



2001 NORTH FRONT STREET
BUILDING #1, SUITE 210
HARRISBURG, PA 17102
(717) 238-5416
FAX (717) 231-3912

FOUNDED 1912

PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION

PRESIDENT

J. MR. HAPLEAKIN
Cumberland County

VICE-PRESIDENT

WILLIAM H. KYAN, JR.
Delaware County

SECRETARY-TREASURER

ETHEL A. LARUSSE
Schuylkill County

IMMEDIATE-PAST PRESIDENT

ALAN M. RUBENSTEIN
Dauphin County

EXECUTIVE COMMITTEE

WILLIAM J. HADERSICK
TED MCKNICHI
JOHN I. ROBINSON
MICHAEL D. MARINO
WILLIAM R. CUNNINGHAM

LEGISLATIVE CHAIR

LYNNE M. ABRAHAM

CHAIRMAN OF AFFAIRS

ROBERT E. COLVILLE

EXECUTIVE DIRECTOR

JANICE MARTINO-COLESJATI

**TESTIMONY OF MICHAEL D. MARINO
DISTRICT ATTORNEY, MONTGOMERY COUNTY**

**ON BEHALF OF THE
PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION**

BEFORE THE

HOUSE JUDICIARY COMMITTEE

AND THE

HOUSE COMMITTEE ON AGING & YOUTH

CONCERNING HOUSE BILL 826

MAY 6, 1993

Good afternoon. My name is Michael Marino. I am the District Attorney of Montgomery County. I am speaking here today on behalf of the Pennsylvania District Attorney's Association ("PDAA.")

As District Attorneys, we are entrusted with the duty to protect our citizens, particularly our most innocent ones - the children. I am here today to oppose House Bill 826 which would create new offenses and which would, in effect, cut to the heart of our child abuse legislation.

House Bill 826 carves out two wholly new crimes, first, intentionally making a false report of child abuse, and, second, persuading someone else to make false allegations. It grades both as misdemeanors of the first degree. House Bill 826's intent is purportedly to criminalize the behavior of making malicious, false, "unfounded" reports of suspected child abuse to child welfare authorities. A noble cause which none of us can disagree with but one which already has statutory remedies and one which, if enacted, will undermine all of the efforts we make to protect children. This bill is not "child protection." It is the antithesis of child protection.

By way of background, let me explain that an "unfounded" child abuse report does not mean a false report. It merely means that the act complained of either can not be legally established or does not fit within the definition of child abuse. As an example, for an act against a child to be termed "child abuse," the Pennsylvania Child Protective Services Act requires

the threat of or actual "serious bodily injury" to a child. It also requires that the person inflicting the injury fit within the narrowly defined category of "caretakers." Teachers, for example, are presently not included in the statutory definition. Therefore, if a teacher were to inflict "bodily injury" on a student and that fact were reported to Child Welfare authorities, the report would ultimately be classified as "unfounded" - not because it was false, but because it did not fit within the statutory definition of child abuse. "Unfounded" does not mean false.

Studies have shown that the majority of unfounded reports are made in good faith. They are made by people who do not intend to make malicious reports but who err on the side of child protection. These are people who in good faith believe or suspect that a child is being injured. Specifically criminalizing that behavior would only have a chilling effect on child abuse reporting. It would threaten people into not reporting because of the fear of criminal prosecution if the incident were eventually determined to be false.

Understand that the notion behind reporting laws in the first place is to empower children. Historically, children have not had the same access as adults to society's means of redressing wrongs. An adult who has been aggrieved has any number of legal alternatives that children simply do not have. By creating these particular penal sanctions, we're taking away from, not adding to, the rights of children.

Moreover, there is absolutely no need to create another criminal statute to penalize false reporting. Anyone now making a false report of child abuse could be charged with any number of offenses. Aside from Perjury, which is a third degree felony, other charges include False Swearing, False Reports to Law Enforcement Authorities, and Unsworn Falsification to Authorities, all misdemeanors of the second degree. Depending on the facts of the incident of false reporting, either one or more of these charges would be appropriate.

Note that House Bill 826 grades the crimes it creates as first degree misdemeanors, a grade higher than the charges noted above. This suggests that falsely reporting child abuse is a far more serious crime than, say, the false report of rape. I submit that there is no rational basis for elevating a false report of child abuse.

Furthermore, House Bill 826 creates the crime of "Unlawful Persuasion," decreeing it a misdemeanor of the second degree to intentionally cause a child to make an allegation of abuse which the adult reasonably knows is false. If the adult's persuasion of the child is furthered by a malicious intent to expose the person to hatred, contempt, ridicule or to a criminal investigation, the offense is upgraded to a misdemeanor of the first degree.

First, the proof problems are almost insurmountable. Second, and most important, the behavior is already criminalized under Section 4952 of the Crimes Code, Intimidation of Witnesses

or Victims. The Intimidation section makes it a felony of the third degree to coerce or intimidate another into refraining from reporting or providing false or misleading reports or testimony. Again, there is no need to duplicate crimes.

Perhaps the most disturbing aspect of House Bill 826 is the realization of how the charges are most likely to occur, how they would be proved or disproved in court and how it would impact on the children involved. Think about this. The one most likely to make a false report of child abuse or to induce another to do so is a parent involved in a bitter custody dispute with his or her ex-spouse. The child more than likely has already suffered severe emotional trauma and has probably already testified in that civil war zone. At some point a false report is made. A parent is charged and must be prosecuted. The only way to prove that the report was false is to have the child, the "supposed" victim testify to prove the falsity. Thus, the child becomes even more of a pawn in the parents' divorce. The child must testify again and instead of being the "supposed" victim, becomes the real victim. After all that she has been through, she has to point the finger of accusation in a criminal prosecution against one of her parents.

Who are we trying to protect? Child Protective Services is supposed to be a shield for children. House Bill 826 makes it a sword. It is not protective. It's a weapon.

We don't tell people who smell smoke that they'll be prosecuted if they call the Fire Department and it doesn't turn

out to be a bona fide fire. We don't tell a medical patient not to see a doctor if he thinks he's ill because he might not turn out to be sick. Likewise, we can't tell people not to report their suspicions of child abuse because the ones we will hurt the most will be the very ones we want to protect - the children.

What is at issue here is the responsiveness of the child welfare system to a national crisis of child abuse and neglect - - not the punishment of reporters. David Liederman, Executive Director of the Child Welfare League of America, said recently that we are not pushing hard enough to respond to this crisis. We agree. If we really want to protect our children, what we must do is enact legislation which provides child welfare authorities with sufficient resources to identify problems and work more intensively with at-risk families. In the words of Mr. Liederman, "...it will save money, tears and lives."

Thank you for giving me the opportunity to talk about this very important issue. I hope that you will take the view of the PDAA into consideration when voting on House Bill 826.