



## Children's Justice & Advocacy Report

To promote community responsibility so every Pennsylvania child is protected from child abuse, including sexual abuse.

### In the December 16<sup>th</sup> edition:

1. [Governor Corbett prepares to sign child protection bills](#)
2. [Seeds for a child-centered definition of child abuse sown well before Sandusky scandal](#)
3. [Broadening yet still balancing who can be a "perpetrator"](#)
4. [Reporting child abuse bills hit a speed bump](#)

2. [Senate Bill 28](#) alters the definition of simple assault and aggravated assault within the Crimes Code (Title 18). Aggravated assault would now be defined as "attempts to cause or intentionally, knowingly or recklessly causes bodily injury to a child less than six years of age, by a person 18 years of age or older." Also included would be "serious bodily" injury (or attempt to cause such an injury) to a "child less than 13 years of age, by a person 18 years of age or older." This bill also amends the Crimes Code to include as a misdemeanor of the 2<sup>nd</sup> degree when a person "intentionally or knowingly makes a false report of child abuse" or "intentionally or knowingly induces a child to make a false claim of child abuse." Finally, the bill defines and sets forth the criminal penalties for retaliation or obstruction related to child abuse reporting. [Senator Pat Browne](#) (R-Lehigh, Monroe and Northampton) is the prime sponsor of SB 28.
3. [Senate Bill 30](#), which was initially known as the "false claims in detention facilities" bill introduced by [Senator Ted Erickson](#) (R-Chester and Delaware), now is a vehicle assuring that there is statewide tracking of "false reports of child abuse" as well as "invalid General Protective Services reports." These reports will be tracked "for the purpose of identifying and tracking patterns of intentionally false reports." The bill also provides for a right to a "timely hearing" for certain appeals of substantiated cases of child abuse resulting in a person being included in the statewide registry.

### Governor Corbett prepares to sign child protection bills

On Wednesday morning, Pennsylvania Governor Tom Corbett is expected to sign a package of child protection bills that at least one media outlet referred to as a "down payment" on improved protections for Pennsylvania's children. On the Governor's desk for signature on Wednesday will be the following bills:

1. [Senate Bill 23](#) amends the Child Protective Services Law (CPSL) to alter the definition of who can be a "perpetrator" of child abuse and to provide for automatic removal of certain juveniles placed on the state child abuse registry.

4. [Senate Bill 34](#) introduced by [Senator Lloyd Smucker](#) (R-Lancaster and York) provides for substantive changes to the Professional Educator Discipline Act. The legislation gives more authority to the PA Department of Education (PDE) to investigate misconduct complaints. Also it broadens the mandatory reporting requirements that a school administrator must relay to PDE when an educator is dismissed “for cause” and would include when an educator resigns for alleged sexual misconduct or physical abuse or was named as a perpetrator of a founded report of child abuse.
5. [Senate Bill 1116](#), which was introduced by [Senator Leanna Washington](#) (D-Philadelphia), renames the multidisciplinary team to the multidisciplinary review team, but the legislation does not alter or enhance its duties. Meanwhile the Investigative Team (often referred to as the Joint Investigative Team) will now be known as the Multidisciplinary Investigative Team (MDIT). It is amended to clarify that the MDIT “shall be used to coordinate child-abuse investigations between county agencies and law enforcement.”
6. [House Bill 726](#) was introduced by Bucks County [Representative Scott Petri](#). It is this legislation that will significantly alter how Pennsylvania defines child abuse.

Pennsylvania is known nationally as a statistical outlier for the number of children who are determined to be victims of child abuse. In 2011, for instance, 1.2 per 1,000 Pennsylvania children were victims of child abuse whereas nationally 9.1 per 1,000 children were victims in 2011.

House Bill 726 is most significant in that places less emphasis on the subjective nature and degree of pain a child experiences before child abuse is substantiated.

Current law defines “serious physical injury” as an “injury that causes a child severe pain.” Also within the definition of serious physical injury is the requirement that the

injury impair a child’s “physical functioning, either temporarily or permanently.”

The new definition includes “causing bodily injury to a child through any recent act or failure to act.” Bodily injury is defined as “impairment of physical condition or substantial pain.” Gone is the reference to severe in terms of level injury or pain experienced by a child before child abuse is substantiated.

Also included in the definition of child abuse would be situations where a person “intentionally, knowingly or recklessly” then engages in any recent acts involving kicking, biting, throwing, burning, stabbing or cutting a child “in a manner that endangers the child.” The new definition also addresses “unreasonably restraining or confining a child” as well as “forcefully shaking a child under one year of age” or “forcefully slapping or otherwise striking a child under one year of age.”

Additional child protection bills are also en-route to the Governor including House Bills 414 (related to consideration of child protection investigations and determinations when a judge is deciding child custody), [321](#) toward enhanced sentencing penalties related to certain child pornography cases and [House Bill 1201](#) that were prohibit the courts from releasing the name of a minor victim of sexual or physical abuse.

### **Seeds for a child-centered definition of child abuse sown well before Sandusky scandal**

When Governor Corbett signs the child protection bills this week, it is assured that many of the remarks of lawmakers and the media coverage will link the bills to the sexual grooming and assaults committed by Gerald Sandusky against so many youth.

Still it is important to set the stage more appropriately and to readjust the lens so that Mr. Sandusky receives far less notoriety or credit.

It is also important to have proper perspective of just how long it has taken for Pennsylvania to move toward enacting state child protection laws that are far more child-centered and protective.

The shocking sexual abuse endured by so many young people at the hands of Mr. Sandusky was the tipping point that finally motivated Pennsylvania lawmakers to create a Task Force on Child Protection inviting objective examination of state laws and the production of comprehensive recommendations. A Task Force first sought by child advocates in April 2011.

Sadly, however, there were many more tragedies woven into nearly two decades of time that assured seeds were sown to finally secure legislation like House Bill 726.

In fact, it was December 1996 when 16-month old Berks County toddler Maxwell Fisher was raped, murdered and discarded as trash. It is in this horrific tragedy that initial seeds were sown.

Maxwell, who was known to two children and youth agencies, had a bright and contagious smile that proved too hard to ignore after his brutal death in December 1996. His death sparked outrage and a number of legislative actions that have, in some way, contributed to the enactment of House Bill 726.

And just as outrage was swirling about Maxwell in late 1996, 4-year-old Ashley Decker was herself becoming known to the children and youth agencies in Blair and Westmoreland Counties. Ashley died in March 1997 from head injuries. Prior to her death, she came into contact with two separate children and youth agencies and twice, including a report made by her pediatrician, she was determined not to be a victim of child abuse.

Twice reports of suspected child abuse were determined to be “unfounded” reports. Unlike the first two, the third report – the report related to her death - was determined to be child abuse.

Included at the end of today’s Report, is a table that traces legislative changes made to the Child Protective Services Law (CPSL) between 1994 and 2012. It shows steps forward, but also serves as a powerful reminder how often our Commonwealth missed the opportunity to sooner – rather than later – better protect Pennsylvania’s children. And there is a list of children who, like Maxwell and Ashley, paid the ultimate price for delaying a child-centered approach to protecting children.

Celebrate we should the enactment of a child-centered definition of child abuse and advancement of other important child protection bills.

Still, celebration should be tempered by the knowledge that in just five years (2008-2012), at least 403 infants and children officially died or experienced a near-fatality due to child abuse injuries. Eighty-three percent involved a child who was 3 years of age or younger and nearly 50 percent lived in a family known to or previously involved with the child welfare system.

The tender age of the children is quite troubling. And the toll is growing. In the first quarter of 2013 (January 1st – March 31st) – 19 Pennsylvania children died or nearly died as a result of child abuse injuries. Ninety-five percent of the children were three years of age or younger and more than 60 percent were in a family known or previously known to the child welfare system.

Celebration should also give way to a fierce commitment that going forward protecting Pennsylvania children will retain urgency and be seen as a shared community responsibility. And finally that decision-making now will be driven by reliable data and that systems accountability will be enhanced.

### **Broadening yet still balancing who can be a “perpetrator”**

[Senate Bill 23](#), which is sponsored by [Senator Lisa Baker](#) (R-Luzerne, Monroe, Pike), reworks the Child Protective Services Law (CPSL) to broaden the definition of “perpetrator.”

Currently the CPSL defines a “perpetrator” as the child’s parent, person responsible for the welfare of the child, the paramour of the parent or a person over the age of 14 living in the same home as the child.

Senate Bill 23 defines a “perpetrator” going forward as:

- A parent of the child;
- A spouse or former spouse of the child’s parent;
- A paramour or former paramour of the child’s parent;

- A person 14 years of age or older and responsible for the child's welfare;
- An individual who is 14 years of age or older who resides in the same home as the child;
- An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

The legislation also provides for a distinction in the definition for those that can be “considered a perpetrator for failing to act” to include:

- A parent of the child;
- A spouse or former spouse of the child's parent;
- A paramour or former paramour of the child's parent;
- A person 18 years of age or older and responsible for the child's welfare; or
- An individual who is 18 years of age or older who resides in the same home as the child.

The bill alters the definition of a “person responsible for the child's welfare” to include “any such person who has direct or regular contact with a child through any program, activity or service sponsored by a school, for-profit organization or religious or other not-for-profit organization.”

“Program, activity or service” isn't defined in Senate Bill 23. It is defined, however, in [Senate Bill 21](#) which is the bill sponsored by [Senator Kim Ward](#) (R-Westmoreland) providing for significant changes to how child abuse is reported. It also was initially included in [House Bill 436](#), which was the reporting bill sponsored by [Representative Todd Stephens](#) (R-Montgomery), but it was removed from that bill leaving it largely a vehicle to address penalties for failure to report. Neither Senate Bill 21 nor House Bill 436 advanced as part of the initial package of child protection bills reaching Governor Corbett.

Senate Bill 23 is also significant in that it includes language to require that the department automatically remove a person from the statewide database (now known as the central registry) if the person was placed on the registry as a juvenile. Removal is generally automatic for juveniles who have reached the age of 21, but is also contingent upon certain conditions which include that the youth

not have been named as a perpetrator in “a subsequent report of child abuse or pending investigation.” Also that the youth not have been convicted or adjudicated delinquent for an offense that would be grounds for denying employment in a child care setting or that the child abuse involved a deadly weapon. Automatic removal is applicable only to indicated reports and would not occur if the person was a sex offender subject to registration.

Once signed by Governor Corbett, Senate Bill 23 would have an effective date of December 31, 2014 and the House [Appropriations Committee has projected that](#) the legislation will “have no adverse impact on Commonwealth funds.”

### ***Reporting child abuse bills hit a speed bump***

The bill to clarify who has a legal duty to report suspected child abuse or what is known as being a person mandated to report suspected child abuse slowed down recently.

Senate Bill 21, which is sponsored by Senator Kim Ward (R-Westmoreland), enumerates the significant list of persons who are mandated reporters. The bill would go beyond current law to include a person – paid or unpaid – who has an “integral part of a regularly scheduled program, activity or service” who has accepted “responsibility for a child.”

The bill retains current law with regard to the basis to report at “reason to suspect,” but makes a significant change requiring that the mandated reporter first make a report to authorities outside of an institution and then notify a designated person within the institution.

Bipartisan lawmakers are attempting to resolve some outstanding issues and finesse the language of the bill in the days ahead.