

**Testimony of Lourdes M. Rosado, Esq.,
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Regarding House Bill 928**

**House Judiciary Committee of the
Pennsylvania General Assembly
February 22, 2010**

Thank you to Chairpersons Caltagirone and Marsico, and to the entire Judiciary Committee for the opportunity to speak to you today about House Bill 928. My name is Lourdes Rosado and I am testifying on behalf of Juvenile Law Center to express our concerns about HB 928. As I will explain in more detail, Juvenile Law Center's primary objection to HB 928 is that it adds a redundant abuse reporting requirement that does not enhance children's safety, while at the same time raising unnecessary barriers to teenagers who seek health care. For that reason, Juvenile Law Center respectfully urges members of the Committee to not support this bill.

Founded in 1975, Juvenile Law Center is the oldest multi-issue public interest law firm for children in the United States. Our mission is to advance the rights and well being of children in jeopardy. While Juvenile Law Center has been in the news as of late for our juvenile justice work in Luzerne County, we also have a long history of working on behalf of children in the child welfare system. For example, we have represented children in child abuse and neglect proceedings for the last 35 years. We routinely conduct trainings for child-serving professionals -- including but not limited to health care practitioners, social workers, case managers, family planning providers, juvenile justice staff and school-based professionals -- on the legal reporting requirements for child abuse and

neglect in Pennsylvania. And our publication, *Child Abuse and the Law*, which is now in its seventh edition, is the leading comprehensive manual on Pennsylvania abuse reporting requirements—it has been circulated to tens of thousands of child-serving professionals, attorneys, and judges since its first publication in 1977. Juvenile Law Center has been, is, and always will be committed to protecting children from all forms of abuse.

HB 928 purports to create further protections for children under the age of 13 by mandating that physicians forego confidentiality and report instances of rape to state authorities. But we already have a law that does just that. Under our penal code, a person commits rape when he or she has sexual intercourse with a child under 13 years of age, no matter what that person's age or relationship to the child.¹ Pennsylvania's Child Protective Services Law ("the CPSL") requires health care professionals to immediately contact our state's ChildLine when they have reasonable cause to suspect that a child has been raped,² and that report is thereafter immediately referred by ChildLine to the appropriate county children and youth agency.³ And the county children and youth agency must immediately notify law enforcement of a report that a child has been raped.⁴ These laws are already in place. HB 928's requirement that reporters call law enforcement directly with the same report does not augment child safety.⁵

¹ 18 Pa.C.S.A. § 3121(c).

² 23 Pa. C.S.A. §§ 6303(a) and (b), 6311

³ 55 Pa. Code § 3490.32 . In addition, the reporter must notify the children and youth agency regarding the suspected child abuse within 48 hours of reporting to ChildLine. 55 Pa. Code § 3490.18

⁴ 55 Pa. Code § 3490.91(a)(10); *see also* 23 Pa.C.S.A. § 6340(a)(10).

⁵ Similarly, Pennsylvania regulations *already* direct that emergency services collect evidence that can be utilized in the prosecution of an offender by using a state-approved

What HB 928 does do is impose additional and unnecessary constraints on health care professionals that will deter teenagers from seeking health care. As parents, lawmakers and advocates, we all have an overarching interest in encouraging children to seek health care for high risk medical conditions and diseases. The last thing we want is to discourage youth from getting treated, for example, for sexually transmitted diseases (STDs), because they are worried about whom such information will be shared with. Before states across the country provided confidentiality protections, teens avoided seeing their doctors. Diseases spread. Children's illnesses were exacerbated.

Thus, the General Assembly wisely chose to allow minors to consent to various types of health care -- ranging from testing for STDs to treatment for substance abuse problems, from prenatal care to outpatient mental health therapy -- recognizing how crucial health care access is to ensuring their well-being. HB 928, however, will force doctors to collect documentation from teenagers before they can provide them with the healthcare to which they can legally consent under our laws. Knowing that they have to produce papers when they go to an appointment will keep many youth from seeking health care. And what happens when a teenager shows up without his papers to get an HIV test or to get a pregnancy test or for prenatal care -- do we really want that health care facility to have to turn that minor away?

HB 928 incorrectly claims that there is evidence that health care professionals routinely circumvent their mandated reporter duties. The data shows otherwise. According to the Pennsylvania Department of Public

rape kit. 28 Pa. Code § 117.52. *See also* 35 P.S. § 10172.3 (establishing a Statewide sexual assault evidence collection program to promote the health and safety of victims of sexual assault and to facilitate the prosecution of persons accused of sexual assault).

Welfare, 4,201 reports of suspected child and student abuse were substantiated in 2008, and sexual abuse was involved in 52 percent of all substantiated reports. Health care professionals were the source of 22 percent of all substantiated reports of abuse received that year; they were the second largest reporting body in the Commonwealth, behind only social service agencies, which contributed 27 percent of the reports.⁶

The General Assembly commendably amended the CPSL in 2006 to close certain loopholes in the law, most notably by mandating the report of abuse committed by all persons and not just those who fit the definition of perpetrator. Juvenile Law Center supports efforts to close existing gaps in our abuse reporting laws and to streamline them. We understand, for example, that Senator Fontana is planning to introduce legislation that would establish the same threshold for triggering a duty to report abuse by a school employee that applies to everyone else; currently, there is no requirement to report unless the abuse rises to serious bodily injury. While we have not yet seen Senator Fontana's bill and therefore cannot specifically comment on it, Juvenile Law Center generally encourages attempts to create a unified and coherent system of abuse reporting and investigation. We also support more training on the CPSL as in bills such as Senate Bill 1137, introduced by Senator Vance, which specifically calls for more training of school personnel. Our extensive research, writing and training in this area tells us that it's challenging for mandated reporters to learn and understand Pennsylvania's comprehensive, yet complex set of laws on abuse reporting. Health care professionals, in particular, often face the difficult task of figuring out when their duty to provide confidential health care ends and

⁶ Pennsylvania Department of Public Welfare. 2008 ANNUAL CHILD ABUSE REPORT, at pp. 6-7.

their duty to report begins. What we need is to better educate child-serving professionals on their obligations. We should avoid adding redundant provisions that will only make a complex set of laws more confusing while also deterring youth from seeking health care.

Keeping our children out of harm's way is an awesome and complicated responsibility. We need many different tools or techniques to accomplish this. There is no question that one such powerful tool is mandatory child abuse reporting. But another critical tool is allowing youth the opportunity to build relationships of trust with health care practitioners so they will seek their assistance when they are unsafe. Our job – and it is not an easy one – is to determine the right balance. Juvenile Law Center remains committed to assisting the General Assembly in this task.