the confidentiality and security of information under this chapter. A person, including an employee of a law enforcement agency, who violates the provisions of this subsection shall, in addition to other civil or criminal penalties provided by law, be denied access to the information provided under this chapter.

(c) Noncompliance with child-care personnel regulations.--An administrator, or other person responsible for employment decisions in a child-care facility or program, who willfully fails to comply with the provisions of section 6344 (relating to information relating to prospective child-care personnel) commits a violation of this chapter and shall be subject to a civil penalty as provided in this subsection. The department shall have jurisdiction to determine violations of section 6344 and may, following a hearing, assess a civil penalty not to exceed $2,500. The civil penalty shall be payable to the Commonwealth.

SUBCHAPTER C.1
STUDENTS IN PUBLIC AND PRIVATE SCHOOLS

Sec.

§ 6351. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrator." The person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor.

§ 6352. School employees.

(a) Requirement.--

(1) Except as provided in paragraph (2), a school employee who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before the school employee in the employee's professional or official capacity is a victim of serious bodily injury or sexual abuse or sexual exploitation by a school employee shall immediately contact the administrator.

(2) If the school employee accused of seriously injuring or sexually abusing or exploiting a student is the administrator, the school employee who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before the school employee in the employee's professional or official capacity is a victim of serious bodily injury or sexual abuse or sexual exploitation shall immediately report to law enforcement officials and the district attorney under section 6353(a) (relating to administration). If an administrator is the school employee who suspects injury or abuse, the administrator shall make a report under section 6353(a).

(3) The school employee may not reveal the existence or content of the report to any other person.

(b) Immunity.--A school employee who refers a report under subsection (a) shall be immune from civil and criminal liability arising out of the report.

(c) Criminal penalty.--

(1) A school employee who willfully violates subsection (a) commits a summary offense.

(2) A school employee who, after being sentenced under paragraph (1), violates subsection (a) commits a misdemeanor of the third degree.

§ 6353. Administration.

(a) Requirement.--An administrator and a school employee governed by section 6352(a)(2) (relating to school employees) shall report immediately to law enforcement officials and the appropriate district attorney any report of serious bodily injury or sexual abuse or sexual exploitation alleged to have been committed by a school employee against a student.

(b) Report.--A report under subsection (a) shall include the following information:

(1) Name, age, address and school of the student.

(2) Name and address of the student's parent or guardian.

(3) Name and address of the administrator.

(4) Name, work and home address of the school employee.

(5) Nature of the alleged offense.

(6) Any specific comments or observations that are directly related to the alleged incident and the individuals involved.

(c) Immunity.--An administrator who makes a report under subsection (a) shall be immune from civil or criminal liability arising out of the report.

(d) Criminal penalty.--An administrator who willfully violates subsection (a) commits a misdemeanor of the third degree.

§ 6353.1. Investigation.

(a) General rule.--Upon receipt of a report under section 6353 (relating to administration), an investigation shall be conducted by law enforcement officials, in cooperation with the district attorney, and a determination made as to what criminal charges, if any, will be filed against the school employee.

(b) Referral to county agency.--

(1) If local law enforcement officials have reasonable cause to suspect on the basis of initial review that there is evidence of serious bodily injury, sexual abuse or sexual exploitation committed by a school employee against a student, local law enforcement officials shall notify the county agency in the county where the alleged abuse or injury occurred for the purpose of the agency conducting an investigation of the alleged abuse or injury.

(2) To the fullest extent possible, law enforcement officials and the county agency shall coordinate their respective investigations. In respect to interviews with the student, law enforcement officials and the county agency shall conduct joint interviews. In respect to interviews with the school employee, law enforcement officials shall be given an opportunity to interview the school employee prior to the employee having any contact with the county agency.

(3) The county agency and law enforcement officials have the authority to arrange for photographs, medical tests or X-rays of a student alleged to have been abused or injured by a school employee. The county agency and law enforcement officials shall coordinate their efforts in this regard and, to the fullest extent possible, avoid the duplication of any photographs, medical tests or X-rays.

(4) Law enforcement officials and the county agency shall advise each other of the status and findings of their respective investigations on an ongoing basis.

§ 6353.2. Responsibilities of county agency.

(a) Information for the pending complaint file.--Immediately after receiving a report under section 6353.1 (relating to investigation), the county agency shall notify the department of the receipt of the report, which is to be filed in the pending complaint file as provided in section 6331(1) (relating to establishment of pending complaint file, Statewide central register and file of unfounded reports). The oral report shall include the following information:

(1) The name and address of the student and the student's parent or guardian.

(2) Where the suspected abuse or injury occurred.

(3) The age and sex of the student.

(4) The nature and extent of the suspected abuse or injury.

(5) The name and home address of the school employee alleged to have committed the abuse or injury.

(6) The relationship of the student to the school employee alleged to have committed the abuse or injury.

(7) The source of the report to the county agency.

(8) The actions taken by the county agency, law enforcement officials, parents, guardians, school officials or other persons, including the taking of photographs, medical tests and X-rays.

(b) Investigation of reports.--Upon receipt of a report under section 6353.1, the county agency shall commence, within the time frames established in department regulations, an investigation of the nature, extent and cause of any alleged abuse or injury enumerated in the report. The county agency shall coordinate its investigation to the fullest extent possible with law enforcement officials as provided in section 6353.1(b).

(c) Completion of investigation.--The investigation by the county agency to determine whether the report is an indicated report for school employee or an unfounded report shall be completed within 60 days.

(d) Notice to subject of a report.--Prior to interviewing a subject of the report, the county agency shall orally notify the subject of the report of the existence of the report and the subject's rights under this chapter in regard to amendment or expungement. Within 72 hours following oral notification to the subject, the county agency shall give written notice to the subject. The notice may be reasonably delayed if notification is likely to threaten the safety of the student or the county agency worker, to cause the school employee to abscond or to significantly interfere with the conduct of a criminal investigation.

(e) Reliance on factual investigation.--The county agency may rely on a factual investigation of substantially the same allegations by a law enforcement officials to support the agency's finding. This reliance shall not relieve the county agency of its responsibilities relating to the investigation of reports under this subchapter.

(f) Notice to the department of the county agency's determination.--As soon as the county agency has completed its investigation, the county agency shall advise the department and law enforcement officials of its determination of the report as an indicated report for school employee or an unfounded report. Supplemental reports shall be made at regular intervals thereafter in a manner and form the department prescribes by regulation to the end that the department is kept fully informed and up-to-date concerning the status of the report.

§ 6353.3. Information in Statewide central register.

The Statewide central register established under section 6331 (relating to establishment of pending complaint file, Statewide central register and file of unfounded reports) shall retain only the following information relating to reports of abuse or injury of a student by a school employee which have been determined to be a founded report for school employee or an indicated report for school employee:

(1) The names, Social Security numbers, age and sex of the subjects of the report.

(2) The home address of the subjects of the report.

(3) The date and the nature and extent of the alleged abuse or injury.

(4) The county and state where the abuse or injury occurred.

(5) Factors contributing to the abuse or injury.

(6) The source of the report.

(7) Whether the report is a founded or indicated report.

(8) Information obtained by the department in relation to the school employee's request to release, amend or expunge information retained by the department or the county agency.

(9) The progress of any legal proceedings brought on the basis of the report.

(10) Whether a criminal investigation has been undertaken and the result of the investigation and of any criminal prosecution.

§ 6353.4. Other provisions.

The following provisions shall apply to the release and retention of information by the department and the county agency concerning reports of abuse or injury committed by a school employee as provided by this subchapter:

Section 6336(b) and (c) (relating to information in Statewide central register).
Section 6337 (relating to disposition of unfounded reports).
Section 6338(a) and (b) (relating to disposition of founded and indicated reports).
Section 6339 (relating to confidentiality of reports).
Section 6340 (relating to release of information in confidential reports).
Section 6341(a) through (f) (relating to amendment or expunction of information).
Section 6342 (relating to studies of data in records).

SUBCHAPTER C.2
BACKGROUND CHECKS FOR EMPLOYMENT IN SCHOOLS

Sec.

§ 6354. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." An individual who applies for a position as a school employee. The term includes an individual who transfers from one position as a school employee to another position as a school employee.

"Administrator." The person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes a person responsible for employment decisions in a school and an independent contractor.

§ 6355. Requirement.

(a) Investigation.--

(1) Except as provided in paragraph (2), an administrator shall require each applicant to submit an official clearance statement obtained from the department within the immediately preceding year as to whether the applicant is named as the perpetrator of an indicated or a founded report or is named as the individual responsible for injury or abuse in an indicated report for school employee or a founded report for school employee.

(2) The official clearance statement under paragraph (1) shall not be required for an applicant who:

(i) transfers from one position as a school employee to another position as a school employee of the same school district or of the same organization; and

(ii) has, prior to the transfer, already obtained the official clearance statement under paragraph (1).

(b) Grounds for denying employment.--Except as provided in section 6356 (relating to exceptions), an administrator shall not hire an applicant if the department verifies that the applicant is named as the perpetrator of a founded report or is named as the individual responsible for injury or abuse in a founded report for school employee. No individual who is a school employee on the effective date of this subchapter shall be required to obtain an official clearance statement under subsection (a)(1) as a condition of continued employment.

(c) Penalty.--An administrator who willfully violates this section shall be subject to an administrative penalty of $2,500. An action under this subsection is governed by 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 6356. Exceptions.

Section 6355 (relating to requirement) shall not apply to any of the following:

(1) A school employee who is:

(i) under 21 years of age;

(ii) participating in a job development or job training program; and

(iii) employed for not more than 90 days.

(2) A school employee hired on a provisional basis pending receipt of information under section 6355(a) if all of the following apply:

(i) The applicant demonstrates application for the official clearance statement under section 6355(a).

(ii) The applicant attests in writing by oath or affirmation that the applicant is not disqualified under section 6355(b).

(iii) The administrator has no knowledge of information which would disqualify the applicant under section 6355(b).

(iv) The provisional period does not exceed:

(A) 90 days for an applicant from another state; and

(B) 30 days for all other applicants.

(v) The hiring does not take place during a strike under the act of July 23, 1970 (P.L.563, No.195), known as the Public Employe Relations Act.

§ 6357. Fee.

The department may charge a fee of not more than $10 for the official clearance statement required under section 6355(a) (relating to requirement).

§ 6358. Time limit for official clearance statement.

The department shall comply with the official clearance statement requests under section 6355(a) (relating to requirement) within 14 days of receipt of the request.

SUBCHAPTER D
ORGANIZATION AND RESPONSIBILITIES OF CHILD PROTECTIVE SERVICE

Sec.

§ 6361. Organization for child protective services.

(a) Establishment.--Every county agency shall make available child protective services within the agency. The department may waive the requirement that a county agency be the sole civil agency for receipt and investigation of reports pursuant to section 6362 (relating to responsibilities of county agency for child protective services) upon a showing by the county that:

(1) It is participating in a demonstration project for or has become part of an approved combined intake system for public human service agencies as permitted by department regulations. Nothing in this paragraph is intended to permit noncounty government agencies to participate in the receipt and investigation of the reports.

(2) The goals and objectives of this chapter will continue to be met if a waiver is granted.

If the department grants a waiver under this subsection, the county agency and its agents shall be bound by all other provisions of this chapter, including requirements concerning the maintenance and disclosure of confidential information and records.

(b) Staff and organization.--The county agency shall have a sufficient staff of sufficient qualifications to fulfill the purposes of this chapter and be organized in a way to maximize the continuity of responsibility, care and services of individual workers toward individual children and families. The department, by regulation, shall set forth staff-to-family ratios for the various activities required of the county agency under this chapter, including reports and investigations of suspected child abuse, risk assessment and the provision or monitoring of services to abused children and their families.

(c) Functions authorized.--The county agency staff shall perform those functions assigned to it by this chapter and such other functions as would further the purposes of this chapter.

§ 6362. Responsibilities of county agency for child protective services.

(a) General rule.--The county agency shall be the sole civil agency responsible for receiving and investigating all reports of child abuse made pursuant to this chapter, specifically including, but not limited to, reports of child abuse in facilities operated by the department and other public agencies, for the purpose of providing protective services to prevent further abuses to children and to provide or arrange for and monitor the provision of those services necessary to safeguard and ensure the well-being and development of the child and to preserve and stabilize family life wherever appropriate.

(b) Assumption of responsibility by department.--When the suspected abuse has been committed by the county agency or any of its agents or employees, the department shall assume the role of the agency with regard to the investigation and directly refer the child for services.

(c) Action by agencies for abuse by agents or employees.--Where suspected child abuse has occurred and an employee or agent of the department or the county agency or a private or public institution is a subject of the report, the department, agency or institution shall be informed of the investigation so that it may take appropriate action.

(d) Reliance on factual investigation.--An agency charged by this section or section 6361 (relating to organization for child protective services) with investigating a report of child abuse may rely on a factual investigation of substantially the same allegations by a law enforcement agency to support the agency's finding. This reliance shall not, however, limit the duties imposed by section 6368(a) (relating to investigation of reports).

(e) Risk assessment.--Each county agency shall implement a State-approved risk assessment process in performance of its duties under this subchapter.

(f) Weekly face-to-face contacts.--For those children assessed as being at high risk for abuse or neglect who are remaining in or returning to the home in which the abuse or neglect occurred, the county agency shall ensure that those children are seen at least once a week, either directly by a county agency worker or through purchase of service, until they are no longer assessed as being at high risk for abuse or neglect.

§ 6363. County plan for protective services.

The county agency shall include provisions for protective services in its annual plan as required by the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

§ 6364. Purchasing services of other agencies.

Any other provision of law notwithstanding but consistent with sections 6361 (relating to organization for child protective services) and 6362 (relating to responsibilities of county agency for child protective services), the county agency, based upon the plan of services as provided in section 6363 (relating to county plan for protective services), may purchase and utilize the services of any appropriate public or private agency.

§ 6365. Services for prevention, investigation and treatment of child abuse.

(a) Instruction and education.--Each county agency shall make available among its services for the prevention and treatment of child abuse instruction and education for parenthood and parenting skills, protective and preventive social counseling, outreach and counseling services to prevent newborn abandonment, emergency caretaker services, emergency shelter care, emergency medical services and the establishment of self-help groups organized for the prevention and treatment of child abuse, part-day services, out-of-home placement services, therapeutic activities for child and family directed at alleviating conditions that present a risk to the safety and well-being of a child and any other services required by department regulations.

(b) Multidisciplinary team.--The county agency shall make available among its services a multidisciplinary team for the prevention, investigation and treatment of child abuse and shall convene the multidisciplinary team at any time, but not less than annually:

(1) To review substantiated cases of child abuse, including responses by the county agency and other agencies providing services to the child.

(2) Where appropriate to assist in the development of a family service plan for the child.

(c) Investigative team.--The county agency and the district attorney shall develop a protocol for the convening of investigative teams for any case of child abuse involving crimes against children which are set forth in section 6340(a)(9) and (10) (relating to release of information in confidential reports). The county protocol shall include standards and procedures to be used in receiving and referring reports and coordinating investigations of reported cases of child abuse and a system for sharing the information obtained as a result of any interview. The protocol shall include any other standards and procedures to avoid duplication of fact-finding efforts and interviews to minimize the trauma to the child. The district attorney shall convene an investigative team in accordance with the protocol. The investigative team shall consist of those individuals and agencies responsible for investigating the abuse or for providing services to the child and shall at a minimum include a health care provider, county caseworker and law enforcement official.

(d) Child fatality or near fatality review team and written report.--

(1) A child fatality or near fatality review team shall be convened by a county agency in accordance with a protocol developed by the county agency, the department and the district attorney in a case when a child dies or nearly dies as a result of child abuse as to which there is an indicated report or when the county agency has not made a status determination within 30 days. The team may convene after a county agency makes a determination of an indicated report and shall convene no later than 31 days from the receipt of the oral report to the

department of the suspected child abuse. A county agency in the county where the abuse occurred and in any county where the child resided within the 16 months preceding the fatality or near fatality shall convene a child fatality or near fatality review team. A team shall consist of at least six individuals who are broadly representative of the county where the team is established and who have expertise in prevention and treatment of child abuse. With consideration given to the circumstances of each case and availability of individuals to serve as members, the team may consist of the following individuals:

(i) A staff person from the county agency.

(ii) A member of the advisory committee of the county agency.

(iii) A health care professional.

(iv) A representative of a local school, educational program or child care or early childhood development program.

(v) A representative of law enforcement or the district attorney.

(vi) An attorney-at-law trained in legal representation of children or an individual trained under 42 Pa.C.S. § 6342 (relating to court-appointed special advocates).

(vii) A mental health professional.

(viii) A representative of a children's advocacy center that provides services to children in the county. The individual under this subparagraph must not be an employee of the county agency.

(ix) The county coroner or forensic pathologist.

(x) A representative of a local domestic violence program.

(xi) A representative of a local drug and alcohol program.

(xii) An individual representing parents.

(xiii) Any individual whom the county agency or child fatality or near fatality review team determines is necessary to assist the team in performing its duties.

(2) Members of the team shall be responsible for all of the following:

(i) Maintaining confidentiality of information under sections 6339 (relating to confidentiality of reports) and 6340.

(ii) Providing and discussing relevant case-specific information.

(iii) Attending and participating in all meetings and activities as required.

(iv) Assisting in the development of the report under paragraph (4)(v).

(3) The county agency, in accordance with the protocol and in consultation with the team, shall appoint an individual who is not an employee of the county agency to serve as chairperson.

(4) The team shall perform the following:

(i) Review the circumstances of the child's fatality or near fatality resulting from suspected or substantiated child abuse.

(ii) Review the delivery of services to the abused child and the child's family provided by the county agency and review services provided to the perpetrator by the county agency in each county where the child and family resided within the 16 months preceding the fatality or near fatality and the services provided to the child, the child's family and the perpetrator by other public and private community agencies or professionals. This subparagraph includes law enforcement, mental health services, programs for young children and children with special needs, drug and alcohol programs, local schools and health care providers.

(iii) Review relevant court records and documents related to the abused child and the child's family.

(iv) Review the county agency's compliance with statutes and regulations and with relevant policies and procedures of the county agency.

(v) Within 90 days of convening, submit a final written report on the child fatality or near fatality to the department and designated county officials under section 6340(a)(11).

Within 30 days after submission of the report to the department, the report shall be made available, upon request, to other individuals to whom confidential reports may be released, as specified by section 6340. The report shall be made available to the public, but identifying information shall be removed from the contents of the report except for disclosure of: the identity of a deceased child; if the child was in the custody of a public or private agency, the identity of the agency; the identity of the public or private agency under contract with a county agency to provide services to the child and the child's family in the child's home prior to the child's death or near fatality; and the identity of any county agency that convened a child fatality or near fatality review team in respect to the child. The report shall not be released to the public if the district attorney certifies that release of the report may compromise a pending criminal investigation or proceeding. Certification by the district attorney shall stay the release of the report for a period of 60 days, at which time the report shall be released unless a new certification is made by the district attorney. The report shall include:

(A) Deficiencies and strengths in:

(I) compliance with statutes and regulations; and

(II) services to children and families.

(B) Recommendations for changes at the State and local levels on:

(I) reducing the likelihood of future child fatalities and near fatalities directly related to child abuse and neglect;

(II) monitoring and inspection of county agencies; and

(III) collaboration of community agencies and service providers to prevent child abuse and neglect.

(e) Response by department.--Within 45 days of receipt of a report of a child fatality or near fatality under subsection (d), the department shall review the findings and recommendations of the report and provide a written response to the county agency and the child fatality review team or near fatality review team. The department's response to the report of the child fatality or near fatality review team shall be made available, upon request, to other individuals to whom confidential reports may be released, as specified by section 6340. The department's response shall be made available to the public, but identifying information shall be removed from the contents of the response, except for disclosure of: the identity of a deceased child; if the child was in the custody of a public or private agency, the identity of the agency; the identity of the public or private agency under contract with a county agency to provide services to the child and the child's family in the child's home prior to the child's death or near fatality; and the identity of any county agency that convened a child fatality or near fatality review team in respect to the child. The response shall not be released to the public if the district attorney certifies that release of the response may compromise a pending criminal investigation or proceeding. Certification by the district attorney shall stay the release of the report for a period of 60 days, at which time the report shall be released unless a new certification is made by the district attorney.

(f) Construction.--The provisions of this section shall be construed to assist in the improvement of services designed to identify and prevent child abuse. The provisions shall not be construed to impede or interfere with criminal prosecutions of persons who have committed child abuse.

§ 6366. Continuous availability to receive reports.

Each county agency shall receive 24 hours a day, seven days a week, all reports, both oral and written, of suspected child abuse in accordance with this chapter, the county plan for the provision of child protective services and the regulations of the department.

§ 6367. Reports to department and coroner.

(a) Reports to department.--Upon the receipt of each report of suspected child abuse made pursuant to this chapter, the county agency shall immediately transmit a child abuse report summary as provided in section 6313 (relating to reporting procedure) to the department. Supplemental reports shall be made at regular intervals thereafter in a manner and form the department prescribes by regulation to the end that the department is kept fully informed and up-to-date concerning the status of reports of child abuse.

(b) Reports to coroner.--The county agency shall give telephone notice and forward immediately a copy of reports made pursuant to this chapter which involve the death of a child to the appropriate coroner pursuant to section 6317 (relating to mandatory reporting and postmortem investigation of deaths).

(c) Child deaths and near fatalities.--A county agency shall immediately provide information to the department regarding its involvement with the child and with the child's parent, guardian or custodian when a child dies or nearly dies and child abuse is suspected. The county agency shall inform the department of any history of child protective or general protective services provided to the child prior to the child's death or near fatality and of services provided to other children of the child's parent, guardian or custodian by the county agency or by court order. The county agency shall inform the department if the child was in the agency's custody at the time of the child's death or near fatality. The county agency shall provide this information in writing on forms provided by the department within 48 hours of the oral report.

§ 6368. Investigation of reports.

(a) General rule.--Upon receipt of each report of suspected child abuse, the county agency shall immediately commence an appropriate investigation and see the child immediately if emergency protective custody is required or has been or shall be taken or if it cannot be determined from the report whether emergency protective custody is needed. Otherwise, the county agency shall commence an appropriate investigation and see the child within 24 hours of receipt of the report. The investigation shall include a determination of the risk of harm to the child or children if they continue to remain in the existing home environment, as well as a determination of the nature, extent and cause of any condition enumerated in the report, any action necessary to provide for the safety of the child or children and the taking of photographic identification of the child or children to be maintained with the file. During the investigation, the county agency shall provide or arrange for services necessary to protect the child while the agency is making a determination pursuant to this section. If the investigation indicates serious physical injury, a medical examination shall be performed on the subject child by a certified medical practitioner. Where there is reasonable cause to suspect there is a history of prior or current abuse, the medical practitioner has the authority to arrange for further medical tests or the county agency has the authority to request further medical tests. The investigation shall include communication with the department's service under section 6332 (relating to establishment of Statewide toll-free telephone number). Prior to interviewing a subject of the report, the county agency shall orally notify the subject who is about to be interviewed of the existence of the report, the subject's rights under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights) and the subject's rights pursuant to this chapter in regard to amendment or expungement. Within 72 hours following oral notification to the subject, the county agency shall give written notice to the subject. The notice may be reasonably delayed if notification is likely to threaten the safety of the victim, a nonperpetrator subject or the investigating county agency worker, to cause the perpetrator to abscond or to significantly interfere with the conduct of a criminal investigation. However, the written notice must be provided to all subjects prior to the county agency's reaching a finding on the validity of the report.

(a.1) Investigation of report concerning child-care service personnel.--Upon notification that an investigation involves suspected child abuse perpetrated by child-care service personnel, including a child-care service employee, service provider or administrator, the respective child-care service must immediately implement a plan of supervision or alternative arrangement subject to the county agency's approval for the individual under investigation to ensure the safety of the child and other children who are in the care of the child-care service. Such plan of supervision or alternative arrangement shall be kept on file with the county agency until such time that the investigation is completed.

(b) Conditions outside home environment.--The investigation shall determine whether the child is being harmed by factors beyond the control of the parent or other person responsible for the welfare of the child, and, if so determined, the county agency shall promptly take all available steps to remedy and correct these conditions, including, but not limited to, the coordination of social services for the child and the family, or referral of the family to appropriate agencies for the provision of services.

(c) Completion of investigations.--The investigation by the county agency to determine whether the report is "founded," "indicated" or "unfounded" and whether to accept the family for service shall be completed within 60 days in all cases. If, due to the particular circumstances of the case, the county agency cannot complete the investigation within 30 days, the particular reasons for the delay shall be described in the child protective service record and available to the department for purposes of determining whether the county agency has strictly followed the provisions of this chapter and whether the county agency is subject to action as authorized by section 6343 (relating to investigating performance of county agency). Where a petition has been filed under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) alleging that the child is a dependent child, the county agency shall make all reasonable efforts to complete the investigation to enable the hearing on the petition to be held as required by 42 Pa.C.S. § 6335 (relating to release or holding of hearing).

(d) Referral for investigation.--If the complaint of suspected abuse is determined to be one which cannot be investigated under this chapter because the person accused of the abuse is not a perpetrator within the meaning of section 6303 (relating to definitions) but does suggest the need for investigation, the county agency shall immediately transmit the information to the appropriate authorities, including the district attorney, the district attorney's designee or other law enforcement official, in accordance with the county protocols for investigative teams required by section 6365(c) (relating to services for prevention, investigation and treatment of child abuse).

§ 6369. Taking child into protective custody.

Pursuant to the provisions of section 6315 (relating to taking child into protective custody) and after receipt of a court order, the county agency shall take a child into protective custody for protection from abuse. No county agency worker may take custody of the child without judicial authorization based on the merits of the situation.

§ 6370. Voluntary or court-ordered services; findings of child abuse.

(a) General rule.--Based on the investigation and evaluation conducted pursuant to this chapter, the county agency shall provide or contract with private or public agencies for the protection of the child at home whenever possible and those services necessary for adequate care of the child when placed in protective custody. Prior to offering these services to a family, the agency shall explain that it has no legal authority to compel the family to receive the services but may inform the family of the obligations and authority of the county agency to initiate appropriate court proceedings.

(b) Initiation of court proceeding.--

(1) In those cases in which an appropriate offer of service is refused and the county agency determines that the best interests of the child require court action, the county agency shall initiate the appropriate court proceeding. The county agency shall assist the court during all stages of the court proceeding in accordance with the purposes of this chapter.

(2) (i) If the county agency deems it appropriate in a dependency or delinquency proceeding, including an instance in which the alleged perpetrator has access or poses a threat to a child, the county agency may petition the court under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) for a finding of child abuse.

(ii) If the court makes a specific finding that child abuse as defined by this chapter has not occurred, the county agency shall consider the court's finding to be a determination that the report of suspected abuse was an unfounded report. The county agency shall immediately notify the department of the change in the status of the report from an indicated report to an unfounded report. Upon notice, the department shall be responsible for expunging the indicated report consistent with the expunction requirements of this chapter.

(iii) If there is a determination that the subjects of the unfounded report need services provided or arranged by the county agency, the county agency may retain those records only if it specifically identifies the report as an unfounded report of suspected child abuse.

§ 6371. Rehabilitative services for child and family.

The county agency shall provide or arrange for and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the court.

§ 6372. Protecting well-being of children maintained outside home.

The county agency shall be as equally vigilant of the status, well-being and conditions under which a child is living and being maintained in a facility other than that of a parent, custodian or guardian from which the child has been removed as the service is of the conditions in the dwelling of the parent, custodian or guardian. Where the county agency finds that the placement for any temporary or permanent custody, care or treatment is for any reason inappropriate or harmful in any way to the physical or mental well-being of the child, it shall take immediate steps to remedy these conditions including petitioning the court.

§ 6373. General protective services responsibilities of county agency.

(a) Program objectives.--Each county agency is responsible for administering a program of general protective services to children and youth that is consistent with the agency's objectives to:

(1) Keep children in their own homes, whenever possible.

(2) Prevent abuse, neglect and exploitation.

(3) Overcome problems that result in dependency.

(4) Provide temporary, substitute placement in a foster family home or residential child-care facility for a child in need of care.

(5) Reunite children and their families whenever possible when children are in temporary, substitute placement.

(6) Provide a permanent, legally assured family for a child in temporary, substitute care who cannot be returned to his own home.

(7) Provide services and care ordered by the court for children who have been adjudicated dependent.

(b) Efforts to prevent need for removal from home.--In its effort to assist the child and the child's parents, pursuant to Federal regulations, the county agency will make reasonable efforts prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home and to make it possible for the child to return to home.

(c) Assistance in obtaining available benefits.--The county agency shall aid the child and the family in obtaining benefits and services for which they may qualify under Federal, State and local programs.

(d) Duplication of services.--Except where ordered by the court in a proceeding brought under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), a county agency shall not be required to duplicate services which are the statutory responsibility of any other agency.

§ 6374. Principles and goals of general protective services.

(a) Primary purpose.--The primary purpose of general protective services is to protect the rights and welfare of children so that they have an opportunity for healthy growth and development.

(b) Assistance to parents.--Implicit in the county agency's protection of children is assistance to parents in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties more adequately.

§ 6375. County agency requirements for general protective services.

(a) Duties of county agency.--The county agency shall make available a program of general protective services within each agency. The county agency shall perform those functions assigned by this chapter and others that would further the purposes of this chapter. It shall have sufficient staff of sufficient qualifications to fulfill the purposes of this chapter and be organized in a way as to maximize the continuity of responsibility, care and service of individual workers toward individual children and families. The department by regulation shall set forth staff-to-family ratios for the receipt and assessment of reports of children in need of protective services and for the provision of services to neglected children and their families.

(b) Organization of county agency.--Each county agency shall be organized and staffed to ensure that the agency can provide intake for general protective services. Intake occurs when a report or referral is made to the agency or when a parent or person responsible for the child's welfare requests the assistance of the agency.

(c) Assessment for services.--

(1) Within 60 days of receipt of a report, an assessment shall be completed and a decision on whether to accept the family for service shall be made. The county agency shall provide or arrange for services necessary to protect the child during the assessment period.

(2) Each county agency shall implement a State-approved risk assessment process in performance of its duties.

(d) Receiving and assessing reports.--The county agency shall be the sole civil agency responsible for receiving and assessing all reports of children in need of protective services made pursuant to this chapter for the purpose of providing protective services to prevent abuse or neglect to children and to provide or arrange for and monitor the provision of those services necessary to safeguard and ensure the child's well-being and development and to preserve and stabilize family life wherever appropriate. The department may waive the receipt and assessment requirement pursuant to section 6361 (relating to organization for child protective services). Nothing in this subsection limits 42 Pa.C.S. § 6304 (relating to powers and duties of probation officers).

(e) Family service plan.--The county agency shall prepare a written family service plan in accordance with regulations adopted by the department.

(f) Types of services.--Each county agency shall make available for the prevention and treatment of child abuse and neglect: multidisciplinary teams, instruction and education for parenthood and parenting skills, protective and preventive social counseling, emergency caretaker services, emergency shelter care, emergency medical services, part-day services, out-of-home placement services, therapeutic activities for the child and family directed at alleviating conditions that present a risk to the safety and well-being of a child and any other services required by department regulations.

(g) Monitoring, evaluating and assessing.--The county agency shall frequently monitor the provision of services, evaluate the effectiveness of the services, conduct in-home visits and make a periodic assessment of the risk of harm to the child, which shall include maintaining an annually updated photograph of the child and verification of the identification of the child.

(h) Emergency coverage.--As part of its general protective services program, a county agency shall provide 24-hour-a-day emergency coverage and be accessible to the public.

(i) Protective custody.--Pursuant to section 6315 (relating to taking child into protective custody) and after receipt of a court order, the county agency shall take a child into protective custody to protect the child from abuse or further neglect. No county agency worker may take custody of a child without judicial authorization based on the merits of the situation.

(j) Court action.--If the county agency determines that protective services are in the best interest of a child and if an offer of those services is refused or if any other reason exists to warrant court action, the county agency shall initiate the appropriate court proceedings.

(k) Adjudication of dependency.--The county agency shall maintain its responsibility for petitioning the court when necessary for the adjudication of dependency of a child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(l) Assistance to court.--The county agency shall assist the court during all stages of a court proceeding in accordance with the purposes of this chapter.

(m) Weekly face-to-face contacts.--For those children assessed under this section as being at high risk for abuse or neglect who are remaining in or returning to the home in which the abuse or neglect occurred, the county agency shall ensure that those children are seen at least once a week, either directly by a county agency worker or through purchase of service, until they are no longer assessed as being at high risk for abuse or neglect.

(n) Transfer of files between county agencies.--Whenever a county agency transfers to another county agency a file relating to a child who receives or is in need of protective services under this chapter, the file shall include any photographic identification and an annual photograph taken of the child.

§ 6376. Appeals with respect to general protective services.

(a) Right to appeal.--A custodial parent or person who has primary responsibility for the welfare of a child may appeal the county agency's decision to accept the family for services. Written notice of this right, along with an explanation of the agency's decision, shall be given to the family within seven days of the decision to accept for service. The department has no authority to modify an order of a court of common pleas.

(b) Receipt and grounds of appeal.--Appeals must be received by the county agency within 45 days of the date when the notice was mailed to the custodial parent or person who has primary responsibility for the welfare of a child. Requests must be made on the grounds that the child is or is not at risk of abuse or neglect.

(c) Review and decision and request for hearing.--The county agency shall review the request and issue a written decision within 45 days of receipt of the appeal. If the agency denies the request, the custodial parent or person who has primary responsibility for the welfare of a child may request a hearing before the department. The request must be made within 45 days of the date of the county agency's decision.

(d) Hearing.--If a hearing is requested, the secretary or his designated agent shall schedule a hearing pursuant to Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, and applicable department regulations. The burden of proof in the hearing shall be on the county agency. The department shall assist the county agency as necessary.

(e) Order.--The department is authorized and empowered to make any appropriate order regarding records to make them accurate or consistent with the requirements of this chapter.

(f) Other appeals.--Action by a custodial parent or person who has primary responsibility for the welfare of a child under this section does not preclude his right to exercise other appeals available through department regulations or the courts.

§ 6377. Caseloads.

The department by regulation shall set forth staff-to-family ratios for general protective services.

§ 6378. Purchase of services.

Except for the receipt and assessment of reports alleging a need for protective services, the county agency may purchase and utilize the services of any appropriate public or private agency. The department shall promulgate regulations establishing standards and qualifications of persons or agencies providing services for a county agency. The department may, by regulation, provide for the establishment of regional facilities or a regional coordination of licensed professional service providers to provide county agencies with access to licensed physicians and psychologists, as required by this section.

SUBCHAPTER E
MISCELLANEOUS PROVISIONS

Sec.

§ 6381. Evidence in court proceedings.

(a) General rule.--In addition to the rules of evidence provided under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), the rules of evidence in this section shall govern in child abuse proceedings in court or in any department administrative hearing pursuant to section 6341 (relating to amendment or expunction of information).

(b) Reports of unavailable persons.--Whenever a person required to report under this chapter is unavailable due to death or removal from the jurisdiction of the court, the written report of that person shall be admissible in evidence in any proceedings arising out of child abuse other than proceedings under Title 18 (relating to crimes and offenses). Any hearsay contained in the reports shall be given such weight, if any, as the court determines to be appropriate under all of the circumstances. However, any hearsay contained in a written report shall not of itself be sufficient to support an adjudication based on abuse.

(c) Privileged communications.--Except for privileged communications between a lawyer and a client and between a minister and a penitent, a privilege of confidential communication between husband and wife or between any professional person, including, but not limited to, physicians, psychologists, counselors, employees of hospitals, clinics, day-care centers and schools and their patients or clients, shall not constitute grounds for excluding evidence at any proceeding regarding child abuse or the cause of child abuse.

(d) Prima facie evidence of abuse.--Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child shall be prima facie evidence of child abuse by the parent or other person responsible for the welfare of the child.

§ 6382. Guardian ad litem for child in court proceedings (Repealed).

§ 6383. Education and training.

(a) Duties of department and county agencies.--The department and each county agency, both jointly and individually, shall conduct a continuing publicity and education program for the citizens of this Commonwealth aimed at the prevention of child abuse and child neglect, including the prevention of newborn abandonment, the identification of abused and neglected children and the provision of necessary ameliorative services to abused and neglected children and their families. The department and each county agency shall conduct an ongoing training and education program for local staff, persons required to make reports and other appropriate persons in order to familiarize those persons with the reporting and investigative procedures for cases of suspected child abuse and the rehabilitative services that are available to children and families. In addition, the department shall, by regulation, establish a program of training and certification for persons classified as protective services workers. The regulations shall provide for the grandfathering of all current permanent protective services workers as certified protective services workers. Upon request by the county agency and approval of the department, the agency may conduct the training of the county's protective services workers.

(a.1) Study by department.--The department shall conduct a study to determine the extent of the reporting of suspected child abuse in this Commonwealth where the reports upon investigation are determined to be unfounded and to be knowingly false and maliciously reported or it is believed that a minor was persuaded to make or substantiate a false and malicious report. The department shall submit the report to the Governor, General Assembly and Attorney General no later than June 1, 1996. The report shall include the department's findings and recommendations on how to reduce the incidence of knowingly false and malicious reporting.

(b) Duties of Department of State.--

(1) The Department of State shall make training and educational programs and materials available for all professional licensing boards whose licensees are charged with responsibilities for reporting child abuse under this chapter with a program of distributing educational materials to all licensees.

(2) Each licensing board with jurisdiction over professional licensees identified as mandated reporters under this chapter shall promulgate regulations within one year of the effective date of this subsection on the responsibilities of mandated reporters. These regulations shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse.

§ 6384. Legislative oversight.

A committee of the Senate designated by the President pro tempore of the Senate and a committee of the House of Representatives designated by the Speaker of the House of Representatives, either jointly or separately, shall review the manner in which this chapter has been administered at the State and local level for the following purposes:

(1) Providing information that will aid the General Assembly in its oversight responsibilities.

(2) Enabling the General Assembly to determine whether the programs and services mandated by this chapter are effectively meeting the goals of this chapter.

(3) Assisting the General Assembly in measuring the costs and benefits of this program and the effects and side-effects of mandated program services.

(4) Permitting the General Assembly to determine whether the confidentiality of records mandated by this chapter is being maintained at the State and local level.

(5) Providing information that will permit State and local program administrators to be held accountable for the administration of the programs mandated by this chapter.

§ 6385. Reimbursement to county agencies.

The department shall certify in accordance with the needs-based budgeting provisions of Article VII of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, a level of funds sufficient to meet the cost of services required by the provisions of this chapter which are reasonable and allowable as defined in Article VII.

§ 6386. Mandatory reporting of infants born and identified as being affected by illegal substance abuse.

Health care providers who are involved in the delivery or care of an infant who is born and identified as being affected by illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure shall immediately cause a report to be made to the appropriate county agency. The county agency shall provide or arrange for appropriate services for the infant.

APPENDIX

House Resolution No. 522 of 2011

Senate Resolution No. 250 of 2011

BLANK

PAGE

PRINTER'S NO. 2876

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 522 Session of 2011

INTRODUCED BY MARSICO AND CALTAGIRONE, DECEMBER 12, 2011

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 12, 2011

A RESOLUTION

Establishing the Task Force on Child Protection.

WHEREAS, The General Assembly finds and declares as follows:

(1) Recent events require a review of laws and procedures relating to the reporting of child abuse and the protection of the health and safety of children.

(2) A review of these laws and procedures will help to ensure that the Commonwealth is able to adequately protect its children.

(3) It is the responsibility of the Commonwealth to protect its citizens, particularly children.

(4) Therefore, the General Assembly shall establish a task force to conduct a thorough and comprehensive review to:

(i) ascertain any inadequacies relating to the mandatory reporting of child abuse; and

(ii) restore public confidence in the ability of the Commonwealth to protect the victims of child abuse;

therefore be it

RESOLVED, That the Task Force on Child Protection be

established; and be it further

RESOLVED, That the task force consist of the following members, appointed within 25 days after the adoption of this resolution by both chambers:

(1) Six members knowledgeable and experienced in issues relating to child abuse or providing services to victims of child abuse as follows:

(i) Three members appointed by the President pro tempore of the Senate, in consultation with the Majority Leader and the Minority Leader of the Senate. A member under this subparagraph may be a member of the Senate.

(ii) Three members appointed by the Speaker of the House of Representatives, in consultation with the Majority Leader and the Minority Leader of the House of Representatives. A member under this subparagraph may be a member of the House of Representatives.

(2) Four members appointed by the Governor as follows:

(i) One member shall be a member of the general public.

(ii) One member shall be a member of a victim organization or a children and youth services organization who is directly involved in providing services to victims of child abuse.

(iii) One member experienced in the operation and interaction between a county children and youth agency and the Commonwealth.

(iv) A district attorney.

(3) The Secretary of Public Welfare or a designee who shall be an employee of the department. The designee shall be appointed in writing, and a copy shall be submitted to the

chairman of the task force;

and be it further

RESOLVED, That the Governor select the chairperson of the task force; and be it further

RESOLVED, That the task force conduct its business as follows:

(1) The physical presence of six members constitutes a quorum of the task force.

(2) Action of the task force shall be authorized or ratified by majority vote of its members.

(3) A member not physically present may participate by teleconference or video conference.

(4) The following shall apply:

(i) The task force shall meet as necessary but no fewer than five times prior to September 30, 2012. Additional meetings may be called by the chairperson as necessary.

(ii) The chairperson shall schedule a meeting upon written request of eight members of the task force.

(iii) The first meeting shall be convened within 45 days.

(iv) The task force shall hold public hearings as necessary to obtain the information required to conduct its review.

(v) The Department of Public Welfare, the Joint State Government Commission and the Juvenile Courts Judges' Commission shall cooperate to provide administrative or other assistance to the task force.

(vi) Members shall not receive compensation but shall be reimbursed for reasonable and necessary expenses

incurred in service of the task force;

and be it further

RESOLVED, That the task force have the following powers:

(1) To examine and analyze the practices, processes and procedures relating to the response to child abuse.

(2) To review and analyze law, procedures, practices and rules relating to the reporting of child abuse.

(3) To hold public hearings for the taking of testimony and the requesting of documents.

(4) The chairperson shall have the power to administer oaths and affirmations to witnesses appearing before the task force;

and be it further

RESOLVED, That the task force have the following duties:

(1) To accept and review written comments from individuals and organizations.

(2) To make, by November 30, 2012, a final report to the Governor, the Senate and the House of Representatives.

(3) Based on its review, the report under paragraph (2) shall include recommendations:

(i) To improve the reporting of child abuse.

(ii) To implement any necessary changes in State statutes and practices, policies and procedures relating to child abuse.

(iii) To train appropriate individuals in the reporting of child abuse.

(4) To make reports as follows:

(i) The task force may file status reports and updates with the Governor and the Senate and the House of Representatives as it deems appropriate.

(ii) A report under this paragraph shall be adopted at a public meeting.

(iii) A report under this paragraph shall be a public record under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law;

and be it further

RESOLVED, That the task force expire December 31, 2012.

BLANK

PAGE

PRINTER'S NO. 1846

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 250 Session of 2011

INTRODUCED BY WARD, VANCE, SCARNATI, PILEGGI, FONTANA, GREENLEAF, TOMLINSON, SCHWANK, BAKER, PIPPY, ERICKSON, WAUGH, D. WHITE, BRUBAKER, ARGALL, FERLO, PICCOLA, MENSCH, RAFFERTY, YAW, VOGEL, GORDNER, STACK, YUDICHAK, EICHELBERGER AND ALLOWAY, DECEMBER 12, 2011

REFERRED TO AGING AND YOUTH, DECEMBER 12, 2011

A RESOLUTION

Establishing the Task Force on Child Protection.

WHEREAS, The General Assembly finds and declares as follows:

(1) Recent events require a review of laws and procedures relating to the reporting of child abuse and the protection of the health and safety of children.

(2) A review of these laws and procedures will help to ensure that the Commonwealth is able to adequately protect its children.

(3) It is the responsibility of the Commonwealth to protect its citizens, particularly children.

(4) Therefore, the General Assembly shall establish a task force to conduct a thorough and comprehensive review to:

(i) ascertain any inadequacies relating to the mandatory reporting of child abuse; and

(ii) restore public confidence in the ability of the Commonwealth to protect the victims of child abuse;

therefore be it

RESOLVED, That the Task Force on Child Protection be established; and be it further

RESOLVED, That the task force consist of the following members, appointed within 25 days after the adoption of this resolution by both chambers:

(1) Six members knowledgeable and experienced in issues relating to child abuse or providing services to victims of child abuse as follows:

(i) Three members appointed by the President pro tempore of the Senate, in consultation with the Majority Leader and the Minority Leader of the Senate. A member under this subparagraph may be a member of the Senate.

(ii) Three members appointed by the Speaker of the House of Representatives, in consultation with the Majority Leader and the Minority Leader of the House of Representatives. A member under this subparagraph may be a member of the House of Representatives.

(2) Four members appointed by the Governor as follows:

(i) One member shall be a member of the general public.

(ii) One member shall be a member of a victim organization or a children and youth services organization who is directly involved in providing services to victims of child abuse.

(iii) One member experienced in the operation and interaction between a county children and youth agency and the Commonwealth.

(iv) A district attorney.

(3) The Secretary of Public Welfare or a designee who

shall be an employee of the department. The designee shall be appointed in writing, and a copy shall be submitted to the chairman of the task force;

and be it further

RESOLVED, That the Governor select the chairperson of the task force; and be it further

RESOLVED, That the task force conduct its business as follows:

(1) The physical presence of six members constitutes a quorum of the task force.

(2) Action of the task force shall be authorized or ratified by majority vote of its members.

(3) A member not physically present may participate by teleconference or video conference.

(4) The following shall apply:

(i) The task force shall meet as necessary but no fewer than five times prior to September 30, 2012. Additional meetings may be called by the chairperson as necessary.

(ii) The chairperson shall schedule a meeting upon written request of eight members of the task force.

(iii) The first meeting shall be convened within 45 days.

(iv) The task force shall hold public hearings as necessary to obtain the information required to conduct its review.

(v) The Department of Public Welfare, the Joint State Government Commission and the Juvenile Courts Judges' Commission shall cooperate to provide administrative or other assistance to the task force.

(vi) Members shall not receive compensation but shall be reimbursed for reasonable and necessary expenses incurred in service of the task force;

and be it further

RESOLVED, That the task force have the following powers:

(1) To examine and analyze the practices, processes and procedures relating to the response to child abuse.

(2) To review and analyze law, procedures, practices and rules relating to the reporting of child abuse.

(3) To hold public hearings for the taking of testimony and the requesting of documents.

(4) The chairperson shall have the power to administer oaths and affirmations to witnesses appearing before the task force;

and be it further

RESOLVED, That the task force have the following duties:

(1) To accept and review written comments from individuals and organizations.

(2) To make, by November 30, 2012, a final report to the Governor, the Senate and the House of Representatives.

(3) Based on its review, the report under paragraph (2) shall include recommendations:

(i) To improve the reporting of child abuse.

(ii) To implement any necessary changes in State statutes and practices, policies and procedures relating to child abuse.

(iii) To train appropriate individuals in the reporting of child abuse.

(4) To make reports as follows:

(i) The task force may file status reports and

updates with the Governor and the Senate and the House of Representatives as it deems appropriate.

(ii) A report under this paragraph shall be adopted at a public meeting.

(iii) A report under this paragraph shall be a public record under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law;

and be it further

RESOLVED, That the task force expire December 31, 2012.