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MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Pennsylvania Bikers for Justice

DATE: November 4, 2021

RE: OPPOSITION TO SB 78 P.N. 73 (BAKER) —"Kayden's Law"

On behalf of all the members and supporters of Pennsylvania Bikers for Justice, we ask that you oppose Kayden's Law until it is corrected to include language addressing the concerns listed below.

Pennsylvania Bikers for Justice is a group of community volunteers who have been helping victims of injustices since 1997. The majority of our work is helping children who have been abused. There is no group in Pennsylvania more dedicated to protecting children from abuse. We help children through the court process to make them feel safe. We help with supervised visitations to provide a safe and friendly environment for children. We help by visiting them to lift their spirits when they are depressed, and have helped in many other creative ways when needed. There is nothing we wouldn't do to guarantee the safety of the children in our communities.

During our years of helping children, we have had many face to face experiences with children who have been victims of abuse. These experiences have provided us with insight on how the courts have failed to protect children. This insight is why we believe that changes in the language of Kayden's Law are necessary.

The drafters of Kayden's Law, wrote this bill based on a tragic and very unusual event without considering the many other common risks of abuse children face and without considering the foreseeable consequences the current language of this bill will create.

This sad case where a victim of abuse lost her children demonstrates the need for changes in the language of Kayden's Law. We are protecting the victims identity because we do not believe victims should be exploited.

Over a decade ago, a mother of two young children, was routinely abused by the children's father. He would slap her, push her, and grab her by the throat. However, he never did it in front of the children and she never told anyone about the abuse. One day, while she was being choked by him, she grabbed a bottle and smacked him with it to defend herself. His forehead was cut from the blow and he released his grip from her throat. She ran out the house, jumped in her car, and drove to a friend's house.

Shortly after she left, the man went to the security video recorder and took the tape out and replaced it with an unrewound tape. He then called the police and told them "she assaulted him and that in self defense, he grabbed her by the neck to push her away." The police then secured an arrest warrant for the mother.

After calming down at her friends house, the mother called her children's father to tell him that the relationship was over and she was coming to get the kids and would be taking them to her sister's house. The man told her to "go ahead and come and get the kids" When she arrived at the house the police were there and arrested her. She told the police she was defending herself and she could prove it. She informed the police that there was a security camera in the garage and the video would show she was defending herself. The police asked the husband for the video. He took them inside and gave them a tape from the recorder. He told them that, she was trying to trick them because she knew that the tape was full and had not been rewound, and the incident was not recorded. The police took the tape and left the house.

The mother was taken away by the police. She was arraigned and her bail was set at \$20,000 which she couldn't afford so she was taken to the county jail. The next day, the man went to court and was granted a temporary PFA against the mother prohibiting her from contacting him and the children. A hearing for a final PFA was scheduled for the following week.

Later that same day, the mother's sister bailed her out of prison. As she was being released she was served with the temporary PFA. She stayed at her sisters house and couldn't see or talk to her children until after the PFA hearing.

After listening to the mother and the man, the Judge didn't believe the mother and the Judge granted the PFA. The Judge also stipulated that no contact with the children would continue until a visitation order was granted.

The mother quickly initiated a custody case seeking full custody of the children. After months of not seeing her children and court delays, her husband was awarded full custody and she was given supervised visitation once a week for six months.

Only one month after the mother was arrested, the children's father had a new girlfriend living in the house. The girlfriend had several DUI arrests and was kicked out of her mothers house after she came home drunk and beat her own mother up. The girl friend was helping the father care for the children and she was told by the father, "the children's mother was an abusive psycho." The girl friend then repeatedly said the same thing to the children telling them "their mother was an abusive psycho."

The children went to the supervised visits. The visits were in a strange place and it was very stressful for them. They didn't like to go and they felt like they were going to doctor visits and were eager to leave before the end of the visits. The time away from their mother and the father's girlfriend telling the children "their mother was an abusive psycho" made the children fearful of their mother.

Because the mother couldn't afford an attorney, she was provided a public defender for the criminal charges for assaulting her children's father. The public defender worked out a deal for her to get 2 years probation and convinced the mother not to go to trial and to take the deal.

After the six months were over, the mother was granted unsupervised overnight visits every other weekend. By this time, the children hated their mother and didn't want to go with her. The children's father would regularly tell the mother that the children were sick and couldn't go with her for the visits. The mother brought contempt charges but the Judge sided with the man believing the children were sick.

The visits continued to be disrupted and the mother was never given any more visitation time. When the children did go on the visits with their mother, they spent most the time in their room and didn't speak with her much.

The children had become unruly at home and school. They had developed mental illnesses and were not receiving any treatment. The man's girlfriend would punish the children when they acted up with physical abuse by beating their legs with a belt or smacking them in the face.

Over the next couple years, the mother did everything she could to regain her children's love. But her efforts were futile. Every visit was the same and the children felt they were forced to go on the visits and didn't want to be there.

The father and the girlfriend eventually broke up and a new girlfriend moved in quickly after. She also helped care for the children and was also told by the father "the children's mother was an abusive psycho." However, she didn't repeat it to the children.

About 5 years after the mother's arrest the new girlfriend finds a video tape in the closet while cleaning the house. The video is not marked so she plays it to see what it is. While playing it she sees the mother of the children being choked by the father before she hits him with the bottle. The new girlfriend packs up, leaves the house, and takes the tape with her. The next day she went to the mother's apartment and gave her the tape and explained what was on it.

Now that the mother had the video that proved her innocence, she contacted an attorney to have the conviction overturned and get her name cleared. But sadly, the attorney told her that the new evidence of her innocence could not be reviewed by the court because once she completed her sentence, she was not eligible for Post Conviction Relief. The mother was devastated. She had the evidence to prove her innocence but could not get her name cleared and would have the criminal record the rest of her life.

Before the mother had received the tape, the children turned to heroin to cope with their mental illness. They were teenagers now and were out of control. Because the visits were so infrequent, the mother was unaware her children were on heroin.

Right before one of the scheduled visits, she received a call from her oldest child who told her the younger child had "committed suicide." The mother was crushed and began sobbing. She felt guilty for not being there to prevent this from happening and blamed herself.

A couple weeks later, when the child came for a visit, the mother sat the child down and showed her the tape that proved she was innocent. She cried while telling the child all about the abuse and the wrongful conviction that caused the supervised visitation. The child was shocked and felt terrible for believing all the lies her father told her. The child then told her mother about the beatings the girlfriend gave her and her brother and how the father did nothing to stop it.

The child went home and confronted the father about the tape she'd seen at her mother's. The father wouldn't talk about it and just said he "did what he had to do." The child now 17, told her father she was moving in with her mother and left.

The mother was so happy to have her daughter living with her. They would talk all the time and the mother finally felt loved by her daughter again. Unfortunately, the mother was still unaware that her daughter was addicted to heroin and one morning after waking up, the mother found her daughter in the bathroom dead from a heroin overdose.

Sadly, thousands of other children have suffered tragedies similar to this one and Kayden's Law would not have prevented the tragic outcome but instead would have guaranteed it. Therefore, we ask that the following changes be made to the language of Kayden's Law.

1. Specific language on the actions the court will take when both parents are accusing each other of abuse.

In the above case, both parents accused the other of abuse. It is foreseeable that in custody cases, both parents will claim the other is abusive. For this reason, the language should be precise on how the court will respond when both parents accuse the other of abuse. The missing language creates the concern of children being placed in foster care when both parents accuse the other is a risk of abuse. With this addition to the language, there should also be language indicating there will be efforts to place the children with kin when it's found both parents are a risk of abuse.

2. Specific language concerning the court's consideration of whether a parent's new spouse or partner is a risk to the child.

In the above case, the father's girl friend was an abuser of the children. The father's girlfriend had been arrested for beating up her mother and had multiple DUI arrests. Those factors would indicate that the children would be at risk of abuse being around the girlfriend. It is foreseeable that there will be cases where the parent isn't the risk but the step-parent or partner is. Considering the thousands of tragic cases where a step-parent or parent's partner harmed a child, a law designed to protect children must include language to address this.

3. Specific language that requires mental health treatment for children subjected to supervised visitation.

In the above case, the supervised visitation was uncomfortable for the children and most likely affected their mental health. Over 90% of children who were subjected to supervised visitation developed mental health illnesses. Most of which turned to drug abuse as a coping mechanism. A bill that contains language to use supervised visitation to protect children from abuse should also include language to protect them from the mental health issues they will suffer without proper treatment.

4. Specific language to amend the Post Conviction Relief Act by eliminating the currently serving requirements.

In the above case, the currently serving requirements of the Post Conviction Relief Act, prevented a review of newly discovered evidence that proved the father was the abuser and the mother was innocent. Back in 2013, the late Senator Greenleaf, informed legislators that the currently serving requirements should be eliminated because of cases like this. Yet to-date, the legislators have failed to make this much needed change to the Post Conviction Relief Act. Wrongful convictions are a reality in Pennsylvania and should not be ignored. It is foreseeable that a parent may be falsely accused by an abusive parent and wrongfully convicted resulting in an actual abuser getting full custody. If the state has a duty to protect children from abuse. The state is failing to perform that duty by not eliminating the currently serving requirements.

5. Specific language of grandparents, aunts, uncles, and other kin being included as eligible parties to seek protection for a child at risk of abuse.

In the above case, the abused mother had a sister who was concerned about the safety of her niece and nephew. But there was no mechanism for her to seek court intervention to protect them. It is foreseeable that there will be cases where both parents live with the children and both parents are a risk. A concerned family member should be able to take legal action to protect the children.

6. Specific language on education for parents to recognize all forms of abuse.

Kayden's Law stresses the need for educating judges, but what about the parents? In the above case, the mother was not educated to recognize the signs her children were being physically and emotionally abused. The fact that the children were withdrawn from the mother and would stay in their room during visits were signs of abuse. The girlfriend emotionally abusing the children by telling them "their mother was an abusive psycho" and the physical abuse of being beaten with a belt and smacked in the face was likely the reason for the children's behavior. Because the mother wasn't educated on recognizing signs of abuse, she didn't seek treatment for them which would have likely prevented the suicide and heroin overdose. To ignore this need for parents in custody disputes to recognize the signs of abuse, the state would be falling to perform its duty to protect children.

7. Specific language on waived fees for indigent parents.

In the case above, the mother was indigent and without the financial resources to hire a lawyer to protect her children. Parents should not be prevented from protecting their children just because they are poor. Costs and fees should be waived for indigent parents and a standard form should be made available to pro se parents who don't have the money to hire an attorney.

We don't claim to have all the answers and we do not believe the drafters of this bill do either. But maybe by working together with all the groups in Pennsylvania aimed at protecting children from abuse, a bill can be drafted that would protect a majority of the children who are at risk of abuse. Stakeholders working together has proven to be the best way to produce an effective bill.

"Stakeholder groups can facilitate networking and collaboration, especially when they include experts and leaders from different QI areas. If you engage a broad range of stakeholders early in the QI initiative, you are more likely to have relevant, timely, and actionable results, thus helping to ensure the initiative's success.

By fostering collaboration among stakeholders, your State and other organizations pursuing child health care QI can use available skills and resources more effectively and efficiently." *Engaging Stakeholders*

to Improve the Quality of Children's Health Care Ellen Albritton, Margo Edmunds, Veronica Thomas, Dana Petersen, Grace Ferry, Cindy Brach, and Linda Bergofsky

"On a practical level, stakeholder engagement identifies areas of agreement as well as disagreement and provides an opportunity to understand more fully what might be driving key stakeholder differences. Stakeholder input may also help articulate the values of the broader community affected and align policy recommendations with these expectations."

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4567945/>

For these reasons, we respectfully request the above changes be made to the language of Kayden's Law.

Sincerely,

Bill Ayers
State President

Fredrick Peters

Northeastern Region President

**Chad Berner
North Central Region President**

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