



## Children's Justice & Advocacy Report

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

November 1<sup>st</sup> edition:

### Unfounded report not equal to false report

In 2012, Pennsylvania child welfare officials substantiated 13.4 percent of the reports of child abuse that were subject to investigation. This rate reflects investigated reports that met Pennsylvania's very narrow definition of child abuse; the remaining 86 percent are referred to as unsubstantiated or unfounded reports.

Specific to actual child victims, data reveals that 1.2 per 1,000 Pennsylvania children were victims of child abuse whereas nationally 9.1 per 1,000 children were victims in 2011.

Pennsylvania's low rate of substantiated child abuse has been framed as indicative of a problem with false reporting versus fundamental flaws in how the state has defined child abuse and who can be a perpetrator of child abuse. Too often it has been **wrongly** suggested, including by some policy makers, that an "unsubstantiated" or "unfounded" report of child abuse is the equivalent of a "false report."

It is important to remember the child at the heart of a 1998 children and youth investigation related to alleged sexual abuse by Gerald Sandusky – this child was determined not to be a victim of child

abuse and to be the subject of an "unfounded report." Today, no one would dare suggest that unfounded report was a "false report."

Federal officials [reported that in 2011](#) there were 2.4 million American children who received a child protective services response (e.g., investigation or assessment) and who were determined not to be a child abuse victim for a variety of reasons, including how child abuse is defined. The federal data further reveals that 0.1 percent of these children were the subject of an "intentionally false" report.

Florida has a law governing false child abuse reports making them subject to civil and criminal penalties. Florida collects and reports specific data indicators to demonstrate the prevalence and disposition of false reports. In 2011, Florida provided a child protective services response to approximately 291,000 children with just over 100 of these children eventually determined to be the subject of an "intentionally false" report.

Beyond anecdotes, Pennsylvania – on the other hand - has no credible data to inform a debate about the frequency of intentionally false child abuse reports.

The push toward criminalizing false child abuse reports in the Commonwealth is occurring even as the state remains in the national spotlight - not for false reports of child abuse - but rather for flaws in state reporting laws, including permitting those who fail to protect a child to escape appropriate accountability.

High profile criminal cases related to failure to report child abuse and protect children have

recently impacted well-established and respected institutions, including the Archdiocese of Philadelphia, the Boy Scouts of America and Penn State University.

The stark reality is that Pennsylvania's children have remained incredibly vulnerable to victimization through the years not as a result of a plague of false reports, but rather a failure by some adults to speak up so that the abuse can stop.

Among the charges from the Pennsylvania General Assembly to the Task Force on Child Protection in December 2011 was to restore "public confidence" in our child protection system. Doing so will require that policymakers develop public policy based on reliable data and that – first and foremost – they urgently act to correct well documented flaws in the state's defining and mandatory reporting child abuse laws.

### **Pennsylvania studied and reported on false reports in the 1990s**

In 1994, the Pennsylvania General Assembly addressed false child abuse reports as part of comprehensive changes to the Child Protective Services Law (CPSL). In [Act 151 of 1994](#), the General Assembly directed the Department of Public Welfare (DPW) to undertake a study "to determine the extent of the reporting of suspected child abuse in this Commonwealth where the reports upon investigation are determined to be unfounded and to be knowingly false and maliciously reported or it is believed that a minor was persuaded to make or substantiate a false and malicious report." DPW was required to provide the General Assembly and Attorney General with a report of its "findings and recommendations" by June 1, 1996 toward reducing the "incidence of knowingly false and malicious reporting."

This study was completed in partnership with the University of Pennsylvania, School of Social Work. The "primary objectives" of the study were:

1. "Determining the extent to which unfounded reports of child abuse were knowingly false and maliciously made; and
2. Determining the advisability of the adoption of a protocol for screening anonymous referrals of suspected child abuse to include corroborating information prior to beginning an investigation."

A final report was issued in 1999 and the findings, according to DPW testimony, "found no absolute standard for determining whether a case is knowingly false or malicious." It was determined, however, that the topic "warranted further attention and an informed systematic response." Among the recommendations were "development of a clear definitional standard of knowingly false reports to assist in case identification, incorporating the "concept of false reports" into child welfare training and "increased use of expert consultation and multi-disciplinary review of potential false reports." From there DPW "incorporated into intake and investigation training" a "broad range of possible indicators of false reports." These indicators generally related to "custody or neighborhood disputes or "multiple unsubstantiated referrals by the same person related to the same family," or those with "retaliatory undertones."

### **Pending Pennsylvania child protection bills attempt to track and criminalize false reports**

As of August 2012, the [Child Welfare Information Gateway](#) notes that 29 states addressed false reports "within their civil child protection laws" for persons who "willfully or intentionally" make a false child abuse report. Meanwhile, 19 states make false reporting a misdemeanor or similar charge. A number of contiguous states to Pennsylvania (e.g., Delaware, Maryland, and New Jersey) do not address false reporting in their statutes.

A number of bills advancing in the Pennsylvania General Assembly address "intentionally false" reports of child abuse, including House Bill 1045 and Senate Bills 24, 28 and 30. The bills amend either the Child Protective Services Law (Title 23) or the Crimes Code (Title 18). Amendments to the CPSL require a "subfile" of persons who make false reports in the state child abuse registry and Title 18 changes make the filing of an "intentionally" false report a crime punishable with up to 2 years imprisonment and a \$5,000 fine.

**House Bill 1045** and **Senate Bill 28** amend the Crimes Code (Title 18) to include false reports of child abuse. House Bill 1045 includes this language:

§ 4906.1. False reports of child abuse.

A person commits a misdemeanor of the second degree if the person knowingly or intentionally makes a report of child abuse that is false or induces a child to make a false claim of child abuse under 23 Pa.C.S. Ch. 63 (relating to child protective services) for any of the following purposes:

- (1) Harassing, embarrassing or harming another person.
- (2) Personal financial gain.
- (3) Acquiring any right under 23 Pa.C.S. Ch. 53 (relating to child custody).
- (4) Personal benefit in any other private dispute.

Meanwhile **Senate Bill 28** states: “Any person who intentionally makes a false report of suspected child abuse against a person, school employee, private residential rehabilitative institution employee, detention facility employee or child-care services employee commits a misdemeanor of the second degree.”

**Senate Bill 30** amends the Child Protective Services Law a “subfile” in the statewide central registry of child abuse related to “persons who made an intentionally false report of suspected child abuse under 18 Pa.C.S. § 4906.1 (relating to false reports of child abuse), including the name of the subject child, which shall only be made available to law enforcement, the department or the county agency investigating new allegations of suspected child abuse at child-care services, facility or school to determine the existence of a pattern of false reports of suspected child abuse on behalf of any one person or subject child.”

Finally, **Senate Bill 24** stipulates that the identity of a person making a child abuse report is not protected and may be shared with law enforcement in the course of an investigation involving false reporting of child abuse under the Crimes Code. This legislation also addresses how child abuse investigations should proceed (e.g., children and youth only, law enforcement only or a joint approach). **Senate Bill 24**, however, doesn’t directly speak to the issue of false reports and how they are to be investigated and determined to be “Knowingly or intentionally” false. This seems particularly important since it is children and youth services – within the scope and parameters of the CPSL that determines if “child abuse” occurred while law enforcement investigates whether a crime was committed.

### **Approach may have the unintended consequence of minimizing child safety**

In April 2010, DPW testified before a Pennsylvania House Judiciary Committee on House Bill 1575 addressing false child abuse reports. DPW testified to the “potentially chilling effect” of the legislation on individuals required or encouraged to report suspected child abuse.

Among the unintended consequences of a false reporting bill, according to DPW, was that a reporter “would be more likely to feel a need to conduct their own investigation prior to making a report to be sure a child is being abused.” The department concluded, “A call received through our ChildLine and Abuse Registry Intake Unit could be what saves a child from severe abuse, or even death. The terminology false report versus unsubstantiated report is confusing to the non-specialists and ordinary citizens may be deterred from reporting potential abuse if they fear they will be subject to civil and criminal penalties. We are very concerned individuals will stop reporting suspected abuse.”

Outside of the “induces a child to make” language, **House Bill 1045** bears a [resemblance to the law in Florida](#) (as did the recommendation from [Pennsylvania's Task Force on Child Protection](#)) including the language related to reports that are made for the purpose of “harassing or harming another” or “acquiring custody.” Florida statute further stipulates:

*“(7) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.*

*(8) If the department or its authorized agent has determined during the course of its investigation that a report is a false report, the department may discontinue all investigative activities and shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01. During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law*

*enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.”*

the unfolding emphasis on false reports might lead to too many cases, particularly where there are also outstanding child custody issues, to readily be screened out based on perceptions without properly assuring child safety or an objective examination of the facts.

Florida statute has required the Department of Children and Families report to the legislature “discrete data elements” “including the number of “suspected false reports,” the number of such reports that warranted a “higher level of review by management and/or legal counsel” as well as the number of such reports “referred for criminal prosecution.”

	FY 09- 10	FY 08- 09	FY 07- 08	FY 06- 07	FY 05- 06
Suspected false reports	172	177	118	139	143
# Referred to law enforcement	24	27	33	34	58

Pennsylvania House Bill 1045 and other pending state legislation does not model the [Florida statute](#) with regard to outlining specific duties and responsibilities for the Department of Public Welfare and/or county children and youth agencies “to determine whether a false report of child abuse” has been made.

House Bill 1045 and other bills also do not articulate how law enforcement is engaged to determine whether a criminal violation related to false reporting of child abuse has occurred. Substantiating “child abuse” is a civil process determined solely by DPW or a county children and youth agency so, in practice, will law enforcement become aware of an “intentionally false” report only as a result of direct communication and referral from child welfare authorities?

Among the issues not fully vetted or understood is whether the unfolding approach on false reporting could not only influence mandatory reporting, but also impact child safety. It seems conceivable that