

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

HOUSE JUDICIARY COMMITTEE HEARING
SUBCOMMITTEE ON FAMILY LAW

STATE CAPITOL
IRVIS OFFICE BUILDING
ROOM 515
HARRISBURG, PENNSYLVANIA

MONDAY, NOVEMBER 15, 2021

IN RE: SENATE BILL 78 - KAYDEN'S LAW

BEFORE:

HONORABLE KATE KLUNK, MAJORITY CHAIRWOMAN
HONORABLE LIZ HANBIDGE, MINORITY CHAIRWOMAN (V)
HONORABLE TORREN ECKER
HONORABLE JOHNATHAN HERSHEY
HONORABLE EMILY KINKEAD

ALSO IN ATTENDANCE:

HONORABLE PERRY WARREN
HONORABLE TIMOTHY BRIGGS

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COMMITTEE STAFF PRESENT:

**THOMAS DYMEK, EXECUTIVE DIRECTOR, REPUBLICAN CAUCUS
MIKE FINK, RESEARCH ANALYST, REPUBLICAN CAUCUS
ELANA MAYNARD, LEGISLATIVE ADMINISTRATIVE ASSISTANT II,
REPUBLICAN CAUCUS
TIM CLAWGES, EXECUTIVE DIRECTOR, DEMOCRATIC CAUCUS
KRISTEN BERNARD, ADMINISTRATIVE ASSISTANT,
DEMOCRATIC CAUCUS**

**JEAN M. DAVIS, REPORTER
NOTARY PUBLIC**

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1 P R O C E E D I N G S

2 * * *

3 MAJORITY CHAIRWOMAN KLUNK: Good morning,
4 everyone.

5 Thank you all for joining us here today. I would
6 like to call to order the House Judiciary Subcommittee
7 Informational Meeting on Senate Bill 78, preventing abuse in
8 child custody proceedings, also known as Kayden's Law.

9 I would like our Secretary to please call the
10 roll.

11 Thank you.

12 (Roll call)

13 MAJORITY CHAIRWOMAN KLUNK: Thank you for taking
14 the roll.

15 And if everyone would rise, who is able to, and
16 join me in the Pledge of Allegiance, please.

17 (Pledge of Allegiance)

18 MAJORITY CHAIRWOMAN KLUNK: I would like to
19 announce that this meeting is being recorded. If anyone has
20 a cell phone now would be a great time to make sure that
21 it's silenced.

22 I would like to take a moment here to recognize
23 that there are a number of other members in attendance, both
24 here in person and virtually. And there might be some folks
25 coming in and out this morning. It's a busy morning in

1 Harrisburg. There are a number of other hearings going on,
2 so please don't take offense if people come and go. It's
3 just the way that we operate up here in Harrisburg.

4 I will start over here if members want to take a
5 moment to introduce themselves. We'll start over here.
6 Actually, let me start online since the Chairwoman is
7 online. And then if there are any other members online,
8 they can speak.

9 So, Chairwoman Hanbidge, if you would like to
10 start, you can.

11 MINORITY CHAIRWOMAN HANBIDGE: Thank you,
12 Chairwoman.

13 Liz Hanbidge, 61st House District from Montgomery
14 County.

15 REPRESENTATIVE ECKER: Good morning, everybody.
16 Torren Ecker, representing parts of Adams and Cumberland
17 Counties. Thanks for being here.

18 REPRESENTATIVE KINKEAD: Good morning.
19 Representative Emily Kinkead. I represent the 20th
20 District, which is Allegheny County.

21 REPRESENTATIVE BRIGGS: Representative Tim Briggs
22 from Montgomery County, the 149th District and the House
23 Democratic Chairman of the Committee.

24 Thank you.

25 MAJORITY CHAIRWOMAN KLUNK: Thank you, members,

1 for joining us here today.

2 So we are here today to discuss Kayden's Law,
3 Senate Bill 78. And I would first like to thank the family,
4 Kayden's family, for joining us here today. I wanted to
5 take a moment and recognize them. Our hearts go out to you
6 and your family for the grief and the tragic experience that
7 you guys have gone through.

8 But I have heard great news today for the family.
9 Another blessing will be added and we are just praying for
10 Kayden's mother and that new little one, who is hopefully
11 going to be entering the world here today happy and healthy.
12 Our prayers are with you today. So thank you so much for
13 joining us.

14 I would like to make note that within our packets
15 we have a number of -- we have a number of testifiers here
16 today, but we also have testimony that we received from a
17 number of different folks, a number of different groups. We
18 received e-mails over the weekend.

19 Unfortunately, some of the testimony could not
20 make it into our packets. And that information will become
21 available to us here after this meeting. So I just wanted
22 to take a moment and note that for everyone.

23 I would also like to take a moment today and
24 recognize Representative Hanbidge, if she would like to make
25 any opening remarks.

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MINORITY CHAIRWOMAN HANBIDGE: Excellent.

Thank you so much. I also share my heartfelt concern for Kayden's family and gratitude that they've continued their advocacy. You are a tribute to Kayden's memory. And hopefully no other family will have to go through what yours has.

By practice, I was a family law attorney for a number of years and have seen some of the issues related to abuse and how it impacts families. I'm very interested to see how this hearing and the information we get from the Subcommittee hearing goes.

Thank you so much.

And thank you to the Chairwoman for hosting it.

MAJORITY CHAIRWOMAN KLUNK: Thank you, Chairwoman Hanbidge. I appreciate that.

We have a number of testifiers here today. And I want to thank all of you for joining us. I think this is going to be a very informational meeting for us today so we can take information on all sides of this issue, learn some of the concerns that members of the public might have for or against this bill.

And I would just ask members to keep an open mind and members of the public who are here today to keep this as civil as possible. We're all trying to make sure that our children within Pennsylvania who happen to go through the

1 system are protected and cared for properly.

2 With that, I would love to welcome our testifiers
3 here today. We have a number of Judges who are joining us
4 today. We have the Honorable Daniel Clifford from
5 Montgomery County who will start off this morning.

6 We had a substitution for Judge Royer. Katherine
7 B.L. Platt, Judge from Chester County, is here today as well
8 as the Honorable John Foradora, who is a Jefferson County
9 Court of Common Pleas Judge.

10 So thank you, Judges, for joining us here this
11 morning.

12 And with that, I will turn it over to Judge
13 Clifford to start. Thank you.

14 HONORABLE DANIEL CLIFFORD: Thank you, Madam
15 Chair.

16 Good morning, everyone. Thank you for the
17 opportunity for us to be here today to speak to you.

18 We also extend our well wishes to Kayden's
19 family. We did not know that last part, so congratulations,
20 and we look for that good news.

21 Of course, we're just coming off a month of
22 observance for domestic violence. October was a month of
23 observance. And many of our Judiciary are active within
24 that -- it's not a celebration but recognition within the
25 Commonwealth with many programs in counties for that

1 particular issue in October.

2 I'm speaking here really with two hats. I'm
3 speaking on behalf of the Joint State Commission, which is
4 actually your arm Advisory Committee, the Advisory Committee
5 on Domestic Relations, which I will get to in a little bit
6 within the context of my remarks.

7 But I'm also here as Chair of the Pennsylvania
8 Conference of State Trial Judges Family Law Section. In
9 July, I appointed a Subcommittee to review the legislation,
10 to make remarks, and to maybe identify some of the concerns
11 that we have as a Judiciary with respect to certain aspects
12 of the bill.

13 So I appointed Judge Royer, who could not be with
14 us today. She chaired the Subcommittee. She issued a
15 report. And most of her remarks reflect the feedback that
16 we received from that Subcommittee. We shared the results
17 of that Subcommittee with our membership. The Family Law
18 Section of the State Trial Judges is roughly 160 members.
19 And we shared that report with our membership. And they
20 were favorable towards the concerns that you will hear about
21 as we go through this.

22 I think what we'll be doing is covering different
23 aspects of it just to be a little efficient with our time
24 this morning. From my standpoint on the Joint Commission,
25 many of the legislators I find are not always familiar with

1 this particular arm of your Legislature. But we're an
2 appointed group. There are 24 advisory members on the
3 Family Law Advisory Committee. And it's our responsibility
4 to help assist you and guide you on pending legislation.

5 And, in fact, we've been extremely busy over the
6 course of the last two years working within the Custody
7 Subcommittee on issues related to the custody factors. As
8 you are aware, roughly ten years ago, the Legislature put in
9 place 16 factors that judges must consider in every child
10 custody case. And we take those factors seriously. We're
11 required to address each and every one of them. In fact, if
12 we don't address one of the factors, we're subject to a
13 reman from Superior Court if we don't address the factors.

14 Front and center to those factors, No. 2, is the
15 factor related to abuse considerations. So we're already
16 required to consider that with respect to the factors that
17 you've already assigned to us. And it's No. 2, so I'd like
18 to say it sort of has a premiere spot. As you know
19 probably, there's no weight to the factors in terms of
20 priority. So we can weigh each factor as we deem fit within
21 our discretion and within the particular facts of every
22 case, which is so important to us as judges to have that
23 discretion.

24 But the abuse factor is front and center. We
25 can't ignore that factor. It's not buried down, you know,

1 Factor 10 or 11. So we're getting to that factor right at
2 the top as we go through them. Some of the judges do the
3 factors on the record. Some of them do it in writing. But
4 it's No. 2 so we can't overlook it. It's never going to be
5 overlooked in any child custody case. Some of our concerns
6 will be directed towards the factors.

7 At this point, I'd like to defer to my colleague
8 who has been called into this at the very last minute.
9 Judge Platt is what I would call one of the deans of the
10 Family Law Judges in the Commonwealth. She's rounding out
11 about 24 years of judicial service and about to retire. So
12 we were happy to have her step in, and fortunate to have her
13 step in, to help us out this morning.

14 So I'll defer to Judge Platt on some of the
15 beginning issues.

16 HONORABLE KATHERINE B.L. PLATT: Thank you.

17 Let me just say that I have my fingers in a lot
18 of pots here. I'm here speaking on behalf of the State
19 Trial Judge Conference and their Subcommittee on Family Law
20 on this issue.

21 However, I am also a member of the Joint State
22 Government Commission on Domestic Relations Law Advisory
23 Committee. And I am also a very active member of the
24 Pennsylvania Bar Family Law Section, who I understand will
25 be speaking. And I am the Administrative Family Court Judge

1 in my county, Chester County. Family court, family law, has
2 been my professional life. So while I'm going to be, if you
3 can pardon the expression, riffing on Judge Royer's remarks
4 that she embodied in her report, please know that I also
5 have my own street creds in dealing with these issues.

6 And while I'm going to do my best to keep my
7 personal opinions out of it, because I do have a
8 Subcommittee's Report that I endorse, I think it's important
9 to make sure that you know that the remarks that Judge Royer
10 prepared and that I will be springboarding from don't
11 necessarily reflect the views of the Supreme Court or any
12 individual Court of Common Pleas or the AOPC. And nothing
13 in my remarks should be construed as taking a position on
14 the legislation.

15 Our goal, the Subcommittee on Family Law from the
16 State Trial Judges Conference, was to give you some
17 boots-on-the-ground feedback as you ultimately debate this
18 bill.

19 I don't know how much you know about the State
20 Conference of Trial Judges. Judge Clifford gave you a
21 thumbnail, but the Family Law Committee of it did appoint a
22 subcommittee to examine this law. And the opinions, the
23 suggestions, and recommendations that I'm going to say have
24 been vetted and endorsed by the subcommittee and by the
25 Family Law Section of the conference.

1 I'm going to limit my remarks to three discrete
2 areas. One will be the rebuttable presumption for
3 supervised visitation a little bit more broadly and also the
4 educational requirements.

5 Preliminarily, I want to make it clear that there
6 was a discussion amongst the members of the Subcommittee
7 that maybe the Legislature could consider narrowing the
8 scope of the phrase that already exists in the custody
9 statute from history of abuse to recent history of abuse.
10 The Ad Hoc Subcommittee considered further whether defining
11 what actually constitutes recent history of abuse might be
12 but decided that judicial discretion, weighing all of the
13 facts of a particular case together, was preferable than a
14 bright line legislative definition. Relevancy and recency
15 of the abuse will be very case specific and could profoundly
16 impact the outcome.

17 Now to the areas that I said I would discuss.
18 Let's talk about the rebuttable presumption. The bill
19 creates a, quote, rebuttable presumption that the court
20 shall allow only supervised custody upon a finding of abuse
21 of the child or any household member, unquote. This
22 presents a concerning issue to us.

23 Each case that comes before us, custody or any
24 other case, is unique. And presumption for supervised
25 visits is not a wise addition for multiple reasons. First,

1 supervised visits are appropriate in only a fraction of
2 cases and only in cases that have had in the past or
3 currently have an existing protection from abuse order or
4 other demonstrable evidence of abuse. Many abuse orders --
5 and I'm going to call them PFAs for shortcuts -- are entered
6 by agreement at the initial point of separation of the
7 parents. And the vast majority of those exist without
8 further violation or problems that would rise to the level
9 of whatever behavior it was that caused the entry of the PFA
10 in the first place.

11 In other words, once the parties physically
12 separate, there is very often a deescalation and subsequent
13 ability for many families to move forward with a reasonable
14 and functional custody agreement whereby the parties can, as
15 we say in the trade, coparent effectively.

16 Second, most and possibly even all counties in
17 Pennsylvania have a serious shortage of options for
18 supervised custody. It sounds like a great idea but who are
19 these people? Where are they going to come from? Who is
20 going to pay for them? I come to you from a fairly large
21 county. Chester County is a third-class county. And even
22 we struggle to locate, find, and assign supervisors. And I
23 am told that this was universally true for all judges on our
24 Committee. The structure is simply not in place for
25 implementation on the scale that's contemplated by the

1 proposed law.

2 Third, all counties have a significant pro se --
3 that's current speak for self-represented litigants -- in
4 custody cases for whom the rebuttable presumption will be
5 difficult to understand as a concept and to navigate and to
6 effectuate from a legal standpoint. When I say significant
7 numbers of self-represented, I am told anecdotally that in
8 Philadelphia County 90 percent of people involved in custody
9 have no lawyers by choice or by necessity and so they are
10 self-represented.

11 In my county, a highly resourced county, it's
12 nudging 70 percent. So that means that the people, the
13 citizens, who come before us haven't got a clue what a
14 rebuttable presumption is and how to rebut a presumption if
15 they needed to. That's a serious due-process issue for us.

16 Removing the requirement in the bill that a
17 finding of any abuse mandates supervised visitation is, we
18 think, important because abuse can cover a wide continuum
19 range of people, time frames, and degrees of conduct. To
20 take away judicial discretion -- and we have judicial
21 discretion currently to tailor conditions based on the
22 particular facts in a given case -- coupled with the fact
23 that in most situations, supervision, especially
24 professional supervision, is often unavailable, that can
25 mean that a child may end up with no contact with a parent,

1 none. And that situation contributes to adverse outcomes
2 for children as well.

3 For example, a parent who committed a distant act
4 of abuse against the other parent may now be able to have a
5 beneficial nurturing relationship with the child without
6 supervision. And that would clearly be in the child's best
7 interest. However, if there's an absolute prohibition or an
8 absolute requirement that that parent prove that the distant
9 abuse somehow factors in, that could create a very bad
10 situation for that family. That's one type of case.

11 But we need the ability to tailor our results,
12 our considerations, to what all of the factors are in a
13 given family situation. And a parent who has established
14 over a vast period of time an ability to function, not only
15 adequately, perhaps extremely well, as a parent, should be
16 permitted to parent, not be required to visit.

17 Requiring supervision often telegraphs to a child
18 that there is something wrong with that parent. Given the
19 fact that Family Court Judges usually face difficult
20 situations, establishing absolute prohibitions or
21 requirements as opposed to factors that must be considered
22 unnecessarily ties a judge's hands in crafting a solution
23 for each individual family.

24 Now, with regards to supervised custody,
25 resources present a huge obstacle for the concept of

1 non-professional versus professional supervised custody
2 visitation. And when we think of those terms, professional
3 means people who are appointed who are not family members,
4 are generally compensated. Non-professional are generally
5 family members or close friends, people who are not
6 compensated who are agreed to by the parties.

7 Now, there's a real shortage of options in most
8 counties when considering supervised visitation or custody.
9 I've mentioned it. But even in large counties, finding,
10 employing, let alone paying professionals to provide
11 supervised custodial time is a huge challenge. Even in
12 well-resourced counties such as ours, we have very limited
13 programs from which to choose. And those entities, even to
14 the extent they exist in counties, can charge high hourly
15 fees, a cost that would have to be borne by a parent unless,
16 of course, the Legislature is going to fund it.

17 A real risk is a parent not seeing their kids at
18 all because of their inability to afford supervision. I'm
19 just going to give you an example. In Chester County the
20 fees for supervised visits range from \$50 to \$150 plus per
21 hour for professional supervised custody.

22 HONORABLE DANIEL CLIFFORD: Those fees are rather
23 standard throughout the Commonwealth. Some counties have it
24 available for thirty-five to forty dollars. But if you're
25 looking at six to seven hours of supervised time on a

1 weekend, I mean, we can all do the math. We're looking at
2 hundreds, if not thousands, of dollars for parents to have
3 to pay for this supervised time by a professional.

4 Many of us, as noted in the report, rely on an
5 affidavit to be signed by -- if it's a family member, an
6 affidavit of accountability basically for the supervision.
7 The affidavit form that we use in Montgomery County makes it
8 clear to the supervisor, which they sign, they're
9 accountable to me, the Court, not to the parents or the
10 child. They're accountable to me.

11 And I think we find that that does help somewhat
12 with respect to accountability for family members when
13 they're supervising. We just don't let them walk out the
14 door and say, okay, you're going to supervise. And we've
15 talked about this collectively that perhaps it would make
16 sense to have this affidavit included in the rule.

17 HONORABLE KATHERINE B.L. PLATT: Or reference to
18 it.

19 HONORABLE DANIEL CLIFFORD: Or reference to it so
20 that it would be more consistent amongst all judges in all
21 counties. So I think that would be a positive result of
22 perhaps our discussion today.

23 I also wanted to have John, Judge Foradora, speak
24 as well because he's from a smaller, more rural county in
25 terms of the availability of these types of supervisors.

1 HONORABLE KATHERINE B.L. PLATT: Okay. Talk to
2 the availability of supervisors and then I'll get to
3 education after you.

4 HONORABLE JOHN FORADORA: John Foradora,
5 Jefferson County. We're a six-class county. I'm the only
6 judge in the county. And thanks to the voters I've got
7 another ten years. So I've been doing this for 20 years,
8 both before and after the 16 factors. I want to thank you
9 for the 16 factors. That's made it easier for people to
10 understand, especially the unrepresented litigants. They
11 still might not understand it, but at least you can guide
12 them towards these are the factors that I have to make a
13 decision on.

14 I just went through -- I know there's been
15 different versions of the act and a few changes.
16 Professional and non-professional supervised custody, in my
17 county and the seven contiguous counties, there is one.
18 That's in Clarion County. I don't believe it provides
19 weekend supervised visits. And I think you max at two hours
20 at \$35 an hour. They're the only ones that provide it. And
21 generally there's a two- to three-month wait period to get
22 in for that because they only have so many people and
23 they're only doing so many.

24 The other thing in the act, qualified
25 professionals specializing in programs relating to the

1 history of abuse or risk of harm provide better intervention
2 on harm. That was another mention in one of the acts.
3 Other than licensed psychologists, there's none in my county
4 or the surrounding counties. So we have two licensed Ph.D.
5 psychologists in Jefferson County. They both specialize in
6 geriatrics, not child custody.

7 When you create -- and I try to think of these
8 cases as let's think of it on the high end. Money is no
9 object, divorce, intact family. If they want to get custody
10 evaluations, Indiana is the closest county. And from our
11 county seat, that's a 60-mile drive. State College is an
12 80-mile drive and Pittsburgh is a 100-mile drive and Erie is
13 about a 130-mile drive. So that's at least an hour and a
14 half to two hours each way for the family and children.
15 Both sides get evaluations.

16 When you're building in rebuttable presumptions,
17 a lot of times -- or the abuse is not noticeable, physical,
18 sexual, but more threatening allegations, an evaluation is
19 what needs to be done generally even going to those other
20 counties. And I think that this has been the same
21 statewide.

22 There's a lot of other areas where counseling and
23 psychologists can make a lot more money and be a lot less
24 stressed. Custody evaluators have gone down tremendously
25 around the state, which is why their prices have gone up.

1 But about the cheapest you can get an evaluation for one
2 side is \$2,500, somewhere up to 10,000, depending on what
3 that person feels the need to be.

4 But throughout most of rural Pennsylvania,
5 without getting into the practicalities, you're talking a
6 three- to five-hour drive when we have no supervisors that
7 are professional. And even if someone has a counseling
8 degree, the drug and alcohol, sex offenders -- and I
9 appreciate the money. It's out there to help those serious
10 issues. But that's normally where people go. And after
11 they get their experience, they go and hang their shingle
12 and don't deal with this stuff. So that's a very practical
13 problem for this situation.

14 Apparently, I always assumed, being from a
15 smaller county, three-class county, we would have all kinds
16 of supervisors and professional supervisors. But it's
17 probably more a fact of affordability. I think ours is
18 somewhere around 27,000 and even at \$35 an hour, that's not
19 affordable by most parties.

20 HONORABLE DANIEL CLIFFORD: We have a similar
21 challenge in Montgomery County. I think we're actually
22 using somebody who is available in Bucks County right now.
23 And it's eighty to one hundred dollars an hour. So there's
24 not a huge availability for this. And we're the third
25 largest county in the state. So there should be no

1 assumption that there's plenty of professional supervisors
2 that are out there. And from our experience, most of these
3 folks get worn out. It's a tough job to do this. It's not
4 a very positive experience. It's hard to keep them
5 maintained in these positions and these jobs.

6 HONORABLE KATHERINE B.L. PLATT: And I will also
7 say when we're talking professional versus non-professional,
8 you might say, well, you know, if it costs so much, why
9 don't you just use, you know, family members. And the
10 bottom line is that often family members enable poorly
11 behaving other family members. And they may not be
12 appropriate to serve as supervisors. They may be partisans
13 of their particular family member and not perform the degree
14 of attention and supervision and care that we would expect
15 where there were allegations of abuse.

16 So sometimes they're perfect. But sometimes they
17 are enablers so that wouldn't work.

18 Let me just touch on my final point, which was
19 the educational requirements of the bill. The proposed
20 statute mandates that child abuse and domestic abuse
21 education and training for judges and court personnel must
22 be provided. It allows the AOPC Judicial Education
23 Department to provide that education.

24 As the Conference of State Trial Judges, we are
25 committed to educate judges in all relevant areas of law.

1 And domestic violence is certainly at the top of the heap.
2 It's no exception.

3 As to the specific content, however, of the
4 programming, we believe it's best to leave that to the
5 judicial educators rather than to have it carved in stone in
6 the statute itself.

7 All areas of social sciences are ever evolving
8 and best practices should keep up with that evolution, not
9 be mired by statute in what seemed like best practices at
10 the time the statute was passed. If it turns out that's no
11 longer best practice, we want to be able to move ahead with
12 appropriate education as what we know in the social sciences
13 is illuminated to us.

14 So we're very much in favor of judicial
15 education, just have the judicial educators be the ones who
16 determine the programming to make sure that it is cutting
17 edge.

18 Finally, on the education piece, we are, as a
19 committee, not at all sure that the AOPC has the authority,
20 let alone the structure, to provide education to entities
21 other than judges. So if you're talking about Guardians ad
22 Litem who may be contracted or provided not through the
23 Judiciary -- I mean, not compensated through the Judiciary,
24 I'm not sure -- we are unsure whether the AOPC can do that
25 as part of their mandate. We certainly know that they are

1 not funded to do that. We are wholeheartedly in favor of
2 expanding the availability of Guardians ad Litem in custody
3 cases. But again, that is a funding issue. There is no
4 funding for that. And right now in most counties Guardians
5 ad Litem focuses on dependency, not child custody.

6 This concludes my remarks. I think Judge Royer's
7 report has a lot more depth. Please, I commend it to you.
8 But I'd be happy, at the appropriate time, to take any
9 questions.

10 HONORABLE DANIEL CLIFFORD: I want to jump in on
11 the factors first.

12 So I'm back on the Joint State Commission hat at
13 this point. You folks have legislative liaisons to the
14 Joint State Commission.

15 I think, Representative Briggs, you are one of
16 those actually by virtue of your position as the Democratic
17 Chair of Judiciary.

18 But we have been aggressively working on a
19 revisiting of these factors. We felt it was an appropriate
20 time to do so. It's been ten years now that they have been
21 in effect. Our Subcommittee has been diligently working on
22 this. We've been conducting a state-by-state review of our
23 sister states to see what factors they have, to see whether
24 we can poach some of their good ideas to see whether or not
25 we should be revising some of ours to see whether current

1 parenting trends would require some rewording of some of the
2 factors. I call it a refreshing. I don't call it a
3 revising of the factors because the framework that you folks
4 set out for us is a good framework for us to work on.

5 So I implore you to work with us. You have this
6 Advisory Committee. We're working diligently on the
7 factors. And if you look through the proposed legislation,
8 the factors are literally, as Judge Royer said, sprinkled
9 with abuse factors within the other factors. When you
10 already have a factor, perhaps that factor needs to be
11 bolstered or revised a little bit.

12 But when you start adding abuse to the other
13 factors, you start diluting those other factors, which are
14 also so very important to us. And since you already have a
15 factor for abuse, No. 2, which will never be overlooked,
16 maybe that's the factor that needs to be looked at instead
17 of including abuse language within the other 15 factors.

18 And the last point I would make is, you know, I
19 would be remiss if I didn't mention Act 102 this morning.
20 Act 102 was enacted in October 2016 and signed by Governor
21 Wolf. This was a change in the divorce statute that
22 initiated with the PBA Family Law section. I like to say
23 it's the most substantive change to the divorce law in 30
24 years.

25 And you know what, that was a collaborative

1 effort. Representative Toohil, who is, you know, packing up
2 her office right now to become one of us on the bench, she
3 spearheaded that legislation through both the House and the
4 Senate. That was a collaborative effort on behalf of
5 everybody, all the stakeholders. We're the people in the
6 trenches, the judges, the family lawyers, the legislators
7 who take this subject under their wing.

8 So I invite you to work with us, please,
9 collaboratively on the factors. Please don't just go ahead
10 with changes to the factors without the consideration of our
11 Subcommittee and the work that we have been working very
12 hard on for the last two years.

13 We're now in a position to issue our report.
14 It's going to make its way up to you guys eventually through
15 your task force. So I would ask you to please work with us
16 collaboratively because we have done that in the past and
17 it's been very successful as a result.

18 MAJORITY CHAIRWOMAN KLUNK: One final comment.
19 We have to keep it moving and get to questions.

20 HONORABLE KATHERINE B.L. PLATT: Absolutely.

21 With regards to factors, I just wanted to point
22 out that the statute says, the custody statute says, giving
23 weighted consideration to those factors which affect the
24 safety of children. And that overarches all, all, of the
25 ensuing factors.

1 Thank you.

2 HONORABLE DANIEL CLIFFORD: Thank you.

3 We're happy to take questions. I know you're
4 tight on time.

5 MAJORITY CHAIRWOMAN KLUNK: Thank you.

6 I believe we have a question down here from
7 Representative Ecker.

8 But before that, to his right, Representative
9 Johnathan Hershey has joined us. I wanted to recognize his
10 presence.

11 Representative Ecker, you can proceed with your
12 question.

13 REPRESENTATIVE ECKER: Thank you, Madam Chair.

14 Thank you, folks, for the testimony. I found
15 what you said pretty interesting. I, too, before I got into
16 legislative practice, did a good deal of family law. I
17 don't have your pedigree by any means but enough to
18 understand the issues here.

19 When we're looking at the best interest factors
20 here, you know, every one of those factors is given a
21 particular, you know, same type of weight. How would this
22 proposed legislation be any different than the best interest
23 when looking at -- so, for example, 2 and 2.1 deal with
24 abuse. How would this legislation, if adopted, change what
25 you folks are already doing under the best interest factors?

1 HONORABLE DANIEL CLIFFORD: Well, it almost seems
2 to have it rise to a higher level than the other 15 factors.
3 And when you start adding the language within the context of
4 the other factors, you're sort of directing those factors
5 towards that very same issue. It's not present in every
6 case. As you know, as a practitioner, abuse is not always
7 present in every divorce case, in every custody case. It's
8 present in some of them. And that's why it's one of the
9 factors.

10 But to include it within all the other factors,
11 you know, within a significant number of the other factors,
12 I think it almost rises to the level of over and above all
13 the other factors. And the other factors are very, very
14 important for us to consider.

15 And it just seems like it's unnecessary and maybe
16 not logical when you already have it as a factor, why is it
17 necessary to include it within the context of these other
18 factors which are also so very important? You're basically
19 diluting perhaps the significance of those other factors
20 especially in those cases where abuse is not even
21 applicable.

22 Many of us do opinions and we say not applicable
23 because there has been no evidence produced on the abuse
24 issue.

25 REPRESENTATIVE ECKER: A follow-up question on

1 that. I agree with you. I think when we look at the best
2 interest factors, there's plenty of other things there that
3 pose health and safety as well. Abuse is definitely
4 something we need to focus in on and not lose sight of. You
5 know, your points have been interesting. I appreciate that.

6 But I'm going to pose a scenario here. Maybe you
7 have an answer. Maybe you don't. I don't know if this
8 legislation contemplates it. But what happens in the
9 instance where you have two parents that have a history of
10 abuse for one reason or another, maybe not with the child
11 but, you know, have a PFA or consent decree? What is that
12 scenario there? Do you know?

13 HONORABLE JOHN FORADORA: With a child?

14 REPRESENTATIVE ECKER: Well, not necessarily with
15 a child, but have a -- I think the legislation even says if
16 you have any history of abuse, not necessarily with a child,
17 but with a household member. What is that scenario? I'm
18 just curious.

19 HONORABLE JOHN FORADORA: As I read the statute,
20 each parent can only have supervised.

21 REPRESENTATIVE ECKER: Sure.

22 HONORABLE JOHN FORADORA: You have to either get
23 Children and Youth involved or some other custodial person
24 because it's presumed.

25 REPRESENTATIVE ECKER: Okay.

1 HONORABLE JOHN FORADORA: Until the presumption
2 is rebutted, neither parent can have the child, as I read
3 it.

4 Your question also raises an important point
5 because it also provides the opportunity the way it's
6 currently written to relitigate the abuse case that already
7 took place in PFA court. Many of our courthouses you have a
8 separate PFA judge and a separate custody judge. Maybe in
9 smaller counties that's not the case.

10 The way that legislation is currently proposed,
11 you can basically -- and as a litigator, you can understand
12 this -- you can go relitigate the abuse case and the custody
13 case. The way it's written right now, the custody judge can
14 still find there was abuse even if there wasn't an abuse
15 finding in the PFA.

16 And the last thing that we need as custody judges
17 is to redo a PFA case within the context of our custody
18 cases. We often rely on the fact that that abuse issue has
19 been, for lack of a better word, you know, sorted out in the
20 PFA realm. And we can't turn the PFA -- the custody court
21 into a second PFA court.

22 And the concern the way the language is worded
23 right now would provide that litigant -- and we all know we
24 had clients -- I was a lawyer too. We have clients that
25 want to relitigate things. We can't afford the luxury of

1 that kind of time to relitigate either an agreement or a
2 non-finding in the abuse case.

3 HONORABLE KATHERINE B.L. PLATT: I think it is
4 important to your issue, sir, that there's a fair chunk of
5 cases where both parties have been subject to Protection
6 From Abuse Orders at any given time where they have slung
7 back and forth. And that could create a judicial, let alone
8 administrative, nightmare in trying to enforce the
9 requirements of the statute.

10 REPRESENTATIVE ECKER: I've had cases exactly
11 like that. That's why I was kind of curious about that
12 instance, what would happen in that scenario. Look, I think
13 this legislation is heading in the right direction. But
14 this is why we have these hearings to kind of find out what
15 were some things to make it better legislation.

16 So I appreciate your testimony. Thanks for the
17 answer to the questions.

18 HONORABLE DANIEL CLIFFORD: Thank you. We do
19 appreciate the opportunity to present our concerns.

20 MAJORITY CHAIRWOMAN KLUNK: Thank you.

21 And with that, I will turn it over to
22 Representative Kinkead for a question.

23 And then, Representative Hanbidge, you will be
24 next. Thank you.

25 REPRESENTATIVE KINKEAD: Thank you.

1 I will say I am conflicted on this legislation.
2 I absolutely think that, you know, we need to do something
3 to make sure that this kind of situation doesn't happen
4 again but I'm not sure that this is the legislation that
5 will do that.

6 To that extent, I just want to ask some questions
7 about it. Why should the burden of the court be considered
8 when we look at legislation when we're talking about saving
9 lives?

10 HONORABLE KATHERINE B.L. PLATT: I'm sorry.
11 Could you repeat the question? I don't understand. Why
12 should the burden?

13 REPRESENTATIVE KINKEAD: So you spoke at length
14 about, you know, the burdens to the court system and to
15 being able to pay for these supervisors. So I'm wondering
16 why those burdens should be taken into account when we're
17 looking at legislation that's aimed at saving the lives of
18 children. Shouldn't it, you know, be a question of you need
19 to figure it out because this is what we're asking you to
20 do?

21 HONORABLE KATHERINE B.L. PLATT: Well, it seems
22 to me that the Legislature is trying to figure it out.

23 HONORABLE DANIEL CLIFFORD: We don't have
24 funding.

25 HONORABLE KATHERINE B.L. PLATT: We don't have

1 the funding to do it.

2 HONORABLE DANIEL CLIFFORD: We're not a funding
3 mechanism. So for us to say in every case you have to have
4 supervised custodial time, where does that come from? Who
5 is paying for it? Most of the self-represented folks have
6 limited resources. And many of the folks who have maybe
7 fallen into the abuse categories would have extremely
8 limited funding. They don't have lawyers to begin with.
9 We're dealing with a huge self-represented population.

10 It's no longer that you have two lawyers walking
11 into the courtroom. So if they can't afford a lawyer,
12 chances are they are probably not going to be able to afford
13 supervised visitation at \$100 an hour or \$80 an hour or even
14 \$50 an hour. We don't have the funding mechanism for that.

15 So if we're required to say, you need to have
16 supervised -- professional supervised time, custodial time,
17 the question is, well, where do I get that and who is paying
18 for it? And then we're there to answer those questions. We
19 don't have any funding for that.

20 It's unlikely that most counties will budget that
21 within their budgets. Maybe they will because you will
22 mandate that. If you decide to mandate it, then they will
23 have to fund it. The counties will then have to find
24 funding for professional supervision for custodial cases.

25 And that would be something that you'll need to

1 get feedback from at your respective county level. Does
2 your county have the ability to fund this? Most counties
3 don't have the ability to fund it.

4 That's why we want the discretion to rely on
5 non-professionals who we, in our judgment, again -- you
6 know, I have the grandparents come in and testify. They
7 realize they're responsible to me, not to anybody else. And
8 if I have them sign the acknowledgement of supervision, I'm
9 often satisfied that that's going to be a legitimate
10 supervision person.

11 Obviously, there are cases where they're not
12 suitable and they're not provided with the ability to
13 supervise. We have to agree to the supervision. So I think
14 there's mechanisms within our current framework as opposed
15 to mandating professional. It's a funding issue at that
16 point.

17 REPRESENTATIVE KINKEAD: Okay. Thank you.

18 MAJORITY CHAIRWOMAN KLUNK: To keep things
19 moving, I'm going to turn it over to Chairwoman Hanbidge.

20 MINORITY CHAIRWOMAN HANBIDGE: Thank you so much,
21 Chairwoman.

22 I have a couple of questions about the sort of
23 efficacy of doing this. As a practitioner, there would be
24 some things that I would worry about the court's capacity to
25 follow up on.

1 I'm wondering about impact that you would foresee
2 on old cases. So cases that we've had a custody agreement
3 in place for the last ten years. There were previous
4 allegations of abuse but things have been working out. Do
5 you foresee these cases coming back and taking up a lot of
6 the court's time? We just heard during the family law
7 arbitration subcommittee hearings about how inundated the
8 family law courts are. Is this a concern of yours?

9 HONORABLE JOHN FORADORA: I was going to follow
10 up with her question, saying, you know, if any of you know a
11 judge who leaves early or takes a lot of vacation, I
12 apologize for that. I was former president of the
13 conference. I can say the same as you can say about the
14 vast majority of the legislators. Everybody is there trying
15 to do their job.

16 Judicial time, getting a courtroom, and getting a
17 court reporter is a scarce commodity when you look at the
18 number of cases we have, especially in the family court,
19 unless we want to create a whole bunch of new judgeships.

20 I mean, most judges, most counties, are
21 restricting the number of witnesses you can call, your time
22 just to get the number of cases through. And then in the
23 huge majority of the cases, helping self-represented people
24 come through, you know, mostly have some type of
25 orientation, conference, mediation before you get to the

1 judge's position. And in this act, we're going to have to
2 be doing a lot more review.

3 And even if the county has funding, I mean,
4 there's not people out there doing supervision. You've got
5 to make some benefit to people coming out of college or
6 whatever you want these supervisors to be because even the
7 one agency I know that has it, they get constant turnover.
8 And it's mostly people, retired Children and Youth workers
9 and other things, who are going in and agreeing to do it.

10 But it's a burnout situation. So I think where
11 the rubber meets the road, you're not going to get any more
12 people saying, yeah, I'm going to set up a company to do
13 parental supervision and be able to hire competent people.

14 But I mean, I think if you look at the judicial
15 efficiency study -- I was part of that committee years ago
16 -- most judges are working really hard and scarcely limiting
17 the amount you can present at a custody case anyhow so we
18 can get the cases through. And, you know, look, it's a
19 struggle for everybody to say, on the one hand you want to
20 do justice, on the other hand, especially in the age of
21 computers, everybody keeps track of our numbers. And we
22 always talk about numbers. It's how things get divided down
23 to it and it impersonalizes a lot of this.

24 But it's a scarce commodity to be in front of a
25 judge with a reporter and having testimony because there's

1 only five days in the week. The courthouse, generally, most
2 of them have some union that's going to keep the matter from
3 8 to 4 or 9 to 5, somewhere in that realm. And it's just
4 something that's, yes, we're at our breaking point, I think.

5 HONORABLE DANIEL CLIFFORD: Well, if I could just
6 -- I wanted to respond to --

7 MAJORITY CHAIRWOMAN KLUNK: Real quickly because
8 we do want to keep things moving.

9 HONORABLE DANIEL CLIFFORD: I wanted to just
10 respond to Representative Hanbidge's question and
11 acknowledge her because I had many cases that had come
12 before me where I noticed that she served as a Guardian ad
13 Litem in many of our custody cases. So I acknowledge her
14 service in that regard.

15 But I think she's hit the nail on the head with
16 respect to the future cases, because the bill as it's
17 written now requires us to call everybody back in these
18 cases a year later. The way it's written now, if we have a
19 situation like this, we're required to bring those cases
20 back a year later.

21 That would be an enormous task for our resources
22 to automatically bring cases back. A case can come before
23 us at any time. If there's problems in that case, I
24 guarantee you we will hear far more from those folks because
25 they'll file a petition to modify. They'll file a petition

1 for contempt. But for us to have to recall them back a year
2 later I think would be an enormous burden on resources, and
3 that's unnecessary.

4 MAJORITY CHAIRWOMAN KLUNK: Thank you for that.

5 HONORABLE DANIEL CLIFFORD: Thank you.

6 MAJORITY CHAIRWOMAN KLUNK: To keep things
7 moving, I'm going to kick it down to Representative Hershey
8 for a last question for this panel.

9 If you could keep it brief, please. Thanks.

10 REPRESENTATIVE HERSHEY: Sure.

11 Thank you, Judges, for being here.

12 And I am not a family law practitioner so you'll
13 have to offer me some forbearance here. I'm just curious
14 about the 16-factor test, how that actually plays out when
15 there is an allegation of abuse present, because, Judge
16 Clifford, you mentioned we are not trying to relitigate the
17 PFA, for example. But it seems like to me if you're
18 considering that factor, that is a necessary part of the
19 proceeding.

20 So I'm just curious from a very surface level how
21 those factors are considered against one another and how
22 that abuse factor plays out if we're not trying to
23 relitigate the accusation.

24 HONORABLE DANIEL CLIFFORD: Well, again, there's
25 no priority to the factors. There's 16. It's up to the

1 judge to weigh the priority of factors. However, there may
2 be a case where the abuse factor, No. 2, is weighted more
3 heavily because of the incidents of abuse.

4 I mean, we all have cases where there have been
5 15 PFAs. There have been 15 reports to Children and Youth.
6 Obviously, the abuse consideration will be entered fairly
7 highly. The weight will be shifted fairly highly to No. 2.
8 And by the way, there's abuse of the abuse statute in cases
9 where you have 15 filings and no findings of abuse and no
10 PFA orders entered. So you have the opposite situation
11 where a parent abuses the process that's placed before us.

12 But the factor will be considered because it's
13 the second one we get to. Again, it's not lost way down No.
14 10 or 15 or whatever. We're going to be considering that.
15 Testimony will be provided with respect to that. If there
16 were a PFA order entered, we'll obviously have to consider
17 that. But we're not looking to relitigate the PFA because
18 we have 15 other things that are also as important to the
19 custody case as well.

20 So again, we respectfully suggest that the abuse
21 piece in the factors should remain as a factor. If it needs
22 to be reworded, if we need to revisit or refresh the
23 wording, that's the appropriate place to do it, not to
24 sprinkle it down within the other factors because it's going
25 to be considered. It can't be ignored. We get remanded if

1 we overlook one of the 16 factors. So clearly we're
2 responsible for making sure that the record is complete with
3 respect to all the factors.

4 REPRESENTATIVE HERSHEY: And that's why it's not
5 a test. Because if it were a test, there would be 9 to win
6 the custody case. One factor may outweigh the other 15 or
7 it may go any which way.

8 HONORABLE DANIEL CLIFFORD: That's right.

9 REPRESENTATIVE HERSHEY: It's how you see it as
10 the facts play out. Because you've set out the law and we
11 have to decide, as we hear the facts, what are the true
12 facts and how do they fit into those factors.

13 MAJORITY CHAIRWOMAN KLUNK: Thank you to our
14 Judicial panel for joining us today. I think we can
15 probably stay here for another half an hour and talk.

16 HONORABLE DANIEL CLIFFORD: Thank you.

17 MAJORITY CHAIRWOMAN KLUNK: We have to keep
18 things moving. So with that, we appreciate this and look
19 forward to continuing the conversation on this.

20 HONORABLE DANIEL CLIFFORD: Thanks very much.

21 HONORABLE KATHERINE B.L. PLATT: Thank you.

22 HONORABLE JOHN FORADORA: Thank you.

23 MAJORITY CHAIRWOMAN KLUNK: With that, I will
24 turn it over now to Danielle Pollack, who is the Policy
25 Manager at the National Family Violence Law Center at George

1 Washington University.

2 You can come up. And actually if you could make
3 sure the other mikes are off. If you guys could turn those
4 off, that will help us. And just make sure the one is on.

5 Thank you. And you may begin as soon as you're
6 ready.

7 MS. DANIELLE POLLACK: Thank you.

8 Good morning, esteemed Chairs and Members. Thank
9 you for the opportunity to provide testimony on SB 78. My
10 name is Danielle Pollack. I'm the Policy Manager for the
11 National Family Violence Law Center at GW Law, the nation's
12 home of research on key issues affecting children's safety
13 in the context of custody litigation.

14 We specialize in the interception of adult and
15 child abuse in a family and its implications in the family
16 courts. We support the goals of SB 78 and we have some
17 suggested amendments to which I will speak in a moment. But
18 first I want to share with you a bit about what we know from
19 the research and also some stories about what is happening
20 in family courts now as a system problem and not a one-time
21 error as some have suggested Kayden's case was.

22 Kayden Mancuso, for those of you who don't know,
23 was a seven-year-old Bucks County girl who was brutally
24 murdered by her biological father during a court-ordered
25 unsupervised visit. The father beat her to death with a

1 barbell during his custody time which was unsupervised and
2 he put a bag over her head and tied a zip tie to make sure
3 she was dead.

4 As was mentioned, Kayden's family is here with us
5 today in the hopes that lawmakers will take this issue
6 seriously so that no other child suffers this horrible fate.

7 In her case, the mandated contact was ordered
8 despite many risk factors being presented to the Court and
9 them considering that abuse factor that was just discussed,
10 including an active Protection From Abuse Order, a PFA, that
11 the mother had for the father threatening to kill the family
12 at the time when they made the custody decision.

13 And he also had past charges and convictions for
14 simple assault for his violent behavior against others. He
15 also had an aggravated assault charge for biting a man's ear
16 off and he was banned from Kayden's school for terrorizing
17 the staff. So there were a lot of red flags.

18 Unfortunately, this is not that unusual. It's
19 showing that the abuse factor can, in fact, be overlooked or
20 not given enough consideration in these cases.

21 A very similar scenario happened in Erie,
22 Pennsylvania, a few months ago when two children, ages 10
23 and 13, Madison and Zachary, were shot to death in their
24 sleep and lit on fire by their father who was litigating
25 custody. And there, too, the mother had raised safety

1 concerns to the custody court. Similarly, Kelly June
2 Williams in Pennsylvania, age 3, was killed like this in
3 York County; Michael Ayers, age 2, in Huntingdon County;
4 Jayen Cox Phoenix, beaten and drown to death, age 3. All of
5 these cases had PFAs, Protection From Abuse Orders, some
6 kind of child welfare involvement on several of them. And
7 the protector had raised concerns and safety issues in the
8 custody litigation, so the Court was made aware.

9 Kayden and these children are among over 100
10 children in the U.S. in the past ten years murdered by an
11 abusive parent who was litigating custody and who had been
12 awarded custody without adequate safeguards in place for the
13 child. And they were awarded despite the safety concerns
14 being raised by the other party, the safe parent, the
15 non-abusing parent.

16 And this is not to overlook those children
17 ordered into an abuser's care for a prolonged period of time
18 but not killed despite a safe parent being available to care
19 for the child and raising the concerns to the Court.

20 We can refer to many, many striking examples,
21 such as one case where a Pennsylvania family court judge
22 told a child victim named Grace, who was hospitalized from
23 being beaten by her father with a cast iron pan, you're
24 going back to him, you spoiled little brat. That was just
25 recently reported by Kim Strong, if anyone wants to look at

1 that.

2 It's an empirical fact both in Pennsylvania and
3 nationally that most child abuse is perpetrated in the
4 family and by a parent. Of the 73 Pennsylvania children
5 killed from abuse or neglect in 2020, which is a 43 percent
6 increase over 2019 -- and this data is from the Pennsylvania
7 Department of Human Services, their Child Fatality Report --
8 it states that parents continue to be the persons most
9 responsible for the abuse of their children and that these
10 73 children most often died from a violent act in 2020.

11 So unfortunately, abuse happens in families and
12 the riskiest person is a parent in certain limited cases.
13 Because the records are private, though, from DHS, we don't
14 yet know how many of these were engaged in private
15 litigation. But very frequently in these families there is
16 a safe caregiver who is trying desperately to get the system
17 to hear their concerns. And they're asking the system to
18 keep the child safely with them and away from the abusing
19 party but their pleas go unheard or minimized and contact
20 with the abusive party is mandated without safeguards.

21 We know a lot about risk. Research has
22 identified several very clear risk factors that increase the
23 likelihood of domestic homicide for children and adults.
24 And all the child murder cases in Pennsylvania that I just
25 spoke about had several of these risk factors and they were

1 presented to the Court. We know that there is a heightened
2 risk of harm from the abuser post-separation when abusers
3 feel a loss of control. So it was stated earlier that, you
4 know, once parents separate, a lot of times the violence
5 de-escalates.

6 And we know from research that the inverse
7 happens because it's when the abuser is feeling this loss of
8 control, the adult parties exiting the relationship and
9 they're taking the children oftentimes and the abuser wants
10 to regain the control. So it escalates post-separation.

11 We know also from research that when a parent is
12 at risk of abuse and homicide, their children are also at
13 risk. Unfortunately, the courts are just not assessing this
14 adequately in many cases.

15 By the way, just so you have a sense of scope,
16 the vast majority of families experiencing dissolution they
17 settle out of court, 90 percent of them. So it's only 10
18 percent who are litigating and have contested custody cases.
19 And in those cases, in that 10 percent, in 70 percent of
20 those cases, there are allegations of domestic abuse.

21 So this population that we're talking about --
22 this statute impacts litigating custody -- has a much higher
23 rate of risk of violence than the general population.
24 Seventy percent of these families had some sort of domestic
25 abuse allegation. It's not your average divorcing family

1 that usually figures things out outside of court.

2 When the Court does not appropriately identify
3 common behavior patterns of abusers nor the associated risk,
4 the court easily becomes a tool that abusers use to
5 perpetrate further harms on their victims. As was mentioned
6 earlier, some abusers, you know, the court becomes a tool
7 for them. These cases are often deemed high conflict,
8 quote, unquote.

9 And Kayden's case was deemed high conflict. It
10 was constantly reported this way. And this suggests that
11 both parties are problematic when really they are most often
12 domestic abuse cases with one dangerous party and one safe
13 party. One party is fighting for control. And one party is
14 fighting for safety of the child, as Kayden's mom was and as
15 so many safe parents are right now.

16 SB 78 recommends improved training on DV and
17 importantly on child abuse. The courts do train on domestic
18 violence, but the missing piece we feel is that they are not
19 adequately trained on the family dynamics in the child
20 abuse, child development, child trauma. This needs to be
21 improved. SB 78 recommends it. It can't be legislated in
22 Pennsylvania as it can be in some states. And also a
23 specific trainer cannot be named in the statute, although I
24 believe PCADV has particular expertise and interest in this
25 and they may speak about that later today. And I'd be happy

1 to answer questions about that, if you want.

2 I know that the Senators leading SB 78, Senators
3 Baker and Santasiero, had several productive and positive
4 conversations with the AOPC on the training portion before
5 the bill passed in the Senate with bipartisan support in a
6 46 to 4 vote.

7 SB 78 asks courts hearing such cases to slow down
8 in their assessments, to look at abuse histories and risk
9 signs more carefully, and then put proper safeguards in
10 place when children are at risk if they do order any
11 contact. Too often in custody cases the emphasis in the
12 custody court is frequently placed on the parental rights
13 and the sharing or equitable distribution of parental rights
14 over the safety of children. This is not to say the courts
15 always get it wrong. Some practitioners are very
16 knowledgeable. But for those needing more guidance -- and
17 there are many -- SB 78 offers some moderate guidance for
18 those very worse cases in terms of risk for child
19 safeguarding.

20 The custody court can improve how they consider
21 information gathered from the criminal and child welfare
22 systems to guide them in private custody decision-making.
23 Some clear examples include criminal charges and convictions
24 for simple assault, which SB 78 proposes including in the
25 list of things that custody courts must consider. And they

1 could look more closely at the circumstances leading to a
2 child welfare agency finding that a child has been sexually
3 or physically abused following a 60-day investigation in the
4 child welfare system, which SB 78 proposes a custody court
5 review and hear the circumstances that led to this
6 determination by the Agency before making a child placement
7 decision.

8 Taxpayers pay for these systems to keep our
9 public safe, the child welfare system, the criminal system.
10 The private custody court does not have such an
11 investigatory body yet this place is where these
12 determinations are made every day for our most vulnerable
13 citizens, our children. SB 78 proposes how courts might
14 better use the existing information from these systems in
15 their decision-making. That's really the goal.

16 So let me turn to suggested amendments on some
17 provisions in SB 78, which have elicited a lot of discussion
18 amongst stakeholders and which Senators sought to meet
19 concerns about but we feel could be further refined, in our
20 view.

21 So about the supervision part, on page 3 under
22 definitions, we agree with what Judge Clifford had said
23 earlier that perhaps there should be a reference to the
24 affidavit of accountability pursuant to Chapter 61 that
25 should read, the Court may require the non-professional

1 supervisor to execute an affidavit of accountability
2 pursuant to Chapter 61 from the PFA statute prior to
3 granting parenting time. And this would just add -- it
4 would help non-professional supervisors understand their
5 role and the responsibility that they are taking on when
6 children are having contact. And as was stated earlier,
7 oftentimes family members are these informal supervisors and
8 can be enablers of the abusers. And so if you have that
9 affidavit of accountability, it just gives a measure of a
10 little bit more accountability.

11 For the professional supervised physical custody,
12 which, by the way, it's triggered for cases when the court
13 finds a history of abuse. So there's a finding of abuse of
14 the child or the household member and there's a present risk
15 of harm to the child or party. So it's just for the most
16 dangerous cases. It's not for -- and it's not for both
17 parties. It's not for the safe parent and the dangerous
18 parent. It's for the dangerous parent.

19 We suggest as an amendment to take out the
20 definition of who can do the professional supervision. All
21 the training and expertise language from the word
22 professional to oversees interaction between the child and
23 the individual and add pursuant to Chapter 61, the PFA
24 statute, under relief 6108(a)4, the Court may award
25 supervised visitation in a secure visitation facility.

1 That's already in our PFA statute where the Court has found
2 a Defendant has inflicted serious abuse.

3 And we suggest this amendment not because we
4 don't think it's important that supervisors are properly
5 trained in the dynamics of family abuse, on the contrary,
6 but because as it stands now, the availability of such
7 secure visitation facilities and appropriately trained staff
8 is fairly limited. This is something for which resources
9 should be allocated in the future.

10 We hope that they are. And I believe PCAR is the
11 best source for more detail on what's currently available
12 for these resources in this regard and what it might cost to
13 make adequate services available to protect children when
14 they're ordered to be in contact with these very risky
15 parents.

16 Also, it was stated earlier that, you know, this
17 could go on in perpetuity and that it's not accurate. SB 78
18 puts forward a requirement that there be at minimum an
19 annual review of any supervision that's been ordered. So if
20 a parent really has reformed and is posing no risk then
21 there is a requirement for an annual review that those
22 restrictions can be eased.

23 On page 4 under safety conditions, line 17 to 21,
24 we recommend that rather than requiring the court, quote,
25 include in the custody order the reason for imposing the

1 safety conditions, restrictions, or safeguards and an
2 explanation of why the safety conditions are in the best
3 interest of the child or the abused party, that instead it's
4 required whenever the court is lifting or easing any safety
5 provisions put in place. Otherwise, the implication is that
6 the safety conditions require greater justification than the
7 lack of safety conditions. And this undermines child
8 safety. So we think that that should be flipped. The court
9 should not be required when they are imposing the safety
10 conditions, but rather when they're lifting or easing them.

11 For the de novo review portion on page 6, lines 8
12 to 13, and page 7, lines 2 to 8, we suggest striking the
13 word de novo, the de novo language. The legislative intent
14 was not for the custody court to overrule or relitigate or
15 overrule the dependency court or vice versa, only to require
16 the custody court to look at the circumstances which led to
17 an indicated status only for physical or sexual abuse of the
18 child, so really only the worst kinds of abuse with the
19 highest risk that child welfare has found after their 60-day
20 investigation.

21 We suggest amending the language to read, the
22 court shall review an indicated report for physical or
23 sexual abuse under Chapter 63 and the circumstances leading
24 to the indicated report. The circumstances leading to the
25 report may be a basis for a finding of abuse under this

1 subsection. We think that the custody court should know
2 what led to the child welfare's determination that the child
3 has been physically or sexually abused. Shouldn't the
4 custody court look at that?

5 I mean, now, litigants already have to inform --
6 in our current statute, they do have to inform the custody
7 court if they have had child welfare involvement or an
8 indicated status but it does not require them to review that
9 information or the circumstances that led to it. So this
10 would simply require the custody court to review the report
11 and look at the circumstances which led to the indicated
12 status for the most severe types of abuse, which are very
13 risky for children.

14 I want to point out, this is not for all types of
15 abuse in SB 78. It's not for neglect, for example, which
16 disproportionately impacts certain historically
17 disenfranchised populations. Some have erroneously claimed
18 that SB 78 -- under SB 78 that any prior finding of abuse
19 for child protective services, no matter how old, will
20 presumptively take custody rights away from a parent . And
21 this is just simply wrong. This is not what SB 78 does.

22 Furthermore, an indicated status for physical or
23 sexual abuse is arrived at in a very small percentage of all
24 reports made to the ChildLine. On average, in Pennsylvania
25 it's about 16 or 17 percent of cases are indicated by the

1 child welfare system for abuse of children. In that system,
2 which is not perfect, there's many reforms done there also,
3 but in that system, there are three to four layers of review
4 inside the Agency before an indicated status, before this
5 determination is made. So it's really to protect the most
6 at-risk children.

7 For the PFA section on page 8, we propose
8 eliminating lines 8 through 11, so the 2.2 and the 2.4. So
9 for PFAs both entered on consent and with a finding of abuse
10 and then adding some language. So just to explain, the goal
11 is to encourage negotiation for PFAs. We certainly do not
12 want to discourage people from entering into consent
13 agreements in the PFAs system. The terms of consent
14 agreements are often better for victims than when the court
15 determines what the terms should be.

16 That said, PFAs issued are a clear risk sign and
17 custody courts should be aware of them. So we propose
18 getting rid of that 2.2 and 2.4 and modify 2.1, line 7, by
19 adding after services, allegations of abuse shall be deemed
20 relevant and shall be reviewed at the custody hearing.

21 So frequently in custody cases the court tells a
22 litigant that PFAs are not relevant, that they're too old.
23 But they are a crucial piece of information for determining
24 risk. Protection orders are generally sought by the victims
25 as an act of desperation after extensive harms have been

1 perpetrated. And in a quarter of them, actually, the victim
2 has been subjected to abuse for five years. So contrary to
3 popular belief, the data shows they're obtained in a very
4 small percentage of cases. They're not just handed out.

5 And then for better organization, we suggest, if
6 the suggestion is taken, moving 2.3 down to be its own
7 factor, as it is now in the current law, to be factor 3 in
8 renumber.

9 For simple assault on page 11, line 9, it is very
10 important that simple assault be added to the list of crimes
11 that a custody court must consider. Keep in mind, like all
12 crimes already on the list of crimes that the custody court
13 must consider, it is not conclusive. It just helps the
14 court understand risk. Simple assault can be a key
15 indicator of risk to children. Many, many, many convictions
16 for simple assault begin as aggravated assault and abusers
17 plea down. Domestic abusers are rarely convicted in the
18 criminal system. And if they are, it's typically for simple
19 assault.

20 We would really think that the facts about that
21 should be looked at and reviewed as a possible risk factor
22 to the children. I want to give you an example of a simple
23 assault. You know, people think, oh, simple assault,
24 somebody just, you know -- simple assault is usually very,
25 very severe abuse. A judge in Delaware County just ordered

1 a child victim out of the custody of his safe protective
2 mother and into the full custody of his abusive father who
3 was en route to jail for perpetrating domestic abuse against
4 her.

5 The custody court was aware of this fact when
6 they ordered the custody switch to the father, which
7 coincidentally happened shortly after the mother reached out
8 to legislators in her district in desperation to ask for
9 help for her son whose life she feels is in imminent danger
10 to ask them for support, for help, and also to support this
11 bill.

12 The father's charge and conviction was for simple
13 assault, which SB 78 asks to add to the list of crimes for
14 the court to consider. So what was that simple assault for?
15 By the way, he was also charged with terroristic threats
16 with the intent to terrorize another, the mother. But he
17 was only convicted for the simple assault.

18 During the attack, the record shows he uttered to
19 the mother, I will kill you, while grabbing her throat,
20 dragging her to the floor, smashing her head on a metal
21 railing, and kicking her over and over. She needed to be
22 hospitalized for these injuries. And this assault occurred
23 in front of her children who are now court-ordered into his
24 full custody because she was held in contempt for not taking
25 her child to the father's court-ordered custody time.

1 And I believe this mother has submitted testimony
2 to this Committee, if you would like to see the full record.
3 Sadly, her story is not that uncommon. But that's just to
4 illustrate to you sort of what simple assault is, why it's
5 important. That case, for example, the mother would have
6 the opportunity to tell the court about that when they're
7 determining custody. Obviously, in this case with this
8 Delaware judge, he perhaps could benefit from the training
9 that's proposed in SB 78.

10 In conclusion, I want to respond to this idea
11 that we do not have presumptions in custody because each
12 family is unique and has unique needs. I wholly agree with
13 the second part, each family needs to be individually
14 considered. Absolutely. But it is not really the case that
15 we don't have any presumption in our custody statute. We
16 have an unwritten presumption that contact with both parties
17 is always in the best interest of children even when there
18 are extreme risk factors.

19 So the presumption in SB 78 of supervision to
20 safeguard children when there is an abuse history or present
21 risk of harm to children, it's really simply to level the
22 unwritten presumption of contact so that children are
23 protected when there are clearly identified risks for their
24 lives.

25 **MAJORITY CHAIRWOMAN KLUNK:** Thank you for that.

1 I hate to cut you off.

2 MS. DANIELLE POLLACK: No. That's it. I'm done.

3 Thank you.

4 MAJORITY CHAIRWOMAN KLUNK: I know that we're a
5 little behind schedule here. I want to keep things moving.
6 I do know that we have some questions.

7 I'll turn it over to Chairwoman Hanbidge remotely
8 if you would like to ask your question.

9 MINORITY CHAIRWOMAN HANBIDGE: Thank you,
10 Chairwoman.

11 I'm not sure if I just wrote down what you said
12 incorrectly but I have some slight confusion about the court
13 sort of taking the factors related to ongoing indications or
14 ongoing investigations as they relate to sexual or physical
15 abuse.

16 Typically, as my practice has indicated, when
17 there is an ongoing either investigation or specific
18 criminal case related to the abuse of a child, the courts
19 don't actually hear testimony on those issues because it
20 would violate the Defendant's Fifth Amendment Right against
21 self-incrimination. So they don't usually touch it. But
22 where I've seen it in practice is that then there is
23 automatically supervised visitation or no visitation
24 granted. Am I correct? Am I understanding that you want to
25 have that be part of the civil record? Because I think that

1 would put courts in a quandary.

2 MS. DANIELLE POLLACK: No. It would apply for
3 cases that have concluded.

4 MINORITY CHAIRWOMAN HANBIDGE: Thank you.

5 MS. DANIELLE POLLACK: You're welcome.

6 MAJORITY CHAIRWOMAN KLUNK: Thank you,
7 Chairwoman.

8 I'll turn it over to Representative Kinkead.

9 REPRESENTATIVE KINKEAD: Thank you.

10 I just have a quick question. When it comes to
11 presumption of supervised visitation, I think that we are
12 all very much aware that abusers frequently take advantage
13 of the system and actually have their victims accused and
14 even charged with domestic violence. And the way that this
15 bill is written, if the Court finds by a preponderance of
16 the evidence that a party has subjected the child or any
17 household member to abuse, there is the presumption.

18 Doesn't that further open the gate to actually
19 having these children removed from the protecting parent and
20 put into the custody of someone who is potentially an abuser
21 or taken entirely out of the custody of both parents?

22 Doesn't that effectively punish the person who has been
23 abused and is arguably trying to bring this to light?

24 MS. DANIELLE POLLACK: I'm not sure. Are you
25 saying that if there's a finding of abuse on the record or

1 present risk of harm to the child, are you asking if that
2 would -- how that would adversely impact the protective
3 parent?

4 REPRESENTATIVE KINKEAD: Yes. Because based on
5 how this law is written, potentially there could be a
6 finding by the preponderance of the evidence that the
7 protecting parent is also responsible for the abuse.

8 MS. DANIELLE POLLACK: Certainly courts make
9 errors because they are not adequately prepared or trained
10 or understand the dynamics of family abuse and wrongly
11 accuse the protective parent. That does happen in certain
12 cases. There's no way to perfectly legislate, which, of
13 course, is generally for individual cases of that nature.

14 REPRESENTATIVE KINKEAD: So wouldn't a better
15 solution be an intensive training program for judges to
16 ensure that the court -- that potentially -- this is not the
17 solution to this, but it is ultimately that we need to be
18 providing more robust training to all of our judges?

19 I will say in Allegheny County, our family court
20 judges are very often the first stopover for new judges
21 before they're on their way to civil court or criminal court
22 and very often do not get the adequate training that they
23 need. So shouldn't that be the legislation?

24 MS. DANIELLE POLLACK: The legislation does call
25 for that. As I said previously, you cannot legislate

1 training in Pennsylvania as you can in some states, so it
2 recommends it. And as I said, there have been many
3 conversations with AOPC which I think were productive. And
4 I think they're, you know, open to such training but that's
5 something that, you know, cannot be legislated. It's
6 recommended.

7 I don't think that it should be one or the other.
8 I don't think that it should be, you know, just training or
9 just more emphasis on abuse and history of abuse. We know
10 now, yes, there are 16 equally weighted factors. And
11 sometimes some of those factors are in contradiction with
12 one another. And so, for example, the friendly parent
13 factor is what's referred to -- and many states have this --
14 it really requires domestic abuse victims to demonstrate
15 that they are friendly and cooperative and collaborative
16 with their abuser.

17 So that is one of the 16 factors. And so what
18 happens oftentimes in these cases is, yes, there's an abuse
19 factor. And then abusers will use the factor that requires
20 the victim to be friendly with the abuser and they
21 counteract one another. And so we think that there should
22 be more emphasis on the circumstances that lead to abuse,
23 looking at the child welfare findings, looking at criminal
24 convictions, looking at Protection From Abuse Orders,
25 because now that stuff is too frequently sort of

1 counterbalanced with friendly parenting and some of the
2 other factors and the abuse gets lost. And so what you have
3 is an outcome of an order of shared parenting. And what
4 happens is that children continue to get sent into harm's
5 way.

6 REPRESENTATIVE KINKEAD: Thank you.

7 MAJORITY CHAIRWOMAN KLUNK: Thank you.

8 I hate to keep this moving but I truly appreciate
9 your testimony.

10 Thank you so much for joining us today.

11 MS. DANIELLE POLLACK: Thank you.

12 REPRESENTATIVE KINKEAD: And thank you for
13 providing a little bit of a different perspective that was
14 needed. So thank you so much for that.

15 With that, I am going to call up Deanna Dyer, who
16 is the Policy Director at the Pennsylvania Coalition Against
17 Domestic Violence, as well as Andrea Levy, who is the Legal
18 Director for Pennsylvania Coalition Against Rape.

19 If they can please join us. And I ask you to
20 please -- we're running a little bit behind. We knew that
21 this was probably going to happen. But if you can keep it
22 super succinct and brief and just hit the high points. We
23 have your written testimony.

24 You can begin as soon as you're ready.

25 MS. DEANNA DYER: Thank you so much, Chairwoman

1 Klunk, and thanks to Chairwoman Hanbidge and the rest of the
2 Committee for inviting me here to testify to you today about
3 SB 78.

4 My name is Deanna Dyer. I'm a survivor of
5 gender-based violence, a domestic violence advocate, and an
6 attorney with 16 years invested in the movement to end
7 gender-based violence. I currently serve as the Policy
8 Director at the Pennsylvania Coalition Against Domestic
9 Violence. The Pennsylvania Coalition Against Domestic
10 Violence, or PCADV, is a member-based organization of 59
11 local domestic violence service providers who offer a
12 variety of services, including crisis counseling and safety
13 planning, as well as emergency safe housing.

14 PCADV also provides funding for 17 civil legal
15 representation projects which provides direct legal
16 representation to victims of domestic violence on an array
17 of cases, including family law and custody cases, housing,
18 immigration, and other civil legal matters.

19 We know that litigation can play a vital role in
20 helping a domestic violence victim obtain safety. Although
21 some victims seek safety through the Protection From Abuse
22 Act, or the PFA, many others seek safety through other types
23 of judicial relief, such as an adjustment of immigration
24 status, spousal or child support, or commonly through a
25 child custody order. For a parent, and especially for a

1 domestic violence victim who is a protective parent, the
2 death of their child is their absolute worst nightmare.

3 The circumstances surrounding the death of Kayden
4 Mancuso are especially tragic and difficult to process. We
5 admire Kayden's mom and protective parent, Kathryn Sherlock,
6 for her incredible resilience, strength, and brave advocacy.

7 Far too often, legal systems make already
8 dangerous situations worse by failing to recognize the
9 complex dynamics of domestic violence. While research
10 indicates that domestic violence is a leading risk factor
11 for the likelihood of child abuse and neglect to occur, it
12 also indicates that one of the most important protective
13 factors is a child's relationship with a safe parent.

14 Protective factors, such as a child's
15 relationship with a safe parent, are conditions that can
16 increase well-being and health outcomes as well as mitigate
17 risk to families and children. In order to keep children
18 safe, courts must understand the crucial connection between
19 domestic violence victim safety and positive outcomes for
20 children.

21 The lack of judicial understanding of this
22 crucial connection leads to a dangerous reality. Family
23 court is often weaponized by abusers as a powerful tactic to
24 continue asserting power and control over a victim. Custody
25 reform is necessary and PCADV understands that SB 78 is

1 intended to be that reform. But unfortunately, as currently
2 drafted, the bill does the opposite of its intent and if
3 enacted will instead have a detrimental impact on the
4 well-being of victims of domestic violence and their
5 children.

6 As such, PCADV is seeking five amendments -- or
7 amendments to five areas of the bill. The first is PCADV
8 feels strongly that courts should not use the existence of a
9 PFA order, whether issued pursuant to an evidentiary hearing
10 as indicated in Factor 2.2 or pursuant to an agreement as
11 indicated in Factor 2.4, as an independent factor of
12 consideration in a custody determination.

13 The first reason is because the inclusion of
14 consensual PFA orders will quell those agreements, thereby
15 reducing victim safety. Being required to relitigate the
16 underlying facts of a consensual PFA at a future custody
17 proceeding not only gives Defendants much less incentive to
18 agree to those orders, it will also cause retraumatization
19 to victims and their children and they are forced to relive
20 and relitigate each underlying fact of their PFA order.

21 Moreover, this takes the decision of whether or
22 not to raise these facts away from the victim. As the
23 custody statute stands now, a victim has the choice about
24 whether or not to testify about a PFA order entered into by
25 consent. SB 78 eliminates that choice and would force

1 victims to testify about them. We firmly believe at PCADV
2 that this decision should remain with the victim.

3 In addition, this provision leaves behind the
4 majority of abuse victims who are not in possession of such
5 an order and leaves judges to believe that without evidence
6 of a PFA order, abuse must not have occurred.

7 Finally, evidence of a PFA, whether entered into
8 pursuant to an evidentiary hearing or an agreement, is
9 already admissible evidence in a custody hearing to
10 establish the existence of abuse. As many others have spoke
11 to already, we know that abuse is already a factor that's
12 given weighted consideration in determining custody under
13 current law.

14 The real issue here in Pennsylvania is not the
15 admission of PFAs, whether entered into with findings of
16 abuse or without findings of abuse, as evidence of
17 establishing that abuse occurred, but rather it's a lack of
18 judicial training and education that equips judges with the
19 knowledge needed to assign appropriate weight to that
20 admitted evidence of abuse as to its impact on child safety.

21 Second, PCADV believes that training programs
22 should include the statewide coalitions as subject matter
23 experts. The largest issue jeopardizing the safety of
24 domestic violence victims and their children in family
25 courts is a lack of judicial training and education on the

1 dynamics of domestic and sexual violence and its nexus to
2 child abuse. Research shows that the presence of domestic
3 violence is one of the biggest indicators of child abuse.
4 There is a 30 to 60 percent overlap in child maltreatment
5 and domestic violence.

6 As I previously stated, research also indicates
7 that one of the most important protective factors to lessen
8 the likelihood of children being abused or neglected is the
9 child's relationship with the safe parent. Further, the top
10 policy recommendation offered by scholars on vulnerable and
11 protective factors for child abuse is -- and I'm quoting
12 from the literature here -- continued training for
13 professionals who interact with children and families to
14 recognize and assess maltreatment based on cutting-edge
15 research on vulnerability and protective factors. Because
16 the literature on vulnerability and protective factors has
17 been anything but static, trainings must be updated as
18 research continues to identify vulnerability and protective
19 factors as well as complex interactions among those factors.
20 Training professionals to identify children who are at risk
21 of abuse or who have been abused, therefore, must capture
22 the complex relationship between risk factors, end quote.

23 Consistent with research and our experience and
24 expertise working with victims of domestic violence and
25 their children, PCADV urges the Legislature to include

1 language in SB 78 that requires judicial consultation with
2 the federally designated state-level experts on domestic
3 violence and sexual assault when developing curriculum to
4 educate the Judiciary on these issues.

5 Third, SB 78 should include a mechanism to
6 establish funding for battering intervention programs and
7 professional supervised visitation. SB 78 currently creates
8 an unfunded mandate by requiring the use of these programs,
9 which are vastly underfunded and entirely unavailable in
10 many regions of the Commonwealth.

11 It is uncontested that utilization of these
12 programs positively impacts the safety for domestic violence
13 victims and their children. The domestic violence service
14 providers that we work with at PCADV would love to offer
15 these services but limited funding means only a small
16 handful can actually afford to do so.

17 One of our member programs who is able to provide
18 supervised visitation, Centre Safe in Centre County,
19 requires approximately \$170,000 a year to fund their
20 program. This includes two full-time and four part-time
21 staff member s as well as their facility costs. And even in
22 a community with access to those resources, the Child Access
23 Center is operating on a waiting list and is searching for
24 additional funding to hire another full-time staff person.

25 The lack of funding for and availability of these

1 programs dovetails into another area of continued concern,
2 the explicit requirement that courts shall be presumed to
3 only allow supervised physical custody. The combined effect
4 is a legal presumption forcing the use of underresourced and
5 often wholly unavailable supervised visitation centers,
6 leading to a reality where many parents, especially those of
7 low and moderate incomes, will be completely suspended from
8 contact with their children.

9 This leads me to our fourth area that we would
10 like to see revised, which is the rebuttable presumption of
11 supervised physical custody that we think should be omitted.
12 PCADV understands the intent behind this provision and we
13 fully support that intent. In an ideal world, this solution
14 would make sense. But realistically, data shows that this
15 legal presumption will unintentionally cause catastrophic
16 harm to the victims of domestic violence and their children,
17 especially those who are the most marginalized and already
18 experience the most barriers to obtaining safety, protective
19 mothers who live below the poverty line and are Black,
20 indigenous, and people of color, or BIPOC.

21 Research shows families below the poverty line
22 are three times more likely to be substantiated for child
23 maltreatment. Economic disparities and historical systemic
24 disadvantages have fueled disproportionate child welfare
25 system involvement among families of color. Here in

1 Pennsylvania, Black children represent 35 percent of
2 Pennsylvania's foster care population despite accounting for
3 just 13 percent of children across Pennsylvania.

4 Yet again, the lack of training and understanding
5 of the complex dynamics of domestic violence and its effect
6 on child safety means the child welfare system too often
7 mischaracterizes victims as abusers, especially protective
8 mothers who are BIPOC. This is particularly concerning
9 considering that we know the loss of a caring parent is an
10 adverse childhood experience that's correlated with many
11 negative impacts on mental health, medical, socioeconomic
12 outcomes even throughout adulthood.

13 We know this isn't the intent of this provision,
14 yet its implementation could harm the very children and
15 families the bill seeks to help. As such, PCADV recommends
16 omitting the bill's presumption of supervised physical
17 custody.

18 Fifth and finally, thank you, PCADV opposes
19 adding the misdemeanor crime of simple assault to the
20 expanded list of crimes that a court must consider in
21 custody determinations. Just like the child welfare system,
22 the criminal legal system tragically mischaracterizes
23 victims of domestic violence as abusers far too often.

24 The prevalence of this miscarriage of justice led
25 to the founding of the National Clearinghouse for the

1 Defense of Battered Women in 1987. Between 2015 and 2019
2 alone, the clearinghouse received over 3,300 requests for
3 assistance from domestic violence victims charged with
4 crimes and/or their defense teams. Most frequently, these
5 cases involved women who were charged with crimes, including
6 assault, after defending themselves against their abuser
7 partners.

8 Moreover, adding simple assault will exacerbate
9 the effects of racial bias in Pennsylvania's court systems
10 where Black people are incarcerated at 7.3 times the rate of
11 white people, and Latino people are incarcerated at 2.8
12 times the rate of white people. Given the legal system's
13 criminalization of victims of domestic violence and its
14 embedded racial bias, adding simple assault to the custody
15 statute will result in disproportionate harm to BIPOC
16 victims of domestic violence.

17 I just want to conclude by expressing deep
18 gratitude from the entire staff at Pennsylvania and our
19 member programs for the opportunity to provide feedback on
20 such an important piece of legislation. This is certainly a
21 topic that I think we all agree demands diligent attention.
22 And we look forward to continuing to work with the bill
23 sponsors, Committee members, as well as other stakeholders
24 on refining the language to steward a bill that's truly
25 protective of victims of domestic violence and their

1 children while also holding abusers accountable.

2 Thank you.

3 MAJORITY CHAIRWOMAN KLUNK: Thank you.

4 MS. ANDREA LEVY: Good morning.

5 My name is an Andrea Levy. I am a lawyer and the
6 Legal Director at the Pennsylvania Coalition Against Rape's
7 Sexual Violence Legal Assistance Project. We are known as
8 PCAR and we represent and partner with the network of 46
9 Rape Crisis Centers that serve all 67 counties in the
10 Commonwealth of Pennsylvania. Rape Crisis Centers provide
11 trauma-informed therapy, counseling, safety planning, and
12 advocacy to victims and their family members.

13 Last year, this network served over 25,000
14 victims of sexual violence, provided school-based training
15 to over 160,000 students, and provided prevention training
16 to over 37,000 community members and professionals. Most
17 notably for the purposes of this hearing, our Rape Crisis
18 Center served 6,649 child victims of sexual abuse last year.

19 I'm here today representing PCAR and the Rape
20 Crisis Center's current position on Senate Bill 78, also
21 known as Kayden's Law. I want to begin by extending our
22 sincere care and compassion to the family and loved ones of
23 Kayden Mancuso. We grieve for the violent and tragic murder
24 of Kayden by her father while she was in his custody in
25 2018. We all realize what happened to this child is

1 unimaginaire.

2 Children also endure sexual abuse in our
3 Commonwealth and it is unfortunately common. PCAR and our
4 centers address these types of assaults nearly every day.
5 The overwhelming majority of children that are assaulted are
6 assaulted by someone that they or their family knows.
7 Family members perpetrate up to 30 percent of these
8 assaults.

9 So it is clear that family courts are uniquely
10 situated to have the potential to play a critical role in
11 addressing child sexual abuse and to protect children. Our
12 centers have evaluated the potential impact of this bill and
13 while we have consistently applauded the intent of Senate
14 Bill 78 from its inception, we cannot lend our full support
15 to this bill because of its unintended yet harmful
16 consequences that are likely to have a disproportionate
17 impact on families of color and families that can't afford
18 to access the professionally supervised visitation services
19 that this bill mandates.

20 Professionally supervised visitation centers are
21 not widely available in Pennsylvania, as we have already
22 heard during this hearing. Yet they are mandated in this
23 bill where the court finds that there is an ongoing risk of
24 abuse to the child. These centers simply aren't available
25 in many Pennsylvania counties. And where such service does

1 exist, it can be expensive and involve long waiting lists.
2 We know that poverty disproportionately impacts families of
3 color and individuals with histories of trauma and abuse,
4 putting professional supervised visitation, out of reach for
5 them.

6 Without the existence of this type of
7 professionally supervised visitation the reality is the
8 protections in this legislation cannot be implemented for
9 many of Pennsylvania's children. PCAR feels this
10 legislation should protect all children, not just those
11 children in wealthier families or families that live in a
12 certain zip code that have geographic access to
13 professionally supervised visitation centers.

14 Therefore, we are opposing Senate Bill 78 unless
15 it is amended to identify and establish specific funding for
16 professional supervised visitation to ensure all children
17 and families can access safe visitation services when it is
18 presumed under this same bill that those services are
19 required to protect a child.

20 The second point that we are seeking an amendment
21 to was just spoken about by Deanna. We also believe, as
22 does PCADV, that the bill should be amended to specifically
23 include the statewide coalitions working to end sexual
24 violence and domestic violence to deliver the ongoing
25 education and training for judges and other court personnel

1 who handle custody cases. We are the federally and state
2 recognized coalitions and subject matter experts in the area
3 of child sexual abuse. We serve thousands of victims and
4 conduct prevention for hundreds of thousands of individuals
5 in our communities each year.

6 In partnership, we believe that our training
7 which is evidence based and is currently already used to
8 train law enforcement officials, prosecutors, and teachers
9 will uniquely equip family courts in recognizing and
10 addressing sexual violence and to improve safety for
11 children and their families. Based on our expertise and our
12 collaborations throughout the Commonwealth, we know that
13 when we work together we are more successful in addressing
14 harmful myths and misperceptions about victim behavior.

15 And we can mobilize this knowledge with the
16 Judiciary to prevent sexual abuse and violence and support
17 children and their families in obtaining safety in custody
18 matters.

19 MAJORITY CHAIRWOMAN KLUNK: Thank you, ladies,
20 for your testimony.

21 Let me just check to see if there are any
22 questions.

23 Chairwoman Hanbidge, I don't see your hand.

24 MINORITY CHAIRWOMAN HANBIDGE: Nothing from my
25 end. Thank you.

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MAJORITY CHAIRWOMAN KLUNK: Thank you.

Thank you so much for joining us today. And thank you for the good work and training that both of your organizations do to make sure that those in our community are aware of domestic violence and sexual violence. And I do believe that -- I think the theme -- one thing that we can all at least agree on that we've heard of is that there's more training that needs to be done.

And I think both of your organizations are uniquely positioned to assist with that. I look forward to seeing where that goes. I know, as has been said before, we cannot legislate that. But hopefully the AOPCA -- I know that they are here and listening. Hopefully, this is the beginning of a potential conversation about how your organization can help them be better judges so that we can have a better system for our children.

So thank you.

MS. DEANNA DYER: Thank you.

MS. ANDREA LEVY: Thank you.

MAJORITY CHAIRWOMAN KLUNK: With that, we'll move on to our next testifier, Frank Cervone, who is the Executive Director at the Support Center for Child Advocates.

Frank, if you would come up, please.

If you would like to come up, Susan, that is

1 perfectly fine. I would just ask if you can keep your
2 remarks very succinct. If you can each keep it to under
3 five minutes, that would be fantastic.

4 Thank you.

5 And so we have Frank Cervone and Susan
6 Pearlstein, who is the 2022 Chairwoman of the Philadelphia
7 Bar Association Family Law Section.

8 Thank you both for joining us.

9 MR. FRANK CERVONE: Now I'm live. How about
10 that. Nobody ever has any trouble hearing me.

11 The Support Center for Child Advocates -- I'm
12 Frank Cervone. I'm the Executive Director of the Support
13 Center for Child Advocates.

14 We are the Philadelphia lawyer volunteer program
15 for abused and neglected kids in Philly. We're the largest
16 and oldest volunteer lawyer program in the country. We
17 represent in a non-COVID year about 1,100 kids a year,
18 mostly in dependency child welfare proceedings, but also in
19 domestic relations proceedings and in criminal cases
20 involving kids as victims.

21 For more than 44 years we've served as a resource
22 to this Legislature and its staff. And I thank you again
23 for the invitation to serve in this role once again. When
24 asked, we attempt to offer to you a balanced, candid, and
25 constructive assessment of what our children need and how

1 we're all doing for our kids.

2 The Support Center for Child Advocates joins many
3 other child and family advocates in urging the General
4 Assembly to proceed with caution in consideration of the
5 child custody legislation known as Kayden's Law. Contrary
6 to its intended effect, Senate Bill 78 will, in fact, work
7 to the detriment of the well-being of children involved in
8 custody proceedings.

9 It's no accident you're hearing today from
10 leading domestic violence, rape crisis, child advocates,
11 legal aid organizations. We represent these folks, the
12 kids, the protective parents. These are our clients and
13 these are our missions. We're all committed to the
14 well-being of children and families.

15 We recommend that the bill be substantially
16 amended and not move forward in its current form. As
17 professionals focused on the advocacy for and representation
18 of kids and Children and Youth and with a long history of
19 child protection and well-being, we want to offer a
20 child-centered frame. That's what I do for a living. We
21 represent kids. We only represent kids. So we kind of
22 start and end with where is the story from the perspective
23 of the child.

24 Senate Bill 78 works an unworkable schema of
25 presumptions and conditions for supervision of custodial

1 visits. We think that's going to severely interfere with
2 healthy parent-child relationships. And there are lots more
3 healthy parent-child relationships than there are unhealthy
4 ones thankfully.

5 And by the way, I've severely redacted. I
6 scratched all of my comments because of the hour.
7 Obviously, as you said, you have my remarks.

8 I want to suggest that the protections will be
9 used against protective parents. That's the way the game
10 gets played. Child custody litigation is brutal. It's
11 ugly. Most lawyers run from it. It's no wonder that judges
12 leave family court except for the wonderful ones we heard
13 today who have, you know, quite literally been there, many
14 of them, their whole professional careers. Most people run
15 from this stuff and with good reason.

16 That's because the laws which are all built to
17 protect kids and to serve in the best interest of the kids
18 often are used to the detriment of kids and certainly
19 protective parents. You heard my colleague, Ms. Dyer, say,
20 the results could be catastrophic. She's not overstating
21 it.

22 The proposed finding very specifically about
23 ending supervised visits, we have a big problem, the same
24 problem you have heard over and over again about presumptive
25 supervised visits. It's just terrible. Switching them off

1 is just as problematic. A proposed requirement from the
2 court to conduct annual reviews and to make a finding of no
3 risk prior to ending professional supervision is only
4 facially attractive and will be problematic to administer
5 and, as you heard from Judge Clifford at the beginning,
6 virtually impossible to satisfy for most litigants.

7 To make a clinical judgment that a party no
8 longer poses a risk of abuse, a psychologist or evaluator
9 would have to conduct extensive clinical interviews,
10 parent-child observations, and psychological testing. These
11 evaluations can cost \$5,000 or more, with additional fees
12 for in-court testimony. You don't get to bring in a
13 professional opinion, you know, with a piece of paper. We
14 lawyers have to bring proof. And that proof has to come
15 with certified experts who are qualified and are available
16 for cross. That costs a lot of money.

17 Somebody referenced a \$10,000 custody case.
18 Private custody cases cost \$50,000 and that's why. How many
19 indigent working-class litigants will be able to afford that
20 kind of proof and for any person with a history really of
21 any is it even possible to definitively define the absence
22 of that history? It's kind of what it means the whole
23 mechanism around working from an indicated report of
24 physical and sexual abuse itself, again facially attractive.
25 You would think it's a really good idea to work from our

1 colleagues' findings over in the child welfare system that
2 whenever they have gone through the process of indicating a
3 case, that ought to be enough.

4 What's not being presented to you is, it's a low
5 bar. I'm a child advocate. We use the low bar. We like
6 the low bar. You built the low bar. Why? Because child
7 protection comes first. The house is burning. The first
8 thing you do is you grab the kids. You don't worry about
9 the windows you're breaking. You don't worry about whose
10 house it is.

11 But there's all sorts of danger when you come
12 hard like that. We know that in child welfare. And so
13 there have to be corrections along the way. This mechanism
14 says, you've got an indicated case bound by substantial
15 evidence, man, it gets a life all its own. We think that's
16 really problematic.

17 It's only ironic that the cost associated with
18 the bill, as identified in your fiscal note, actually the
19 Senate's -- we don't put it on you -- is the, quote, minimal
20 government cost of some additional training programs for
21 judges, hearing officers, and lawyers for children. In
22 reality, the emotional and financial cost to the family
23 members and the kids involved in custody disputes for
24 continuing litigation, legal representation, supervised
25 visit fees, the loss of work from having to come back to

1 court, are all likely to be exponentially increased by this
2 litigation.

3 I call your attention to the Pennsylvania
4 Dependency Benchbook, a really good document. Judge
5 Foradora was very involved in its creation, along with a lot
6 of other really good judges. It provides the playbook for
7 dependency practice. We didn't have that until about nine
8 years ago. And it's a really good resource. It's probably
9 now in its third edition. See, very expansive.

10 The stuff on presumed visitation is really
11 useful. It should be presumed that visitation is
12 unsupervised unless there's a safety reason that requires
13 supervision. And a parent may not be denied visitation
14 except for when there is a grave threat. Grave threat is
15 the legal standard. That's way higher than the standard we
16 are talking about here.

17 In 2013, the custody statute was amended to
18 require the court to ascertain and consider whether any
19 party had a history of child abuse findings or involvement
20 with child protective services. I was involved with many of
21 your colleagues in writing this bill. This revision had
22 precisely the effect intended by 78, to bring the history of
23 abuse into the custody case but without the mandate for a
24 specific custodial condition or the deprivation of judicial
25 discretion. Rather than automatically and severely

1 restricting visitation when the history is discovered, this
2 bill will be revised, should be revised, to include further
3 study about the effectiveness of that 2013 report. We
4 really want further study in a bunch of different areas.
5 And that's where I'm going to close in a second.

6 But first I want to say this to be clear: We
7 want to be clear that a well-intentioned concern for child
8 safety is not always benign, let alone salutary. In my
9 business, they put wings on our backs. Oh, here comes the
10 child advocate. He's the angel. Oh, you do such good work.
11 I can't believe you do good work. Right. It's not always
12 like that.

13 It's well known that Children and Youth Agency
14 interventions can sometimes be misplaced and even harmful.
15 The better game is to pick the right case, the case that
16 needs the help, that needs the protection, that come with
17 the finely nuanced motor skill, not the blunt instrument.

18 On the factors, you've already heard plenty about
19 it. I'd only say this -- two correctives for my esteemed
20 colleague from a minute ago -- the factors are simply not
21 equally weighted. It's not the way they're written. It's
22 not the way they work. It's not the way they're
23 administered. In my business, think about it this way: The
24 parent who has sexually abused a kid isn't ever going to see
25 that kid. Are there any other 15 factors that we consider?

1 No. They're all listed, as Judge Clifford said. Nothing
2 requires the friendly parent to work with the unfriendly
3 parent except when it's in the interest of the kid through
4 the protection of everybody. Okay. That's the way the work
5 is done.

6 On the criminal convictions and simple assault,
7 there's several crimes of cruelty added in the bill that
8 make perfect sense. But I just caution you. I so wanted to
9 let one of your colleagues -- it sounded so reasonable that
10 you would add simple assault to the list. Think of the tens
11 of thousands of Pennsylvanians who have some sort of simple
12 assault on their record.

13 I sat in the bleachers of my ten-year-old
14 grandson's football game on Saturday. There's a guy behind
15 me screaming like crazy. We've all been there. Right. If
16 we were in a setting where both teams' parents were in the
17 same stands, somebody would have gotten sued. Both of those
18 people would have come away with a simple assault. And then
19 three months from now, both of those guys, and we'll just
20 put it on the men for now, because God knows most women
21 wouldn't be so untoward, both of those guys, cases in
22 custody court would cite their behavior at a children's
23 ten-year-old football game, right? That's the way we play
24 custody work.

25 One must recall there's no case management

1 structure or staff in the domestic relations system, similar
2 to what you see at Children and Youth cases. All of the
3 supervision case monitoring enforcement, the one thing that
4 was missing in Kayden's underlying case, was a case
5 management structure. But it simply doesn't exist.

6 So what is a judge supposed to do? The proposal
7 here, you never see your kids until you can come with your
8 own case management structure. You can come with your own
9 supervision. And if you don't come with all of that, you're
10 not seeing your kid alone.

11 I'll finish by saying, in calling for a better
12 piece of legislation, meaningful child-centered research,
13 increased resources and sensitivity of the unintended
14 consequences and impact on thousands of children and
15 families, we do not mean to dishonor Kayden nor diminish the
16 tragic outcome of a child's life. You can be assured, I've
17 been in this conversation for two years. I'm now the
18 subject of a lot of heat on Facebook generated by this
19 community. That's not what we want. I don't think I
20 deserve it, but it's not really for me to decide that.
21 People are entitled to their feelings. All I can tell you
22 is, we all agree that children and their well-being should
23 be the heart of the matter.

24 Thank you.

25 MAJORITY CHAIRWOMAN KLUNK: Thank you, Frank.

1 And, Susan, if you can proceed. And if you could
2 keep it brief, we would appreciate it.

3 Thank you.

4 MS. SUSAN PEARLSTEIN: Thank you.

5 I'm not going to read from my testimony to keep
6 it brief, but I will just say good morning and thank you for
7 having me. My name is Susan Pearlstein. I am an attorney
8 at Philadelphia Legal Assistance. Philadelphia Legal
9 Assistance provides civil legal services to low-income
10 residents of Philadelphia. I've been practicing law at
11 Legal Aid for 23 years. And prior to that, my first job out
12 of college was as a child protective service social worker
13 in Montgomery County and then I went to law school. I've
14 been representing survivors of domestic violence for all
15 these years.

16 I'm going to -- this is not in my testimony but
17 I'm going to tell you a story. When I was a brand-new
18 lawyer, I had a case in which I was representing a young
19 teen mom who was leaving an abusive situation with her
20 baby's father. The baby was seven months old. We went to
21 court for a Protection From Abuse. And during that hearing,
22 the judge was really busy. And in Philadelphia we have
23 about -- we have two judges every day that do the PFA
24 hearings. There is often 70 cases on their list. And
25 that's for PFA, not custody, which I will talk about in one

1 second. The judge needed us to hurry up, get our stuff
2 done. The dad was willing to agree to supervised visits.
3 He identified his mom that he lived with as a potential
4 supervisor. My client agreed. And on the very first -- not
5 the very first. I think it was the second time he had the
6 child he asked his mom to go mail a letter. He shot himself
7 and he shot the baby. This was 20-some years ago and I
8 think about that baby all the time.

9 So you would think that anything, anything that
10 could possibly protect children in child custody cases I
11 would want to happen. But I am opposing this bill for all
12 the reasons that you heard my esteemed colleague Frank and
13 the advocates from PCAR and PCADV do.

14 It has been basically my life's work in a way to
15 help judges in custody cases understand the dynamics of
16 domestic violence and understand the impact of witnessing
17 domestic violence on children when they are not even the
18 ones who have been actually physically, verbally, or
19 mentally abused, that just the existence of domestic
20 violence in the home greatly impacts the child. It is a
21 parenting choice made by the perpetrator of the abuse which
22 diminishes the other parent's ability to parent. And it
23 greatly has a negative impact, as we all know, on children.

24 Even so I have to oppose this bill for all the
25 same reasons, the presumption and the imposition of

1 supervised visits. In Philadelphia where I practice, about
2 80 to 90 percent of the litigants are unrepresented, meaning
3 they have to go to court in custody cases, Protection From
4 Abuse cases, and representing themselves.

5 What my organization does is we take the most
6 serious cases, the cases in which there has been child
7 physical, sexual abuse or abuse of a parent or another
8 family member. Those are the cases in which we represent.
9 We can't represent all of them.

10 When we're talking about the court needing to do
11 a thorough review of all these cases and the 16 factors,
12 this statute already covers everything -- the current
13 statute already covers everything that the judges need to
14 do. The 16 factors like has been discussed are weighted.
15 They are not all equal. If somebody is shown to be a risk
16 of harm to the child, the standard is grave threat of harm
17 to take away all their rights to access of their children.

18 Judges have those tools. And they have the
19 ability to restrict somebody's physical access to a child
20 and impose safety restrictions. The problem with the
21 presumption, like everyone else has said, is that it is an
22 unfunded mandate. In Philadelphia our supervised visitation
23 site has been closed since March of 2020. March of 2020.
24 And it is still not open. There is no other safe visitation
25 and exchange site in the city. Not one.

1 There are some in the surrounding counties and
2 their cost is extremely prohibitive for all of my clients
3 who are indigent and for the majority of people that live in
4 Philadelphia, as Philadelphia has one of the highest rates
5 of poverty in the country for a large city and the highest
6 of people living in deep poverty.

7 So it was closed during COVID and it remains
8 closed during COVID but even that was not proper
9 supervision. So we do need funding for safe exchange and
10 visitation sites, and not just for visitation, for
11 exchanges. Many, many, many occurrence of abuse and
12 violations of protection orders happen when parents are
13 exchanging their children. Even at the court, supervised
14 nursery sites, I have had clients be harassed in line by
15 their abuser, followed by their abuser.

16 One guy stood out in front of the car when the
17 protective parent was trying to leave, followed her to the
18 garage. There's all kinds of things like that that happen.
19 We need safe exchange and visitation sites in Pennsylvania
20 throughout the state.

21 I was also going to talk about how the
22 presumption is and will negatively impact survivors of
23 domestic violence. What Mr. Cervone was talking about about
24 dependency and the correlation between dependency cases and
25 custody cases, that needs to be studied as well. That's one

1 of the things that we really need to look at, because as it
2 stands now, there are different standards in dependency.

3 I'm litigating a case right now where a father
4 was given custody of a child through a dependency case
5 because the mother was being investigated for an injury that
6 happened to another child of hers with a different father.
7 There was no -- the dependency court does not have to go
8 through the 16 factors and can say we're going to withdraw
9 this complaint of dependency. We're going to withdraw this
10 dependency petition and give custody to the other parent as
11 the willing and able and safe parent.

12 The things that are looked at in the custody
13 statute were not looked at in that case. And the child was
14 given to the father, who at the time had and still does have
15 strangulation and aggravated assault charges against him for
16 abusing the mother. And now I'm trying to get that child
17 back for her in a custody case.

18 And the reason why I'm telling you this is
19 because it has taken her over a year and a half and we are
20 not even in court yet. She has been trying to get into
21 court and have a judge look at his convictions -- I mean his
22 charges for aggravated assault and strangulation and to do
23 the evaluation that is already contemplated in the current
24 statute. So if you have a charge of any of these crimes,
25 aggravated assault -- well, strangulation has been added --

1 you have to -- the court is supposed to evaluate whether or
2 not you are a current risk of harm. And I'm saying this
3 because this is already in the statute and it's already so
4 difficult to get the court to look at that.

5 And what I'm saying is, if you are adding on
6 another presumption for the court to have to look at and
7 then a review a year later, it's going to take years and
8 years for these people who have had their custody suspended
9 and only have supervised time with their child to get into
10 court and then have to undo this rebuttable presumption
11 without understanding how to do it and how do you show
12 you're no longer a risk of harm to a child? Right.

13 In order to get these evaluations done, litigants
14 have to pay for them themselves. We have one court. We
15 have no court psychiatrist -- psychologist in family court
16 in Philadelphia right now because they haven't hired one to
17 replace the one that left. There's been no one doing these.
18 Litigants that have to have these evaluations -- many
19 litigants want a psychological evaluation on the imposing
20 party even if they don't have the criminal convictions and
21 that's very difficult to do and it can cost up to -- at the
22 bottom it's like \$200 to \$250 for these very, very minimal
23 evaluations that really don't tell you that much.

24 Right now they are like impossible to get. And
25 you have to get in front of a judge to have the judge even

1 order one. And to get in front of a judge, it often, like I
2 said, will take about a year at times, possibly more. If
3 you have to go back for review again a year later, that's
4 going to backlog the custody cases even more.

5 What we really need are more judges to hear these
6 custody cases. We need the education for the judges and the
7 court staff who are dealing with these people to understand
8 the trauma that people have gone through, that survivors
9 have gone through, that children have gone through.

10 The other point I wanted to make is that as it
11 stands now, the hearings and custody matters to go through
12 these 16 factors and determine all of these things, they get
13 about 20 minutes to a half hour for Mom to testify, for Dad
14 to testify, if there are attorneys, which in most cases,
15 like I said, there are not, to cross-examine, to present all
16 this evidence. It's impossible already as it stands.

17 Adding this presumption would mean that judges
18 could kind of rubber stamp and say, okay. You have an
19 indicated report against you. You are not going to see your
20 kid for a very, very, very long time.

21 I know you want me to stop talking, so I will.

22 MAJORITY CHAIRWOMAN KLUNK: Thank you.

23 MS. SUSAN PEARLSTEIN: You're welcome.

24 I'm happy to answer any questions. And I
25 appreciate you allowing us to testify today.

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MAJORITY CHAIRWOMAN KLUNK: Thank you so much.

And thank you for your passion and the work that you do in Philadelphia and for children.

Frank, we do have a question here from Representative Kinkead.

REPRESENTATIVE KINKEAD: Just a quick question.

You guys have kind of outlined a lot of the issues that you see with the proposed legislation. And I appreciate that. I think that we can all agree that the system right now has some significant problems. So to the extent that, you know, we would not pass this legislation, what is currently available that would or could prevent another tragedy like what happened with Kayden and what has happened with all of these other children that have lost their lives as a result of not having this kind of legislation in place?

MR. FRANK CERVONE: Of course. It's always the right question. And I'd suggest you, when you have some time and stomach, read the proceedings from Kayden's case. It's all available. I've read every page of it. They needed a case management mechanism. And there simply is not one available. He didn't order supervised visits. They were seeing each other for years exchanging custody. Literally he had this stuff going on in his own life. He was a violent guy, whatever, getting into bar fights, biting

1 people's ears off, whatever he was doing. And over here, he
2 was apparently good to his kid.

3 So you have to figure out how do you find the one
4 that matters where the person is not? As Susan has said,
5 custody evaluation mechanisms are not available in most
6 jurisdictions but could be with some resource, a child
7 advocacy in the few cases for contested cases, a lawyer for
8 the kid or a Guardian ad Litem for the kid. But again it's
9 a resource question.

10 Those are the steps that one might take. But in
11 this business, they're all expensive. There's no Federal
12 funding for them. You can't go to Children and Youth and
13 get them because it's not a reimbursable expense. It's
14 entirely on the local and state, you know, tax base.

15 REPRESENTATIVE KINKEAD: So your proposed
16 solution is we have these structures in place. We just need
17 better funding to be able to --

18 MR. FRANK CERVONE: Really, I want to know. We
19 want to know, are they working? Are they working well?
20 This jumps ahead to ask, you know, we say in the law, bad
21 cases make bad law. This was obviously the worst of
22 possible cases. But from my perspective, not because the
23 judge went wrong, certainly not because Mom went wrong,
24 right, a guy went off and did a very, very horrible thing.
25 You can't make law from that. But the Joint State

1 Government Commission has a study process. We ought to be
2 asking the questions that I've outlined in my thing and
3 Deanna outlined in her remarks. There are a number of, in a
4 sense, study questions that might get us from here to there.

5 That's what they did when the factors got
6 created. Right. The factors, the 16 factors bill, was
7 written by -- led by Kathy Manderino, former Representative
8 Kathy Manderino, after a ton of study. Virtually no study
9 -- we're running with a few scraps of data. Let's go study
10 it. Let's find out what we're really doing. What are we
11 doing good for our kids?

12 REPRESENTATIVE KINKEAD: Thank you.

13 MS. SUSAN PEARLSTEIN: And I would also just like
14 to add that having safe exchange and visitation sites would
15 really, really help. It would give the courts a stopgap
16 measure while an evaluation possibly could be done. You
17 know, right now they're saying, oh, well, go figure out a
18 supervisor. Find somebody. Have a friend do it. It's not
19 been working . Right.

20 And even for exchanges, they sometimes have to
21 exchange -- in Philadelphia our judges order all the time
22 for people to do exchanges at a police station. It's not
23 safe. You think a police station would be safe. The police
24 don't have the resources to supervise these exchanges. It's
25 scary for kids. It's scary for the safe parent. It's not

1 good.

2 And the thing about -- I just want to say the
3 thing about the Protection From Abuse, relitigating it,
4 you're not going to relitigate a Protection From Abuse
5 matter if it was done by agreement. But like PCADV said,
6 you're taking away the choice of whether to litigate it now
7 away from the survivor. And we are really, really scared
8 that this presumptive -- that factor would quell any
9 agreements being made at Protection From Abuse hearings.

10 MR. FRANK CERVONE: Look, in your business, even
11 more than in ours, child custody -- legislative action on
12 behalf of kids, they get an engine all their own. We raised
13 all of these issues over in the Senate. And it passed 46 to
14 3 or whatever the number was. It's going to take some
15 courage to stop and to say, we need further study.

16 And we just urge you -- we've come because we're
17 all on the right side of this, objectively speaking. That's
18 what we do. It's who we work for. But unless the House
19 says, we have to put a pause on this and do some study, you
20 know, it's going to happen. And two years from now we're
21 going to be hearing a lot of problems.

22 MAJORITY CHAIRWOMAN KLUNK: Well, Frank and
23 Susan, thank you so much for your testimony. Thank you for
24 your recommendations. And we will certainly keep all of
25 your concerns in mind as we continue to consider this bill.

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Thank you.

MS. SUSAN PEARLSTEIN: Thank you.

MR. FRANK CERVONE: Thank you.

MAJORITY CHAIRWOMAN KLUNK: With that, I'm going to turn it over to our last testifier. We're up against session here.

Helen Casale from the Pennsylvania Bar Association, Family Law Section. You're the Chairwoman of that. We would love to hear your testimony. If you can keep it brief, we would certainly appreciate it. We have your written testimony.

And thank you so much for your patience.

REPRESENTATIVE BRIGGS: Excuse me, Chairwoman. I'm sorry. Could I just -- Chair?

MAJORITY CHAIRWOMAN KLUNK: Yes. Oh, sure.

MR. FRANK CERVONE: Can I interject a little bit?

MAJORITY CHAIRWOMAN KLUNK: Sure.

Chairman Briggs.

REPRESENTATIVE BRIGGS: We have been joined by a non-member of the Committee. Representative Perry Warren, for the whole time he's been very interested in this. I just wanted to thank him for coming.

Thank you, Chairwoman.

MAJORITY CHAIRWOMAN KLUNK: Yes. Thank you, Chairman Briggs.

1 Representative Warren is here. And I know he is
2 very familiar with this bill and has been doing the work on
3 the House side of things with it.

4 So thank you so much for joining us here today.

5 With that, I'll turn it over to Helen.

6 Thank you.

7 MS. HELEN CASALE: Thank you, Madam Chair.

8 And thank you to the other representatives for
9 allowing me the opportunity to speak on behalf of the
10 Pennsylvania Bar Association.

11 I am currently the Chair of the Family Law
12 Section for the 2021-2022 bar year. And as the
13 representative from the Bar Association, I welcome the
14 opportunity to provide you with the family law section's
15 opinion or at least the issues that we have with the current
16 legislation as written.

17 Unfortunately, there are many issues that we
18 have. And fortunately, you have heard from many other
19 testifiers today as to those issues. So going last is a
20 benefit in that I don't have to repeat what everybody else
21 has said. And going last is a detriment in that, now what
22 do I say? So I'm going to do my best to actually take some
23 of the comments that have already been made by those
24 individuals that have testified and kind of respond to those
25 and take into consideration some of the questions that you

1 have already posed and maybe provide some different answers.

2 As you already have my written testimony, I have
3 been practicing family law exclusively for 25 years. I
4 started my practice in New Jersey. And I've been practicing
5 in Pennsylvania for 20 years. I've had the benefit of
6 hearing before Judge Clifford, who testified here before
7 you, and working with Judge Clifford and appearing before
8 Judge Platt, two amazing judges in the counties where I
9 practice, which include Bucks County, where this tragedy
10 occurred; Montgomery County; Chester County; Delaware
11 County; and Philadelphia. So I have quite a bit of
12 extensive background on what happens in the courtroom when
13 we deal with these custody cases.

14 And I kind of want to start, Representative
15 Kinkead, from where you had ended, which was your question
16 about, you know, what is it that we can do then to try to
17 prohibit something like this from happening again? And I
18 think it's a tough answer, which is, I'm not sure if we can
19 ever get the answer there.

20 But I do think what Judge Clifford suggested is
21 the best one, which is we need to work -- and you, as the
22 House, need to work collaboratively, especially with that
23 Joint State Government Commission on Domestic Relations, on
24 what changes need to be made, because I think what you've
25 also heard from everybody today is that changes do need to

1 be made. And that makes sense.

2 The custody factors went into effect in 2013.
3 They have now been in place for years. And we now can take
4 a look at what works and what doesn't work. But I can tell
5 you, as this legislation is written, it doesn't quite work.
6 And let me tell you why. Okay.

7 First -- and I'm not going to go through the
8 presumption because you've heard about that. I'm not going
9 to go through the fact that -- you know, how we define abuse
10 or the history of abuse because you've heard about that.
11 What I do want to start with is the changes to those factors
12 in this legislation, which is where 53281 and how you've
13 incorporated, how the bill incorporates, certain language as
14 it focuses on abuse.

15 No one is saying that we shouldn't focus on abuse
16 and the safety of the children. Not one testifier has said
17 that today. And I do not sit here as a representative from
18 the Bar Association saying that. That should be paramount.

19 However, as a family law practitioner, you have
20 already heard that those factors are not weighted the same.
21 These judges have the opportunity and the ability to take
22 each individual factor and weigh it or look at the
23 importance of it based on the facts that were presented to
24 him or her on that day. And if, in fact, they see that
25 there was a history of abuse, it obviously triggers that

1 factor and it says, okay, now is this something that we
2 should weigh more heavily?

3 Let me give you an example. And this was in my
4 testimony. We had -- I represented a father, a young
5 father, with a young child. The parties were never married.
6 They ended up breaking up. When that happens, as a family
7 law practitioner, we see people acting out. They're
8 emotional. It is difficult for them and they make bad
9 decisions.

10 This father made a bad decision during a custody
11 transition. He put his hands on Mom and it ended up the
12 police getting called. He ended up getting a criminal
13 charge and there was a PFA filed. As a result, we came to
14 an agreement on the custody situation because that was a
15 highly emotional situation. He wanted shared physical
16 custody. He wasn't going to get it. There was an issue
17 that occurred. It included abuse. He wasn't going to get
18 it.

19 Before that there was no history of abuse with
20 this father and mother. There was no history of abuse with
21 the child. After that one incident occurred during the
22 custody exchange, there were no other issues of abuse. No
23 other allegations. Three years later he went back into
24 court and asked to modify that child custody matter to get
25 more time. Again, no history of abuse other than that one

1 isolated incident.

2 Luckily, the judge I was in front of was able to
3 see through what Mom was doing, which was using that
4 particular one incident to try to interfere in this father's
5 relationship with his child. That's what was going on. And
6 if this bill became law at that time, the judge would have
7 had to retry that whole PFA case all over again during the
8 custody trial. So embedded in the custody trial, we would
9 have been having an abuse trial.

10 These judges don't even have the time to do the
11 custody trial let alone another abuse trial on an isolated
12 incident that occurred three years before. This father
13 deserved time with his child. And that's what ended up
14 happening because the judge was able to explore and see what
15 was happening, that it was an isolated incident. It did not
16 happen again. It was never happening before. And the
17 mother was using it to her advantage. That wasn't allowed
18 to happen.

19 My fear is that if Kayden's Law becomes law, that
20 will be what happens. And I believe someone had said -- and
21 I believe it was Ms. Pollack that said there is no way to
22 perfectly legislate an individual case. That's true. But
23 that's what's happening with this bill. We're taking one
24 case that was an extremely tragic situation. No one denies
25 that. It shouldn't have happened. But I'm not sure if this

1 bill was law that it wouldn't have happened anyway.

2 Ms. Pollack provided you with some statistics
3 that I'm not sure were accurate. However, I will tell you
4 that the annual reports from the AOPC show that since 2010,
5 there's been on average 39,500 custody orders that were
6 entered each year or approximately 450,000 as of July of
7 2021. During these 11 years there were four homicides of a
8 child by a parent that occurred during a court-ordered
9 period of custody. Four. There shouldn't have been one.
10 We can all agree on that.

11 But I'm not sure, Representative Kinhead, if
12 there's any change that's ever going to make that go away.
13 I'm just not sure of it. I will say that the cases that
14 were cited by Ms. Pollack, the Huntingdon County case, for
15 example, that occurred during the period of supervised
16 custody. That homicide occurred during supervised custody
17 and the issue had nothing to do with custody. They were
18 actually fighting over some financial issues relating to
19 discovery.

20 The issue as it relates in Erie County, that was
21 an agreed-upon custody order so there was never a trial,
22 which means there was never a determination of what was the
23 custody schedule. The parties agreed on what that custody
24 schedule would be. Again, it doesn't take away from the
25 tragedy. I'm just making sure that you have all of the

1 information in front of you because I don't want bad
2 legislation to be passed when there was a tragic, terrible
3 situation that occurred.

4 I practice every day in those family courts and I
5 see it every day. It is tragic. It is tragic that an
6 individual has to spend twenty to thirty to forty thousand
7 dollars on me to represent them in a contested custody case.
8 When you look at the factors, what this bill does is it
9 eliminates the first factor that is currently there, which
10 is, who is likely to encourage, which parent is likely to
11 encourage the other parent to make sure that they have a
12 relationship with the child?

13 What this bill does is it's taken that factor out
14 and it's embedded it into the abuse factor. Judge Clifford
15 said it. That waters that factor down. Nobody is saying
16 that the safety of a child is not paramount. The custody
17 statute, as currently written, makes safety of a child
18 paramount.

19 But I practice every day. And unfortunately, in
20 custody cases, what parents do is they pit the child against
21 the other parent. They try to include obstacles so that it
22 prevents the other parent from having a relationship. This
23 idea that there is a presumption that parents should be in a
24 relationship with the child, that this unwritten presumption
25 that Ms. Pollack talked about, that's not an unwritten

1 presumption. That's the public policy of our Commonwealth,
2 isn't it? We want parents to have a relationship with their
3 child. But we also want to make sure that the child is
4 safe.

5 I'm not sure that the changes to the custody
6 statute, as currently written, make that happen. That's the
7 problem, I think. And working with an organization like the
8 Joint State Government Commission to get all of the
9 information that you need to revamp what we need to do, I
10 think makes the most sense.

11 I'll just end with some of the other questions
12 that were posed, if I can find them in my notes. I think
13 Representative Ecker, who was here before, had said, how
14 does this change the best interest analysis, this law?
15 Well, just take what I just said. You've just taken one of
16 the most important factors and you've watered it down and
17 included it into the abuse factor. Which parent is likely
18 to encourage a relationship with the child and the other
19 parent? That is paramount when it comes to a custody case.

20 The other question was, Representative Kinkead, I
21 think from you about funding. The focus shouldn't be on
22 funding for the court system. Really the focus that you all
23 need to think about is, how are the parents going to fund
24 this custody case? How are they going to overcome this
25 presumption? because they need a legal expert to do that.

1 What is a presumption? Most of these pro ses who appear
2 before these judges in Allegheny County and Philadelphia
3 County don't have the benefit of counsel. That has to be
4 considered.

5 And then one of the last questions that I'll
6 address and then I'll end my testimony -- thank you very
7 much for the opportunity -- I think came from Representative
8 Hanbidge about, would this create a flood of litigation?
9 And I think the answer is simply yes, that's what it will
10 do.

11 And our judges are already maxed beyond belief.
12 They can't give me two days consecutive on a protracted
13 custody case. They don't have it. It's not there. So now
14 you're going to ask them to somehow miraculously carve out
15 time a year later to review the supervised visitation?
16 First, how does that happen? That can't just be scheduled.
17 You can't just get a date. Somebody has to file a petition
18 in order for that to be had. A request has to be made.

19 In addition, if you're looking at history of
20 abuse, will that now create a flood of petitions being filed
21 when this law is passed to say, hey, my boyfriend or the
22 father of my child, I had a PFA against him. It's now
23 expired. It's five years ago. But that should be
24 considered. I'm going to file a petition. I don't know if
25 that's going to happen. But I think you have to think about

1 that when moving forward with whether to pass this
2 legislation.

3 Thank you so much. I appreciate your time. I
4 know that I was the last of a long day so I appreciate it
5 very much.

6 MAJORITY CHAIRWOMAN KLUNK: We appreciate your
7 testimony. Thank you so much for joining us.

8 And to all of our testifiers, thank you so much.
9 We're coming up on a hard end here because session is
10 getting ready to be gaveled in any second now.

11 So unfortunately, we're not going to have time
12 for questions. But certainly we will follow up with you if
13 we have any.

14 Thank you so much to everyone who has joined us
15 here today. A lot of information to take in. A lot of
16 things to consider regarding this bill. And we just
17 appreciate everyone's attention for the two and a half
18 hours.

19 Thank you so much. We appreciate it.

20 And with that, we are adjourned.

21 (Whereupon, the hearing adjourned.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

Jean M. Davis
Notary Public