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**TESTIMONY ON HOUSE BILL 826
FALSE AND MALICIOUS REPORTS OF CHILD ABUSE
HOUSE JUDICIARY COMMITTEE**

**Nancy E. Rorem, Deputy Director
Pennsylvania State Association of County Commissioners**

May 6, 1993



Good afternoon. My name is Nancy Rorem, I am the Deputy Director of the Pennsylvania State Association of County Commissioners. With me today is Lynn Keltz, Assistant Director of the Children and Youth Administrators Association, who was formerly the Administrator of Jefferson County Children and Youth Services. We are here today to discuss H.B. 826 specifically and in general, the problems of malicious and false reporting.

As you know, the child welfare system in the state of Pennsylvania is a State supervised county operated system, while federal rules and regulations govern some of what we do. The system is very specifically prescribed in State law and regulations. Every county child welfare agency is licensed each year by the state, based on the laws and regulations. H.B. 826, introduced by Representative Birmelin is a valiant effort to deal with a problem that has long plagued the child welfare system; the problem is of false malicious reports of child abuse. Unfortunately, neither the PSACC nor the Administrator's association can support the bill in it's current form. We have met with the Representative and are involved in discussions that will hopefully lead to something we can support.

What does the bill do? Three things: the first is to make it a criminal offense for an adult to unlawfully persuade a child to make allegations of child abuse. Secondly, it makes it a criminal act for an adult to falsely report or make an allegation of child abuse. And, finally, it provides stiffer penalties for an adult who not only falsely reports, but maliciously makes an allegation of child abuse.

What do the Children and Youth Administrators' think? Representative Birmelin has introduced this bill in the previous two sessions of the legislation. When he first introduced the bill, almost five years ago he asked the C and Y administrators what they thought. While the response was not overwhelming, it definitely showed support for resolving the problem of malicious reporters. This year, as part of our discussions with Rep. Birmelin, we again asked the C and Y administrators for the view of the bill. The response was overwhelming in two ways. First, administrators continue to clearly acknowledge the problem that false and malicious reporting creates for both their agencies and the parties involved. Second they also responded that the proposed law would not solve the problem in a responsible way. In fact, we have not yet heard from any county who is in support of the bill as currently written. Attached to my testimony is a compilation of many of the comments. We have several concerns about the bill. The first is that we believe that if the legislation is enacted it will discourage reporting which is the exact opposite of the intention of the CPS law. Pennsylvania lawmakers, in enacting the CPSL, made an assumption that persons reporting child abuse do so out of "good faith". In addition they decided that the charge of "child abuse" is a very serious one and therefore made the definition of child abuse one of the most restrictive in the country. Because of this narrow definition (Attorney General Preate calls it one of the worst laws in the country) we do not comply with the federal standard nor do we receive federal funding for child abuse. Pennsylvania, with four times the population of Tennessee, produces the same number of founded abuse charges. Is that because Tennessee has more child abuse? Probably not, but their definition is much broader than ours.

To compensate for this narrow definition, Pennsylvania lawmakers crafted a system that allows for the widest reporting possible. In essence they said that they did not expect citizens to understand the legal standards involved, and therefore did not want to impede reporting; instead they wanted to give families a chance for early intervention and services. They seemed to understand that while some caretakers deserve punishment, most need help. This position has been a courageous one and balances the dichotomy of public opinion that on the one hand insists that no child dies as a result of child abuse and on the other hand warns against over intrusiveness in the lives of family.

Lawmakers also agreed that in order to encourage reporting as well as to protect families being investigated or involved in child abuse, confidentiality must be available to protect the family, the child, the reporter and the perpetrator or alleged perpetrator. These confidentiality laws are sometimes burdensome but they are fundamental to the design of Pennsylvania's CPSL.

If this legislation is enacted it will tip the balance. Rep. Birmelin says that he doubts that this law will lead to many convictions. We agree, but for every one conviction made there may be hundreds of reporters who are threatened or harassed. We can see the threat of legal expenses or possible convictions coming into the decision making process for mandated and voluntary reporters. We believe that mandatory and voluntary reporters will think again and again before reporting. Again and again thinking may

mean that fewer false reports will occur, it may also mean that more children will sustain serious injury or even death.

We believe that false reporting occurs in less than 5 percent of the investigations made. The second reason why we oppose this bill in its present form is that we believe that if this legislation is enacted, malicious and false reporters will quickly learn that they can make the same reports but must do so anonymously, or worse yet, give a false name. Sometimes the best information that child welfare agencies get from the report made is from the relationship between the reporter and the child. This helps us understand the seriousness of the abuse and gives us a place to start. If reporters report anonymously or give a false name, that important lead will be gone.

A third concern we raise is that this bill may further threaten the ability of child welfare workers to spend time with children and families. Because many of the terms in the bill are subjective, administrators worry that agencies will be pulled into legal proceedings as the "experts". They worry that this will take even more time away from the children and families for whom abuse is found.

Administrators report that when malicious or false reports are made now, they almost exclusively involve child custody cases and are a symptom of very serious problems in the family. These reports are not necessarily malicious or false reports. They do not indicate a need for protective services but probably do indicate a need for a referral to some other agency. If there is an answer to the issue of false or malicious reporting,

we believe that this information regarding custody disputes may provide us with a lead toward a workable solution. We think we ought to look at the statutes involving custody proceedings. Mediation prior to custody proceedings could prevent many reports and reduce the number of referrals that child welfare agencies now handle.

The provision about encouraging a child to make false reports is appealing to us. These cases, when they happen, are very disturbing. We think however, that they might already be covered under the child abuse definition of emotional abuse. We believe that this portion of the bill needs further exploration but may also provide us with a direction about solving false or malicious reports.

In short, we believe that the cure this bill might provide is worse than the disease. Quite frankly we would love to figure out a way to end malicious reports but we need to do so in a way that will not threaten confidentiality or harm children.

Let me switch now and talk about some numbers. While we readily admit that we do not have much information about the numbers of false or malicious reports, some numbers will be helpful to put this problem in perspective. Early this year, the Luzerne County judge who hears C & Y cases and custody cases did some research. He found that he presided over 950 child custody disputes in 1992 of which he referred about 10% to the Child Welfare agency as possible abuse cases. The director found that his agency had done 2,000 intakes in 1992. About 750 of them were assigned to the CPS unit as potential abuse and 1,250 were assigned to general protective services. Of

these cases, including the judge's ten percent, 50 cases were also child custody cases. Of these 50, 5 were eventually indicated as abuse. This leaves 45 cases or about 2 and 1/2 percent where there may have been false or malicious reports.

The numbers of calls in Pennsylvania are going up, but the number of calls that result in substantiated reports is virtually the same as it was ten years ago. Approximately 33% of the reports we receive are substantiated. We have attached a chart that is generated by the State's Child Abuse Reports. It shows the numbers of reports and the substantiated rates over the last ten years.

And finally, let me add some dollar figures. Pennsylvania spends, from all sources approximately \$775,000,000 on the child dependency and delinquency system. Of this figure \$20 million is spent on the investigation of child abuse. If we want to curtail increased costs in the child dependency and delinquency system, we need to look at the cases that do come into care and figure out how to prevent the intake in the first place.

Let me end by saying that working in the child welfare system is difficult. Unfortunately mistakes are sometimes made. These mistakes sometimes mean that administrators and workers get sued; they mean that families and alleged perpetrators get hurt and sometimes they mean that children get injured or die. We are all to aware of the vulnerability of our system and the possibility of human error. Therefore we are in the process of doing a couple of things that we think will help. First, we are requiring that a

child protective services workers received intensive training, pass a test and are certified. We hope to extend it to the rest of the system, including the private sector, in the near future. Second, we are in our third year of implementation of something called "risk assessment". This tool and process means that some of the guessing is no longer necessary. Using risk assessment, each CPS worker reviews each child and family, and based on reliable measures, assessing whether any intervention is necessary and if so at what level. We believe these two changes when fully implemented will go a long way towards further professionalizing the child welfare system.

ATTACHMENT - C&Y ADMINISTRATORS COMMENTS

H.B. 826 P.N. 889

The basic issue is that this bill will discourage reporting. Possibility of criminal prosecution interferes with intent of the law, i.e. to assure better reporting of child abuse. Reporters, mandated or otherwise, will hesitate even more than they do at present if they fear possible criminal charges. This will be true if "person" is changed to non-mandated reporter too. When it becomes a misdemeanor to report or not to report, people on the hedge about reporting just won't do it and more kids will be hurt more severely.

The interpretation of "reasonable" is subjective. Reporters do not have a universal and complete knowledge of either CPSL or criteria for an abuse finding or all the "reasonable" indicators of possible abuse. The current law presumes good faith; this latitude is necessary for the CPSL to work.

Enforcement of the proposed legislation hinges upon the availability of information which would identify the reporting source of the alleged abuse. This is clearly a contradiction of the terms of the current CPS law which protects the referral source. Who will ultimately be responsible for providing the name of the referral source? CPS workers face criminal sanctions at this time for doing so.

Malicious reporting occurs but it's rare. It's usually connected to custody "battles".

Custody arguments stem from real concerns about the child but the adults' needs interfere with objective perceptions of events. Parents may report bruises and/or other injuries from exaggerated fears or worries about children's safety. For example, a non-custodial father may fear that his wife's boyfriend, who has been known to be violent, has inflicted the bruise that his 4 year old says she got from falling off her trike. Or a woman reports sexual abuse by her ex-husband when the 5 year old son complains of itching in his genital area, because she knows that the father grew up in a home where he was abused as a child. These reports go to Children and Youth but are probably not numbered since they don't meet the definition of abuse under the CPSL.

The option to file charges against a reporter only compounds the problem that H.B. 826 attempts to address. Under H.B. 826, not only can misuse of the CPSL still occur, but also malicious and vindictive persons can use H.B. 826 to cause emotional and financial hardships to a reporter by dragging him/her into court with all its attendant legal costs. In particular it gives an advantage to the person with more financial resources to use the law as a weapon.

CYS staff would undoubtedly be called to court on malicious reporting and unlawful persuasion cases, thus creating more of a

drain on the system. It would keep CYS from putting time into helping children and families.

CYS looks into the matter through interviews, determines that there has not been abuse but sees other dysfunctions in the family systems that need to be addressed. CYS may offer their own services or refer elsewhere.

Often the more dysfunctional families are the families which get involved in serious custody battles. They need help from someone to look at themselves and what they're doing to their children.

The unbounding of a report does not necessarily mean that maltreatment has not occurred. I can see an alleged perpetrator filing charges against a reporter, equating an unbounding with lack of reasonable grounds. Already supporters of H.B. 826 are citing the higher percentage of unboundings to indicated dispositions as evidence of malicious reporting.

It's a reality that there will always be malicious or false reporting. Government cannot protect citizens from all such actions.

The proposed legislation will severely affect mandated reports by professionals who are leery of lawsuits being filed against them, i.e. doctors, school personnel.

Anonymous referrals would increase, precluding the opportunity to gather additional information from the referral source. This could result in more harm to kids.

People would be able to get name of referral source and this goes against the law's intent. Contradictory clauses on same issue open up entire law and actions under it to interpretation by judges.

H.B. 826 is not needed because:

- a. incidence of unreasonable/malicious reporting is relatively low.
- b. Childline and CYS already pre-screen before assignment of a CL# or assignment to a worker.
- c. repeated false reports from a given individual or related to a particular child can be blocked by court order and/or agreement by local CYS and Childline on an individual basis.

There are protections for those who feel they have been falsely accused of abuse. When an abuse report has been filed with Childline, a formal appeals process exists and has been successful in addressing people's rights. When an abuse report has not been filed, people who feel falsely accused often can clear their names by going to a psychologist and having an evaluation. Civil actions can be filed against the accuser. Policy have the re-

course of pressing charges against people for false reporting. It may not be necessary to add to these protections.

H.B. 826 makes no provision for timing--we have 30 days to investigate and evaluation reports of suspected child abuse. There should be no attempt to access the identity of a reporting source until the agency has at least had the opportunity to fully investigate the allegations.

Lawyers, as a group, have probably been among the biggest misusers of the system. They are regularly encouraging clients to call CYS to get custody. Does this constitute encouraging a false report? I think it does and needs to be defined in the Act. If attorneys are excluded from this Act, it will not affect the false reporting in custody cases.

We do not see H.B. 826 as bringing any relief to Children and Youth Staff or protecting children from abuse of the CPS Law and procedures:

How is one to validate:

"intentionally"

"Knowingly"

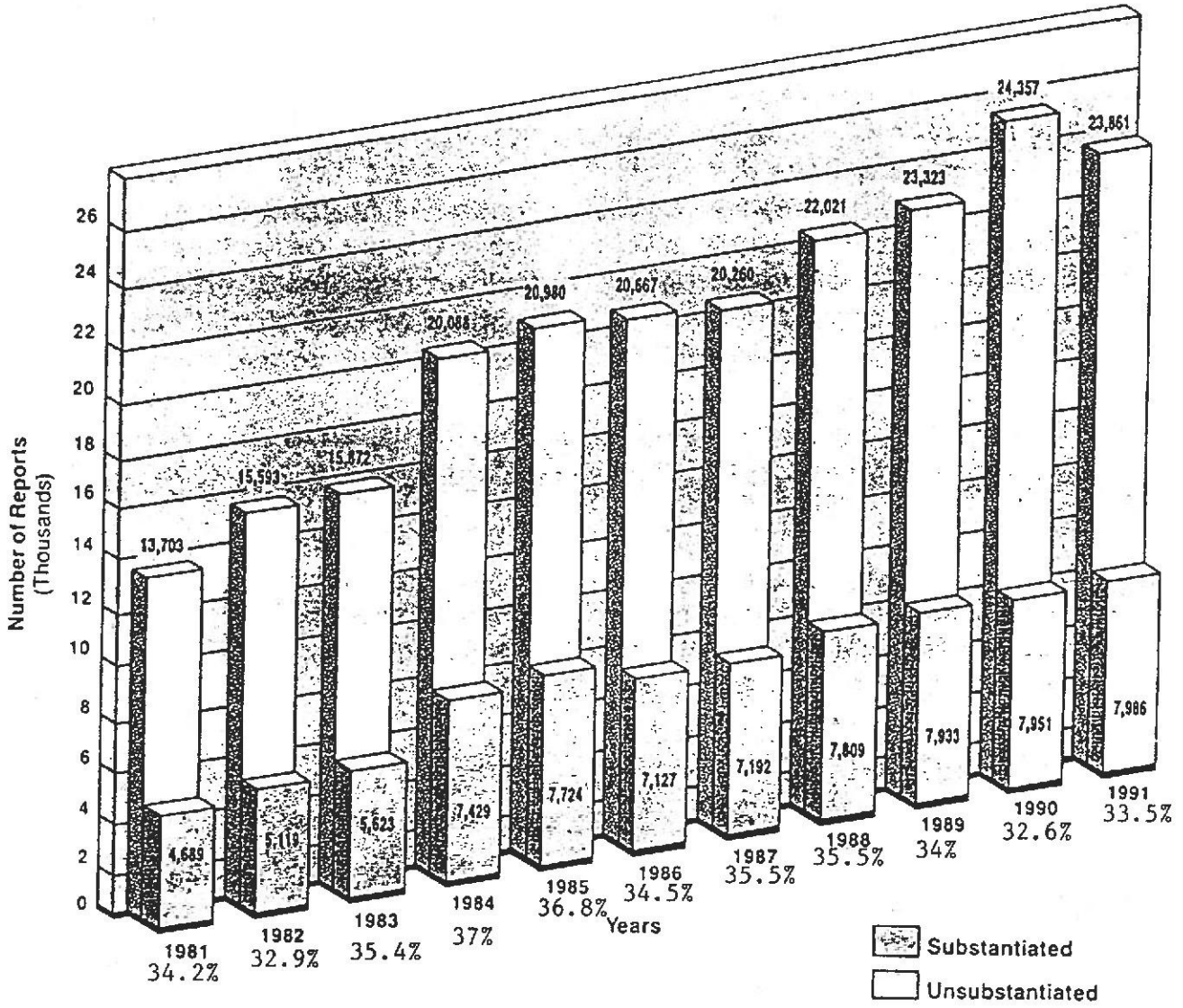
"no reasonable grounds to believe"

"malicious intent"

"without having reasonable grounds to believe the report to be true"

Chart 1

CHILD ABUSE REPORTS FROM 1981-1991



PERCENTAGES OF SUBSTANTIATED CASES