

**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
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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.

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“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.

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David W. Heckler, Chairman
Task Force on Child Protection

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The Honorable Kim L. Ward
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The Honorable Wayne D. Fontana
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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. Ward¹ 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. Vance⁴ 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 Costa¹⁰ 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. Marsico¹² 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 Caltagirone¹³ 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. Rehner, 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 consensus³⁶ 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 than 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 these 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.

PROPOSED LEGISLATION

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.

6301. Short title of chapter.

6302. Findings and purpose of chapter.

6303. Definitions.

6304. Exclusions from child abuse.

6305. Advanced communication technologies.

6306. Regulations.

* * *

§ 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 in subsection (a) is limited to the parent or guardian of the child. The poverty of the persons providing the child with shelter and other basic 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.

6312. Persons [permitted] encouraged to report suspected child abuse.

6313. Reporting procedure.

6314. Photographs, medical tests and X-rays of child subject to report.

6315. Taking child into protective custody.

6316. Admission to private and public hospitals.

6317. Mandatory reporting and postmortem investigation of deaths.

6317.1 Mandatory reporting of certain infants.

[6318. Immunity from liability.

6319. Penalties for failure to report or to refer.]

§ 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.

6322. Availability to receive reports.

6323. Disposition of initial reports.

6324. Disposition of reports; incidents occurring outside Commonwealth.

6325. Investigation by county agency.

6326. Investigation by multidisciplinary investigative team.

6327. Cooperation with county agency.

6328. Disposition of reports upon completion of assessment or investigation.

6329. Appeals of indicated reports.

6330. Appeals with respect to general protective services.

§ 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 is 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 (e)(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., July 12, 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 A.3d 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.

6331. Establishment of [pending complaint file, Statewide central register and file of unfounded reports] Statewide database of protective services cases.

[6332. Establishment of Statewide toll-free telephone number.

6333. Continuous availability of department.

6334. Disposition of complaints received.

6335. Information in pending complaint and unfounded report files.]

6335.1 Access to information in Statewide database.

[6336. Information in Statewide central register.

6337. Disposition of unfounded reports.

6338. Disposition of founded and indicated reports.]

6339. Confidentiality of reports.

6340. Release of information in confidential reports.

6340.1 Exchange of information with medical practitioners.

[6341. Amendment or expunction of information.]

6342. Studies of data in records.

[6343. Investigating performance of county agency.

6343.1. Citizen review panels.]

6344. Information relating to prospective child-care personnel.

6344.1. Information relating to family day-care home residents.

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.

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§ 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.

6354. Definitions.

6355. Requirement.

6356. Exceptions.

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. Citizen review panels.

6359.1. Multidisciplinary review team.

6359.2. Child fatality and near fatality review team.

6359.3. Departmental reviews and reports of child fatalities and near fatalities.

6359.4. Investigating performance of county agency.

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.

6362. Responsibilities of county agency for child protective services.

6362.1 Home education program.

6363. County plan for protective services.

6364. Purchasing services of other agencies.

6365. Services for prevention, investigation and treatment of child abuse.

[6366. Continuous availability to receive reports.

6367. Reports to department and coroner.

6368. Investigation of reports.

6369. Taking child into protective custody.]

6370. Voluntary or court-ordered services; findings of child abuse.

[6371. Rehabilitative services for child and family.

6372. Protecting well-being of children maintained outside home.]

§ 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 RESPONSIBILITIES OF GENERAL PROTECTIVE SERVICE

Sec.

6373. General protective services responsibilities of county agency.

6374. Principles and goals of general protective services.

6375. County agency requirements for general protective services.

6375.1. Reports to department.

[6376. Appeals with respect to general protective services.]

6377. Caseloads.

6378. Purchase of services.

§ 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 in 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.

6380. Rehabilitative services for child and family.

6380.1. Protecting well-being of children maintained outside home.

6381. Evidence in court proceedings.

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:

<u>Profession</u>	<u>49 Pa. Code</u>
Chiropractor	§ 5.91 <i>et seq.</i>
Funeral director	§ 13.301 <i>et seq.</i>
Board of medicine-regulated practitioner (medical doctor, midwife, physician's assistant, drugless therapist, athletic trainer, acupuncturist, practitioner of Oriental medicine)	§ 16.101 <i>et seq.</i>
Nurse	§ 21.501 <i>et seq.</i>
Optometrist	§ 23.111 <i>et seq.</i>
Osteopathic practitioner	§ 25.401 <i>et seq.</i>
Podiatrist	§ 29.91 <i>et seq.</i>
Dentist	§ 33.250 <i>et seq.</i>
Physical therapist	§ 40.201 <i>et seq.</i>
Psychologist	§ 41.71 <i>et seq.</i>
Speech language and hearing practitioner (audiologist, speech-language pathologist, teacher of the hearing-impaired)	§ 45.501 <i>et seq.</i>
Social worker, marriage and family therapist and professional counselor	§ 47.51 <i>et seq.</i>

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.

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.

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, (e)(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

THE LANDSCAPE IN PENNSYLVANIA

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 officials⁵² 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 over 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 Government Commission.

- 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.

CHILD ABUSE AND PERPETRATORS

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 Act¹²⁰ 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 abuse¹²⁵ and sexual exploitation¹²⁶ 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 custodian¹⁵⁹ or foster parent¹⁶⁰ 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 household¹⁶¹ 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 school¹⁷¹ 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(e).

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 employees²²¹ 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 superintendents, 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 law²⁴¹ 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 than 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. 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 licensure²⁵⁹ 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.

DIFFERENTIAL RESPONSE

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.differentialresponseqc.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.differentialresponseqc.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.differentialresponseqc.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.differentialresponseqc.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/nirmonograph.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 register²⁹⁹ 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 indicated³⁰⁷ or unfounded³⁰⁸ 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 abuse³³⁴ 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 Act³⁷³ 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 custody³⁷⁷ 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 of 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 expunged³⁹⁹ 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.

DEPENDENCY PROCEEDINGS

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 child⁴²⁵ 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)(e), 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, 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.

PREVENTION EFFORTS

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/cyfl/protectingyoung.pdf> (last accessed Nov. 2, 2012).

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_NetworkForAction (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 Fund⁴⁸⁴ (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.
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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. § 13-36200 & 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 <i>et seq.</i> , 12-18-601 <i>et seq.</i> & 12-18-801 <i>et seq.</i>
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 <i>et seq.</i>
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 <i>et seq.</i>
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	<i>In regulations</i>
MO	Mo. Rev. Stat. § 210.152
MT	Mont. Code Ann. § 41-3-102
NE	Neb. Rev. Stat. §§ 28-720 & 28-720.01
NV	<i>In regulations</i>
NH	N.H. Rev. Stat. Ann. § 169-C:3
NJ	<i>In regulations</i>
NM	<i>In regulations</i>
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	<i>In regulations</i>
PA	23 Pa. Cons. Stat. § 6303(a)
RI	<i>In regulations</i>
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 <i>et seq.</i> , 9-27-313 & 9-27-314
CA	Cal. Welf. & Inst. Code § 305 <i>et seq.</i>
CO	Colo. Rev. Stat. Ann. § 19-3-401 <i>et seq.</i>
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 <i>et seq.</i> & 31-34-5 <i>et seq.</i>
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 <i>et seq.</i>
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 <i>et seq.</i>
AK	Alaska Stat § 47.10.005 <i>et seq.</i>
AZ	Ariz. Rev. Stat. Ann. § 8-844
AR	Ark. Code Ann. § 9-27-301 <i>et seq.</i>
CA	Cal. Welf. & Inst. Code §§ 315 & 319
CO	Colo. Rev. Stat. Ann. §§ 19-3-312 & 19-3-501 <i>et seq.</i>
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 <i>et seq.</i>
HI	Haw. Rev. Stat. § 587A-1 <i>et seq.</i>
ID	Idaho Code Ann. §§ 16-1610 to 16-1615 & 16-1619 <i>et seq.</i>
IL	405 Ill. Comp. Stat. 2.13 <i>et seq.</i>
IN	Ind. Code §§ 31-33-14-1 & 31-34-9 <i>et seq.</i>
IA	Iowa Code § 232.78
KS	Kan. Stat. Ann. § 38-2242 <i>et seq.</i>
KY	Ky. Rev. Stat. Ann. § 620.070 <i>et seq.</i>
LA	La. Child. Code Ann. arts. 619, 620, 624, 626 & 632 <i>et seq.</i>
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 <i>et seq.</i>
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 <i>et seq.</i>
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 <i>et seq.</i>
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 <i>et seq.</i> 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 <i>et seq.</i>	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 <i>et seq.</i> 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 <i>et seq.</i> 12-18-601 <i>et seq.</i> 12-18-701 <i>et seq.</i> 12-18-801 <i>et seq.</i> 12-18-1001 <i>et seq.</i>
CA	Cal. Penal Code	11165.7 11165.9	11165.12 11166	11169 11170
	Cal. Welf. & Inst. Code	300 305 <i>et seq.</i>	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 <i>et seq.</i>
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 <i>et seq.</i>	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 <i>et seq.</i>	587A-4 587A-8 587A-9
ID	Idaho Admin. Code	16.06.01.552 <i>et seq.</i>		

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 <i>et seq.</i>
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 <i>et seq.</i>		
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 <i>et seq.</i> 31-34-5 <i>et seq.</i> 31-34-9 <i>et seq.</i>
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 <i>et seq.</i>
KY	Ky. Rev. Stat. Ann.	600.020 620.030	620.040 620.060	620.070 <i>et seq.</i>
LA	La. Child. Code Ann. (articles)	603 609 610 612	615 616.2 619 620	621 624 626 632 <i>et seq.</i>
	La. Rev. Stat. Ann.	14:403		
ME	Me. Rev. 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)		
NV	Nev. Rev. Stat.	432.120 432B.020 432B.130 432B.220	432B.240 432B.260 432B.390 432B.400	432B.470 432B.490 432B.513 432B.520
NH	N.H. Rev. Stat. Ann.	169-C:3 169-C:6 169-C:7	169-C:29 169-C:34 169-C:35	169-C:35-a 169-C:38 169-C:39
NJ	N.J. Stat. Ann.	9:6-2 9:6-5 9:6-8.9 9:6-8.10 9:6-8.11	9:6-8.14 9:6-8.16 9:6-8.17 9:6-8.18 9:6-8.19	9:6-8.21 9:6-8.29 9:6-8.34 9:6-8.36a 9:6-8.40a
NM	N.M. Stat. Ann.	32A-4-2 32A-4-3 32A-4-4	32A-4-5 32A-4-6	32A-4-7 32A-4-15
NY	N.Y. Soc. Serv.	412 412-A 413	414 417 420	422 424 424-d
NC	N.C. Gen. Stat. Ann.	7B-101 7B-301 7B-302	7B-307 7B-311 7B-320	7B-500 7B-501 66-67.4
ND	N.D. Cent. Code Ann.	50-25.1-02 50-25.1-03	50-25.1-04 50-25.1-05.3	50-25.1-07 50-25.1-13
OH	Ohio Rev. Code Ann.	2151.011 2151.031	2151.27 2151.31	2151.314 2151.421
OK	Okla. Stat. Ann. tit. 10A	1-1-105 1-2-101 1-2-102	1-2-105 1-2-108	1-4-201 <i>et seq.</i> 1-4-203
	Okla. Stat. Ann. tit. 21	1021.4		
OR	Or. Rev. Stat.	419B.005 419B.010 419B.015	419B.017 419B.150	419B.183 419B.185
PA	23 Pa. Cons. Stat.	6303 6311 6312 6315 6332 6334	6337 6338 6341 6352 6353	6353.1 6353.2 6368 6369 6370
	42 Pa. Cons. Stat.	6311 6324	6332 6337	6337.1 6351
	237 Pa. Code Pt. 1, Subpt. B	(chapters)	12	13
RI	R.I. Gen. Laws Ann.	40-11-2 40-11-3 40-11-5	40-11-6.1 40-11-7	40-11-7.1 40-11-13.1
SC	S.C. Code Ann.	16-3-850 63-7-20 63-7-310 63-7-410	63-7-620 63-7-630 63-7-750 63-7-920	63-7-930 63-7-940 63-7-1660 63-7-1960
SD	S.D. Codified Laws	22-22-24.18 26-7A-10 26-7A-12 26-7A-13 <i>et seq.</i>	26-7A-13.1 26-8A-2 26-8A-3 26-8A-8	26-8A-9 26-8A-11 26-8A-12
TN	Tenn. Code Ann.	37-1-102 37-1-113 37-1-114 37-1-117	37-1-403 37-1-404 37-1-406 37-1-412	37-1-606 37-1-607 37-1-608 37-1-615

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 <i>et seq.</i>
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

CHILD PROTECTIVE SERVICES LAW

TITLE 23 DOMESTIC RELATIONS

PART VII ABUSE OF FAMILY

CHAPTER 63 CHILD PROTECTIVE SERVICES

Subchapter

- A. Preliminary Provisions
- B. Provisions and Responsibilities for Reporting Suspected Child Abuse
- C. Powers and Duties of Department
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- D. Organization and Responsibilities of Child Protective Service
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SUBCHAPTER A PRELIMINARY PROVISIONS

Sec.

- 6301. Short title of chapter.
- 6302. Findings and purpose of chapter.
- 6303. Definitions.

§ 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.

6312. Persons permitted to report suspected child abuse.

6313. Reporting procedure.

6314. Photographs, medical tests and X-rays of child subject to report.

6315. Taking child into protective custody.

6316. Admission to private and public hospitals.

6317. Mandatory reporting and postmortem investigation of deaths.

6318. Immunity from liability.

6319. Penalties for failure to report or to refer.

§ 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.
- 6332. Establishment of Statewide toll-free telephone number.
- 6333. Continuous availability of department.
- 6334. Disposition of complaints received.
- 6335. Information in pending complaint and unfounded report files.
- 6336. Information in Statewide central register.
- 6337. Disposition of unfounded reports.
- 6338. Disposition of founded and indicated reports.
- 6339. Confidentiality of reports.
- 6340. Release of information in confidential reports.
- 6341. Amendment or expunction of information.
- 6342. Studies of data in records.
- 6343. Investigating performance of county agency.
- 6343.1. Citizen review panels.
- 6344. Information relating to prospective child-care personnel.
- 6344.1. Information relating to family day-care home residents.
- 6344.2. Information relating to other persons having contact with children.
- 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.

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.
- 6352. School employees.
- 6353. Administration.
- 6353.1. Investigation.
- 6353.2. Responsibilities of county agency.
- 6353.3. Information in Statewide central register.
- 6353.4. Other provisions.

§ 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 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.

6355. Requirement.

6356. Exceptions.

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 Employee 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.
6362. Responsibilities of county agency for child protective services.
6363. County plan for protective services.
6364. Purchasing services of other agencies.
6365. Services for prevention, investigation and treatment of child abuse.
6366. Continuous availability to receive reports.
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§ 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.

6382. Guardian ad litem for child in court proceedings (Repealed).

6383. Education and training.

6384. Legislative oversight.

6385. Reimbursement to county agencies.

6386. Mandatory reporting of infants born and identified as being affected by illegal substance abuse.

§ 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.

House Resolution No. 522 of 2011

Senate Resolution No. 250 of 2011

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

1 Establishing the Task Force on Child Protection.

2 WHEREAS, The General Assembly finds and declares as follows:

3 (1) Recent events require a review of laws and
4 procedures relating to the reporting of child abuse and the
5 protection of the health and safety of children.

6 (2) A review of these laws and procedures will help to
7 ensure that the Commonwealth is able to adequately protect
8 its children.

9 (3) It is the responsibility of the Commonwealth to
10 protect its citizens, particularly children.

11 (4) Therefore, the General Assembly shall establish a
12 task force to conduct a thorough and comprehensive review to:

13 (i) ascertain any inadequacies relating to the
14 mandatory reporting of child abuse; and

15 (ii) restore public confidence in the ability of the
16 Commonwealth to protect the victims of child abuse;

17 therefore be it

18 RESOLVED, That the Task Force on Child Protection be

1 established; and be it further

2 RESOLVED, That the task force consist of the following
3 members, appointed within 25 days after the adoption of this
4 resolution by both chambers:

5 (1) Six members knowledgeable and experienced in issues
6 relating to child abuse or providing services to victims of
7 child abuse as follows:

8 (i) Three members appointed by the President pro
9 tempore of the Senate, in consultation with the Majority
10 Leader and the Minority Leader of the Senate. A member
11 under this subparagraph may be a member of the Senate.

12 (ii) Three members appointed by the Speaker of the
13 House of Representatives, in consultation with the
14 Majority Leader and the Minority Leader of the House of
15 Representatives. A member under this subparagraph may be
16 a member of the House of Representatives.

17 (2) Four members appointed by the Governor as follows:

18 (i) One member shall be a member of the general
19 public.

20 (ii) One member shall be a member of a victim
21 organization or a children and youth services
22 organization who is directly involved in providing
23 services to victims of child abuse.

24 (iii) One member experienced in the operation and
25 interaction between a county children and youth agency
26 and the Commonwealth.

27 (iv) A district attorney.

28 (3) The Secretary of Public Welfare or a designee who
29 shall be an employee of the department. The designee shall be
30 appointed in writing, and a copy shall be submitted to the

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1 chairman of the task force;

2 and be it further

3 RESOLVED, That the Governor select the chairperson of the
4 task force; and be it further

5 RESOLVED, That the task force conduct its business as
6 follows:

7 (1) The physical presence of six members constitutes a
8 quorum of the task force.

9 (2) Action of the task force shall be authorized or
10 ratified by majority vote of its members.

11 (3) A member not physically present may participate by
12 teleconference or video conference.

13 (4) The following shall apply:

14 (i) The task force shall meet as necessary but no
15 fewer than five times prior to September 30, 2012.
16 Additional meetings may be called by the chairperson as
17 necessary.

18 (ii) The chairperson shall schedule a meeting upon
19 written request of eight members of the task force.

20 (iii) The first meeting shall be convened within 45
21 days.

22 (iv) The task force shall hold public hearings as
23 necessary to obtain the information required to conduct
24 its review.

25 (v) The Department of Public Welfare, the Joint
26 State Government Commission and the Juvenile Courts
27 Judges' Commission shall cooperate to provide
28 administrative or other assistance to the task force.

29 (vi) Members shall not receive compensation but
30 shall be reimbursed for reasonable and necessary expenses

1 incurred in service of the task force;

2 and be it further

3 RESOLVED, That the task force have the following powers:

4 (1) To examine and analyze the practices, processes and
5 procedures relating to the response to child abuse.

6 (2) To review and analyze law, procedures, practices and
7 rules relating to the reporting of child abuse.

8 (3) To hold public hearings for the taking of testimony
9 and the requesting of documents.

10 (4) The chairperson shall have the power to administer
11 oaths and affirmations to witnesses appearing before the task
12 force;

13 and be it further

14 RESOLVED, That the task force have the following duties:

15 (1) To accept and review written comments from
16 individuals and organizations.

17 (2) To make, by November 30, 2012, a final report to the
18 Governor, the Senate and the House of Representatives.

19 (3) Based on its review, the report under paragraph (2)
20 shall include recommendations:

21 (i) To improve the reporting of child abuse.

22 (ii) To implement any necessary changes in State
23 statutes and practices, policies and procedures relating
24 to child abuse.

25 (iii) To train appropriate individuals in the
26 reporting of child abuse.

27 (4) To make reports as follows:

28 (i) The task force may file status reports and
29 updates with the Governor and the Senate and the House of
30 Representatives as it deems appropriate.

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1 (ii) A report under this paragraph shall be adopted
2 at a public meeting.

3 (iii) A report under this paragraph shall be a
4 public record under the act of February 14, 2008 (P.L.6,
5 No.3), known as the Right-to-Know Law;

6 and be it further

7 RESOLVED, That the task force expire December 31, 2012.

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

1 Establishing the Task Force on Child Protection.

2 WHEREAS, The General Assembly finds and declares as follows:

3 (1) Recent events require a review of laws and
4 procedures relating to the reporting of child abuse and the
5 protection of the health and safety of children.

6 (2) A review of these laws and procedures will help to
7 ensure that the Commonwealth is able to adequately protect
8 its children.

9 (3) It is the responsibility of the Commonwealth to
10 protect its citizens, particularly children.

11 (4) Therefore, the General Assembly shall establish a
12 task force to conduct a thorough and comprehensive review to:

13 (i) ascertain any inadequacies relating to the
14 mandatory reporting of child abuse; and

15 (ii) restore public confidence in the ability of the
16 Commonwealth to protect the victims of child abuse;

1 therefore be it

2 RESOLVED, That the Task Force on Child Protection be
3 established; and be it further

4 RESOLVED, That the task force consist of the following
5 members, appointed within 25 days after the adoption of this
6 resolution by both chambers:

7 (1) Six members knowledgeable and experienced in issues
8 relating to child abuse or providing services to victims of
9 child abuse as follows:

10 (i) Three members appointed by the President pro
11 tempore of the Senate, in consultation with the Majority
12 Leader and the Minority Leader of the Senate. A member
13 under this subparagraph may be a member of the Senate.

14 (ii) Three members appointed by the Speaker of the
15 House of Representatives, in consultation with the
16 Majority Leader and the Minority Leader of the House of
17 Representatives. A member under this subparagraph may be
18 a member of the House of Representatives.

19 (2) Four members appointed by the Governor as follows:

20 (i) One member shall be a member of the general
21 public.

22 (ii) One member shall be a member of a victim
23 organization or a children and youth services
24 organization who is directly involved in providing
25 services to victims of child abuse.

26 (iii) One member experienced in the operation and
27 interaction between a county children and youth agency
28 and the Commonwealth.

29 (iv) A district attorney.

30 (3) The Secretary of Public Welfare or a designee who

1 shall be an employee of the department. The designee shall be
2 appointed in writing, and a copy shall be submitted to the
3 chairman of the task force;

4 and be it further

5 RESOLVED, That the Governor select the chairperson of the
6 task force; and be it further

7 RESOLVED, That the task force conduct its business as
8 follows:

9 (1) The physical presence of six members constitutes a
10 quorum of the task force.

11 (2) Action of the task force shall be authorized or
12 ratified by majority vote of its members.

13 (3) A member not physically present may participate by
14 teleconference or video conference.

15 (4) The following shall apply:

16 (i) The task force shall meet as necessary but no
17 fewer than five times prior to September 30, 2012.
18 Additional meetings may be called by the chairperson as
19 necessary.

20 (ii) The chairperson shall schedule a meeting upon
21 written request of eight members of the task force.

22 (iii) The first meeting shall be convened within 45
23 days.

24 (iv) The task force shall hold public hearings as
25 necessary to obtain the information required to conduct
26 its review.

27 (v) The Department of Public Welfare, the Joint
28 State Government Commission and the Juvenile Courts
29 Judges' Commission shall cooperate to provide
30 administrative or other assistance to the task force.

1 (vi) Members shall not receive compensation but
2 shall be reimbursed for reasonable and necessary expenses
3 incurred in service of the task force;

4 and be it further

5 RESOLVED, That the task force have the following powers:

6 (1) To examine and analyze the practices, processes and
7 procedures relating to the response to child abuse.

8 (2) To review and analyze law, procedures, practices and
9 rules relating to the reporting of child abuse.

10 (3) To hold public hearings for the taking of testimony
11 and the requesting of documents.

12 (4) The chairperson shall have the power to administer
13 oaths and affirmations to witnesses appearing before the task
14 force;

15 and be it further

16 RESOLVED, That the task force have the following duties:

17 (1) To accept and review written comments from
18 individuals and organizations.

19 (2) To make, by November 30, 2012, a final report to the
20 Governor, the Senate and the House of Representatives.

21 (3) Based on its review, the report under paragraph (2)
22 shall include recommendations:

23 (i) To improve the reporting of child abuse.

24 (ii) To implement any necessary changes in State
25 statutes and practices, policies and procedures relating
26 to child abuse.

27 (iii) To train appropriate individuals in the
28 reporting of child abuse.

29 (4) To make reports as follows:

30 (i) The task force may file status reports and

1 updates with the Governor and the Senate and the House of
2 Representatives as it deems appropriate.

3 (ii) A report under this paragraph shall be adopted
4 at a public meeting.

5 (iii) A report under this paragraph shall be a
6 public record under the act of February 14, 2008 (P.L.6,
7 No.3), known as the Right-to-Know Law;

8 and be it further

9 RESOLVED, That the task force expire December 31, 2012.