



TESTIMONY REGARDING PROPOSED CREATION OF OFFICE OF CHILD ADVOCATE

PRESENTED TO THE HOUSE CHILDREN AND YOUTH COMMITTEE

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BY

BRIAN BORNMAN, ESQ.
PCYA EXECUTIVE DIRECTOR

My name is Brian Bornman. I am the Executive Director for the PA Children and Youth Administrators Association, an affiliate of the County Commissioners Association. Our association consists of all 67 counties and a number of associate members, primarily representing service providers affiliated with the child welfare system in Pennsylvania. I have worked in the field of social work since 1988 in various roles, including those of child therapist, a child welfare caseworker, and legal counsel for a county child welfare agency. I thank you for the opportunity to testify before this body and appreciate the efforts to look at different ways to benefit the child welfare system in the state.

The idea of creating an "Ombudsman" or "Child Advocate" is not new and has been gaining in popularity throughout the country. House Bill 1311 seeks to establish an Office of the Children's Advocate under the purview of the Pennsylvania Attorney General's Office. The Pennsylvania Children and Youth Administrators Association is generally opposed to the creation of such an office for the reasons set forth below. That being said, there are also beneficial pieces of the legislation that cannot be ignored or discounted. Those too shall be discussed. I will also address some areas of concern that we feel will need addressed should this office be implemented.

At the outset, I would note that 36 states have some version of a Child Advocate or child Welfare Ombudsman, although the make-up and operation of these varies greatly. Of those states implementing some version of this office 11 have statutorily created an independent office, such as HB1311 seeks to create. Three states have systems that operate within their equivalent of the Department of Human Services, although they have some level of autonomy in their operations. Five states have general governmental ombudsman offices that handle complaints for all services, not just child welfare. Nine states have ombudsman that exist within their child welfare system, much the way hospitals employ an ombudsman to handle complaints within their own system. Lastly, nine states have some variation that is not necessarily set out in statute and may only serve

limited constituencies or populations.

In order to be able to explain PCYA's position, there must be some explanation of how the Pennsylvania child welfare system varies from other states. Of the fifty states, the vast majority operate state child welfare systems. While there are variations in the details of how they operate, the basic principle is that everyone from the caseworker to the state director of child welfare are state employees. This represents 38 of the 50 states. Nine states have county administered systems, with various levels of oversight by the state. Pennsylvania falls into this second category. Three states have mix of county and state administration.

For state administered child welfare systems, an independent child advocate office is a much clearer choice, compared to that of a mixed or county administered system. In state run child welfare systems, complaints and concerns about a caseworker or local child welfare professional are handled by another state employee farther up the chain of command. This creates obvious concerns about how seriously those complaints may be taken and how the benefit of the doubt may be always given to the actions of the child welfare professional, since they are all within the same entity. However, for a system such as Pennsylvania, those concerns do not really hold as much merit.

In Pennsylvania, the counties provide the day-to-day child welfare services. Investigations, safety assessments, case management, placement services, and other service delivery are provided either directly by the county or by contracted service providers who work on behalf of the county. Placements and youth who are adjudicated dependent are supervised by the court. All counties are licensed and supervised by the Office of Children, Youth, and Families (OCYF), a department within the Pennsylvania Department of Human Services. If someone has a complaint regarding their treatment at the county level, they can file a complaint with OCYF. OCYF conducts their own investigation and can issue citations against the county or take action against the county's license to operate as a child welfare agency for any noncompliance with regulation or statute.

Because there is already a process in place to review complaints of service delivery within child welfare, and one that is undertaken by an entity that is separate from the county who is providing the services, PCYA believes that yet another independent office of child advocate will be redundant. Of the other county administered systems, only Colorado maintains an independent Child Advocate Office. California also maintains an ombudsman office within their child welfare administration that is autonomous, but not independent. The other states with county administered systems have a county run ombudsman program, a program limited in the population served and/or constituency, or have no ombudsman program at all.

Regarding Colorado, their system varies fairly dramatically from Pennsylvania's in that the state does not license or oversee the day-to-day operations of the county child welfare system. The state sets targets or goals in conjunction with the counties and monitors the child welfare system in that way. As such, there are not the same processes in place which Pennsylvania has to be able to contact the regional offices of the state regulatory agency, rendering it much more like a state run system in regards to the prior discussion on ombudsman.

Additionally, one must consider the costs associated with the creation of such an office. In preparation for this hearing, I researched other state ombudsman and child advocate offices. When

looking at comparable states based on population and independent offices, there were no clear matches, but there were some opportunities to extrapolate regarding costs.

Colorado has a population of 5 million, as opposed to Pennsylvania's 12.8 million. Their Office of Child Protection Ombudsman spent \$504,000 in FY14-15 and \$485,000 in FY15-16. They maintain a staff of 5. Michigan, with a population of 9.9 million, spent \$1.2 million in 2011 for a staff of 9. Indiana, with a population of 6.5 million, spent \$314,000 in 2016 with a staff of 3. Based upon the duties set forth in this bill and the population and geographical area of Pennsylvania, it would be reasonable to expect to have operating costs of \$1 to 1.5 million annually to maintain an Office of Child Advocate. While this is a small amount in comparison to the entirety of the child welfare budget, those funds may be better spent on other services such as home visitors or parental recovery services, particularly when it is for what could be considered a redundant safeguard.

Lastly, PCYA has concerns regarding adding yet another layer of uncertainty for families within the system. It is frequently the case that the families involved with child welfare do not want to be involved with child welfare. In any dependency case, it is almost never the case that all the litigants feel that they were treated fairly. Thankfully, Pennsylvania has substantial protections built into the Juvenile Act to protect parents' rights, while simultaneously providing a pathway for agencies to be able to protect children. However, parents who may have had custody of their children transferred to a county agency, seldom agree with the averments of the agency petitioning the court or the findings of the court. They have the right to appeal these decisions to the Superior Court; however, there are concerns that having an office with such broad sweeping powers to investigate complaints under §6379.4(1) may feel that they essentially have another avenue of appeal from the services they are being directed to undertake. It would be better if the cases under court supervision were not subject to further review by an independent office.

This last concern brings me to our primary recommendation should this office be created. There must be requirements surrounding the appointment of the Children's Advocate that ensures this office is not affected by political affiliation. Such an office holds a tremendous potential to create a political narrative. The reports of such offices receive substantial media attention and the absolute last thing any child welfare system needs is someone who may be tempted to use the position as an opportunity for political advancement. It would be beneficial to have written into the bill that the Children's Advocate is prohibited from engaging in any partisan activity and even a prohibition from running for political office for a period of time following the completion of their term. For such an office to establish a reputation for being impartial and fair, there can be no hint of partisanship.

I believe some of the specifics of the bill should be reconsidered. For instance, §6379.6(b)(3) provides that any complaint that involves legal counsel shall be referred to the disciplinary board of the Supreme Court, who is responsible for the discipline and oversight of practicing attorneys. If you consider that nearly every single counsel who has represented parents in dependency proceedings has had an upset client because their case was not successful, this may result in an incredible number of complaints to the Children Advocate office.

While it is unlikely that disciplinary action will actually be taken by the Supreme Court against these counsel, those counsel must report complaints to their malpractice insurance coverage each time a complaint goes to the disciplinary board. It would not take long before no counsel would be willing

to represent parents or children if every complaint to the children's Advocate Office will automatically create a complaint to the disciplinary board, regardless of whether there is any merit or not. The parent representation positions are already challenging to fill, as they generally pay \$40-75 per hour, compared to \$200+ per hour for private practice. This guaranteed disciplinary board report may effectively eliminate any willingness to engage in the practice of law in this area.

Similarly, §6379.6(b)(2) provides for reports to the court of jurisdiction for any non-attorney *Guardian Ad Litem* (GAL) or Court Appointed Special Advocate (CASA) for all complaints. This may result in a similar unwillingness to engage in these positions. It would be beneficial to transmit such a report only if the preliminary investigation yielded some reason to believe that there may have been malfeasance or inappropriate action.

For 6379.6(b)(1), there is only a transmission to the licensing boards of licensed professionals, other than legal counsel, CASA, or non-attorney GALs, if the investigation of the Children's Advocate leads them to believe there was some form of professional misconduct.

As there are real ramifications for repeatedly being reported to a disciplinary board, this should only occur from the Office of the Children's Advocate in there is reason to believe that there was a violation of professional rules of conduct. As the Supreme Court holds jurisdiction for ensuring the compliance of legal counsel with their rules of professional conduct, complaints regarding legal counsel to the Children's Advocate should be directed to raise those issues with the Common Pleas Court handling the case or by referring the complainant to the Site for the Supreme Court Disciplinary Board.

I have a concern regarding the third provision under the definition of "Remediable Action." In my experience, the single biggest complaint issued by anyone involved in the system, be they child, parent, parent's attorney, GAL, CASA, or any other professional involved in the system is that the facts the CYS agency or court were operating under were erroneous or irrelevant. As the system is based entirely on investigating a situation to determine whether services or protective custody is needed to assure the safety and well-being of a child, yet the parent having custody of that child does not want to have the agency involved, it is nearly impossible to ever have the facts 100% correct. Even in cases of severe maltreatment with a medical diagnosis, the doctors can only opine that the child could not have inflicted such injuries on themselves within a reasonable degree of medical certainty. If every single case was subject to an additional investigation based upon any error or incompleteness of information, the system could rapidly grind to a halt. I believe this provision is overly broad and should be qualified in some manner, such as adding "substantially" or "unreasonably" to the provision.

I noted earlier in my testimony that there are also many positives within this bill and I want to note some of them at this point. Overall, the concept to review complaints and act as a form of mediator for complaint resolution can be a powerful tool in improving confidence in the system and facilitating greater degrees of family engagement in the process. The portions of the bill that direct the Children's Advocate to review the system for ways to improve it are great. In fact, I think it should go one step farther and include exploration of other states' solutions to identified system challenges. Additionally, an independent examination and report to the governor and legislature could identify areas for improvement and be very positive for the system. Other states have utilized their Children's Advocate Offices to assist with the state child death and near death reviews and this

may be a way to provide greater consistency in Pennsylvania in this area.

One overarching concern I have regarding the concept as a whole stems from some position papers and advocacy materials that have been circulated in the past. There have been claims that child fatalities and near deaths will dramatically decline if such an office is implemented. It must be noted that research in this area has shown that this was the case. While there may be an improvement in the overall confidence and sense of fairness within the system as a whole in states where this has been implemented, there has not necessarily been the commensurate decrease in negative outcomes. As with all other aspects of the child welfare system, this office is reactionary and only becomes involved when the child welfare system does as well. While one can certainly conceive of situations where the involvement of the Children's Advocate may prompt an agency to take a second look at a risky case or to intervene when malfeasance is occurring, such as the "Kids for Cash" debacle, the reality is that the county agencies who investigate child abuse referrals every day are still going to be the best trained and most experienced in assuring the safety of children.

There could certainly be some benefits from the creation of such an office, but this body must decide if the expense, redundancy, potential negative consequences as discussed above will outweigh the benefits.

In short, while PCYA believes that this bill is generally unnecessary due to our child welfare structure in Pennsylvania, there is also the possibility of greater accountability throughout the system, recommendations for systemic improvements, and improvements in the public perception of the field. If such an office is ultimately created, there are a number of concerns that we hope can be adequately addressed. In my mind the single greatest obstacle is in identifying someone to fill the role that will be unbiased, objective, nonpartisan, caring, yet extremely knowledgeable about the field of child welfare and the laws surrounding its implementation. The right person in this role could make it extremely positive, the wrong person could create more problems than are solved.

I want to thank this committee for giving me this opportunity to discuss this proposed legislation and to consider these concerns. Lastly, I want to thank all the professionals in Pennsylvania who have committed their lives to protecting and caring for the at-risk and abused children in the state and all the devoted kinship caregivers, foster parents, and relatives who go beyond the call of duty to help those children they love.

Thank you.

Brian C. Bornman, Esq.
PCYA Executive Director
bbornman@pacounties.org