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TESTIMONY ON HB 826

Good morning. My name is Larry Frankel and I am the Legislative Director for the American Civil Liberties Union of Pennsylvania. The ACLU is a nonpartisan advocacy organization whose sole purpose is the protection of the Constitution and the Bill of Rights. The ACLU has over 10,000 members in the Commonwealth of Pennsylvania. I want to thank you for the opportunity to comment on House Bill 826 and the issue of false reporting of child abuse.

The ACLU opposes HB 826 because it is unnecessary as a remedy for protecting the rights of those accused of child abuse. We are concerned about the rights of those persons and we hope that the appropriate committee or committees will undertake a comprehensive investigation into the problems that have been noted and described by other witnesses. However, we do not think that another criminal statute is the appropriate mechanism for addressing the problems that exist.

HB 826 is unnecessary because there already are legal remedies for those who have been falsely accused of child abuse by a person who can be identified and to whom an intentional motive can be attributed. The Pennsylvania Crimes Code contains the following crimes which may be applicable to such a situation:

Perjury (Section 4902), False Swearing (Section 4903), Unsworn Falsification to Authorities (Section 4904), False Reports to Law Enforcement Authorities (Section 4906), Intimidation of Witnesses or Victims (Section 4952), Obstructing Administration of Law or Other Governmental Function (Section 5101), and Corruption of Minors (6301).

There are civil remedies available to those exonerated of charges of abuse. An action for malicious use of process or abuse of process could be brought by someone falsely accused against a person who had a malicious motive and lacked probable cause for making the accusation. It is also conceivable that a civil action could be brought for invasion of privacy.

In Pennsylvania we do not lack for remedial laws to address the problem of false reporting or the inducement of children to make false statements. In order to protect the rights of those accused of child abuse, the remedy proposed by HB 826 is superfluous. If anything, by focusing on reporting in child abuse cases, the enactment of HB 826 would have an unwanted chilling effect on the reporting of child abuse.

Protecting the rights of children to be free from abuse raises critical and difficult issues regarding the sometimes competing rights of children and parents. Children are dependent on their parents who are a source of nurture and support for growth and development. Ordinarily the parent-child relationship should not be ruptured. However, there are instances when children suffer lasting injury at the hands of their parents and

state intervention can be justified. While the ACLU supports personal autonomy for adults against state intervention, this policy is not automatically extended to a principle of unqualified family autonomy.

On the other hand, involuntary state intervention in the family raises dangers of abuse. State intervention impinges on the rights of privacy of parents and children. It also impinges on the right of parenthood. State intervention has on many occasions resulted in substantial harm to the children who are presumably being protected. The physical abuse of children in state custody is too common and institutionalization of children can be harmful to a child's development. Moreover, the history of involuntary state intervention into family life is marked by instances of judgments made on the basis of impermissible criteria such as race, sex and economic class. We know that involuntary state intervention into family life is often accompanied by clear cut civil liberties violations.

Because of the inherent problems in balancing these competing interests, the ACLU strongly believes that further criminal legislation in this area would inappropriately upset the balance. We call on you to review the existing procedures and safeguards to insure that we protect children from physical harm without trampling on the rights of those who are accused. This requires a careful and extended analysis and an examination of non-criminal means for resolving the conflicts that have triggered this debate.