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**Testimony before the House Judiciary Sub Committee on Family Law
Public Hearing on Senate Bill 78, Preventing Abuse in Child Custody Proceedings—Kayden’s Law
November 15, 2021
Presented by Andrea Levy, legal director, Pennsylvania Coalition Against Rape**

Thank you Chairs Klunk and Hanbidge, and to the members of the House Judiciary Subcommittee on Family Law, for your leadership in convening this hearing on Senate Bill 78, which at its heart, is a bill that aims to better protect children from violence in the context of child custody determinations throughout the Commonwealth. We know this is a goal we all share.

My name is Andrea Levy. I am an attorney and the legal director at the Pennsylvania Coalition Against Rape’s Sexual Violence Legal Assistance Project. PCAR represents and partners with the network of rape crisis centers that serve all 67 counties in the Commonwealth. Rape crisis centers provide trauma-informed therapy, counseling, and advocacy to victims of sexual violence and their loved ones throughout the Commonwealth. They also engage community members and students in public health approaches to end sexual violence. Last year, the network of rape crisis centers served over 25,000 victims of sexual violence, provided school-based training to over 160,000 students, and engaged over 37,000 community members and professionals in sexual violence prevention. Last year, rape crisis centers served 6,649 child victims of sexual abuse.

I am here today representing PCAR and our organization’s current position on SB 78.

I begin my remarks by extending care and compassion to the family and loved ones of Kayden Mancuso. PCAR grieves for the violent and tragic murder of Kayden by her father while in his custody in 2018. It is difficult, to say the least, to wrap our heads and hearts around this tragedy and the reality that children are harmed by the very people who are supposed to love, protect, and support them.

We are united by a goal to better protect children from sexual abuse and other violence.

We know this violence does not occur in a vacuum. It is influenced by a number of complex factors affecting the safety of children. Stress and isolation are key risk factors for child sexual abuse and other forms of violence throughout the Commonwealth and nation. During this time of COVID, with increased stress and reduced resources for individuals and families, this conversation is of utmost importance.

PCAR respects the prime sponsors of this bill, Senators Baker and Santarsiero, and acknowledges their dedication and hard work to advance this bill over the past two years. We know this legislation comes from the very best intentions and has taken considerable work and time to develop. We have made many strides in Pennsylvania to better protect children from sexual abuse and other violence. PCAR looks forward to continued work to ensure legislation is protective and informed by the best possible data, models, and expertise.

Prevalence and impacts of child sexual abuse:

As you may know, according to the National Intimate Partner and Sexual Violence Study, approximately one in four girls and one in 13 boys are sexually abused before they turn 18. Of women who were raped during their lifetimes, one in three was assaulted between the ages of 11 and 17 and one in nine was younger than 10. The overwhelming majority (91%) of children are assaulted by someone they or their family knows. Family members perpetrate 30% of such assaults.

Sexual abuse is an adverse childhood experience that can create a lifetime of suffering and harmful ripple effects in a person's life—from decreased physical and mental health, to drug and alcohol addiction as a coping mechanism, to interrupted education and employment that undermines the economic stability of victims and their families over time.

It is common for children to wait many years to disclose they have been sexually abused. In fact, studies show victims of child sexual abuse delay reporting until they are in the 40s or 50s. We see the harmful ripple effects of sexual abuse and violence at PCAR and within the legal assistance project. But we know child sexual abuse can be prevented family courts play a unique role in recognizing and addressing such abuses.

Senate Bill 78:

Given the pervasiveness of child sexual abuse, we know family court judges in Pennsylvania are interfacing with victims of child sexual abuse in the course of custody determinations—either as children or as adult survivors who are now parents coming before them. Their decisions have significant impacts on the safety and trajectory of children's lives.

Yet, there is concern that current gaps in Domestic Relations law, as it pertains to custody proceedings, lead to devastating outcomes for children, and more should be done to better protect children.

PCAR and the PA Association of Sexual Assault Centers agree that we should be working together to best equip courts with information, training, and tools that enhance the safety of children and their families. SB 78 represents one pathway toward better protections for children experiencing abuse. This bill aims to improve upon the status quo of family court proceedings in a number of ways, including by strengthening training for court personnel on child sexual abuse, domestic violence and trauma; by requiring a more comprehensive examination of factors that affect a child's safety and well-being when determining custody; and expanding safety considerations when there are findings of abuse or ongoing risk of abuse toward a child, with a rebuttable presumption that supervision is in the best interest of a child in those cases.

PCAR has consistently applauded the intent of SB 78 from its inception. However, we have not been able to lend our full support to this bill because of its unintended, yet potentially harmful consequences that are likely to have a disproportionate impact on families of color and families without economic means to access the services that will be ordered in the bill.

Concerns:

In analyzing this legislation as it has developed, we spoke with the network of rape crisis centers and partners throughout the state. We heard a range of concerns from these partners who work with families navigating custody proceedings throughout the state.

At the center of those concerns are the experiences of families on the margin—families of color and families struggling economically—and how this legislation could unintentionally impact the safety and well-being of children in these families.

More specifically, we carry forward the reality that families of color are over-represented in criminal and child welfare systems due to systemic racism and blocked access to economic resources and sources of support. While African American children represent 15% of the nation's children, they account for 45% of the foster care population and are four times as likely as white children to be in foster care. In Pennsylvania, disproportionality is documented with children who are Black or African American, Latino, or with multiple races having higher rates of referrals to Child Protective Services. We also see at the state-

level data that Black or African American children and children with multiple races are represented in foster care at rates two times that of their rate in the general population.

We also know that poverty disproportionately impacts families of color and individuals with histories of trauma and abuse—making legal representation, custody evaluations, and professional supervised visitation out-of-reach for these families. Furthermore, we know from various studies that tests and evaluations used for these purposes were developed with and for white, middle class families and are not always culturally responsive or reflective of racially and culturally diverse families.

We also heard examples of non-offending parents—especially victims of domestic violence—not being believed and having to then shoulder the burden of court costs and orders for evaluations, counseling, mediation, and supervised visitation. Disclosures of child abuse and child sexual abuse can be discounted or minimized in custody contexts, due to myths and misperceptions about victim behavior. This leaves children and non-offending parents without critical safety mechanisms.

Our concern is that this bill, if enacted, will create two classes of families and children within domestic relations custody determinations—those with resources to leverage legal, clinical, and professional supervision services who may see more favorable outcomes and those without the means to do so.

Professional supervised visitation is cost-prohibitive and geographically unavailable in many Pennsylvania counties. An online directory of such services in Pennsylvania indicates there are approximately 44 centers; however this directory may not be up-to-date or reflective of closures related to funding and/or COVID. Three of the centers are described as serving all of Pennsylvania; 26 are listed as “call for service area,” and the remainder is listed as serving the following: Berks, Lehigh, Cumberland, Perry, Dauphin, Chester, Bucks, Montgomery, Philadelphia, Indiana, Delaware Counties and Scranton. It is unclear if this directory is representative of all professional visitation and custody exchange centers in operation in the Commonwealth. It is also unclear how many of these programs operate in a victim-centered, trauma-informed manner.

Where such services exist, they can be incredibly costly for any family, with hourly rates of \$100 or more. This is unaffordable for most families who do not have these out-of-pocket funds readily available. The lack of available and affordable professional supervised visitation services will result in orders being made by judges that are not realistically possible for most families—particularly geographically remote

families, families of color, and families without the economic means to access the services named in the bill.

The Lehigh Valley rape crisis center had this to say: *“This law does not take into account the cycle of violence that parents can go through with an offender, and by implementing only supervised visits for those who have a past history of abuse against any household member is sure to put a strain on local agencies that provide supervised visitation, as well as create a barrier for those non-offending parents to seek services.”*

The Mercer County rape crisis center had this to say: *“I would like to take this opportunity to share with you the frustrations we are having as to child custody exchanges and supervised visits. Mercer County does not have a supervised visitation nor custody exchange center. I have been working with our President Judge to bring such a center to our county, but we keep hitting funding roadblocks. I have the program ready to go, but the funding is the issue.*

We have had children sexual assaulted during custody exchanges, many of our PFA violations result from custody exchanges, and we had a DV homicide last year during a custody exchange. The victim was shot...when she was retrieving the car seat, and the child was present. As to supervised visits, usually the parties try to pick a mutually agreed upon person to do the supervision, but that can result in many issues as well.”

PCAR is also concerned that custody determinations must be informed by the best available research, information, training, and models to protect children from sexual abuse and other forms of violence. Yet, judicial training cannot be mandated by the legislature. We know judges, custody masters, custody evaluators, guardians ad litem, family lawyers, and other court personnel are not immune from myths, misperceptions, and biases and sexual abuse and domestic violence—none of us are. Yet, these individuals are influencing critical decisions that will impact the safety of children and their families.

Recommendations:

PCAR feels this legislation should protect all children, not just those children in families with the economic means to leverage legal representation and professionally supervised visitation services.

PCAR’s Coalition of rape crisis centers is comprised of 46 rape crisis centers serving all 67 counties of the Commonwealth. PASAC met earlier this year while the bill was under consideration in the Senate to

discuss how SB 78 may affect the clients and families we serve. After thorough discussions of the bill, a majority of PASAC network voted to oppose the bill unless it is amended.

More specifically, we sought an amendment that would identify and establish specific funding for professional supervised visitation to ensure all children and families can access safe visitation services when it is presumed such services are needed to protect a child from harm.

We recommend that professional supervised visitation centers be trauma-informed and victim-centered, with personnel trained in domestic and sexual violence. One such model exists in Centre County, operated by the community-based rape crisis and domestic violence center, CentreSafe. Their director, Anne Ard, provided this quote for the good of the Committee:

“Following a homicide/suicide during a custody exchange in 2007, then President Judge Thomas K. Kistler convened a group of Centre County community members (Centre Countians) working to address and prevent domestic violence to create the Centre Co. Child Access Center. Since 2008, as part of the domestic violence/rape crisis program Center Safe, the Child Access Center has been providing a safe space for parents to exchange custody or have supervised visitation with their children. Following the national Safe Haven model developed in the Office of Violence Against Women in the Dept. of Justice, the Child Access Center provides professional services through staff trained in the dynamics of domestic and sexual violence. These services are provided free of charge to parents (now funded through the Victims of Crime Act, or VOCA). Providing safety for all parties in custody exchanges and during supervised visitation is the goal of the Child Access Center and this is managed through staggered scheduling and screening of participants. Most, but not all, clients are court-ordered to the service.

While not an expensive program to maintain, our program currently has two full-time and four part-time staff, so adequate funding is needed for staffing and facilities. It is critical, however, that programs such as the Child Access Center are conducted within the framework of an understanding of the dynamics of domestic and sexual violence to keep all participants, parents and children, safe. Appropriate judicial training is also a factor in success as is the on-going collaboration between the Child Access Center and the courts, Child Protective Services (and their contracted providers), the batterer's intervention program, and others serving victims of domestic and sexual violence.”

PCAR believes victims of sexual violence and we know false report rates are low for these crimes (between two and eight percent). Disclosures of child abuse—including sexual abuse—and of domestic violence should always be taken seriously whether they occur in the context of custody, divorce, or other proceedings. Judicial training and community collaborations with rape crisis and domestic violence centers can help address these myths and misperceptions.

PCAR feels that Judicial and court personnel training will be most successful if key partners, including but not limited to Coalitions working to end sexual abuse and domestic violence, are explicitly named as training developers and providers. We want this training program to be successful. Since 1975, PCAR has been working with partners throughout the Commonwealth to end all forms of sexual violence and advocate for the rights of all sexual assault victims, as the federally- and state-recognized state coalition. We value our collaborations and know that when we work together, we are more successful in addressing harmful myths and misperceptions about victim behavior and in mobilizing protective factors that can prevent sexual abuse and violence and support children and their families in obtaining support. Training can help equip courts in recognizing and addressing sexual and domestic violence to improve the safety of children and families. This is why it is so important to us that we are specifically named in legislation as one key partner. For these reasons, we sought an amendment in the Senate that would name key partners, including but not limited to statewide coalition against rape or sexual assault, as training developers and providers. Codifying these collaborations will ensure there is consistency in the training program as new research and best practices emerge over time.

Thank you for your time, leadership, and consideration.