



## Children's Justice & Advocacy Report

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

# Child Protection Check-up

What got done  and what didn't get done 



### ASSAULTS AGAINST CHILDREN

[Senate Bill 28](#) (Senator Pat Browne),

increased the penalties for simple assault and aggravated assault of a child. With regard to simple assault, the legislation now captures offenses committed a perpetrator who is 18, 19 or 20 year olds. Aggravated assault now involves the serious bodily injury of a child under the age of 13 by any person 18 years of age or older. The legislation also increased the grading of aggravated assault when the child is under the age of 6 and the perpetrator is 18 years of age or older.

**SB 28 = Act 118 of 2013** (effective January 1, 2014)

constitute a ban – permanent or temporary – from working or volunteering with children.

The General Assembly tackled background checks requirements via two pieces of legislation: House Bills 434 and 435.

[House Bill 435](#) (Representative Dan Moul) will have a direct impact on paid employees and volunteers.

By the end of 2014, employees having contact with children as well as foster and adoptive parents will be required to have comprehensive background checks – checks that will have to be updated every 3 years. Impacted will be:

1. An employee of child care services
2. A foster parent
3. A prospective adoptive parent
4. A self-employed family day-care provider
5. An individual 14 years of age or older applying for a paid position as an employee responsible for the welfare of a child or having direct contact with children
6. An individual seeking to provide child-care services under contract with a facility or program
7. An individual 18 years of age or older residing in the home of a foster parent or



### BACKGROUND CHECKS

The Task Force on Child Protection's recommendations

released in November 2012 sought to require comprehensive background checks for all persons having "contact with children" regardless of whether that contact was in a paid or unpaid capacity.

The Task Force also intended to strengthen and clarify current law, identifying what should

prospective adoptive parent for at least 30 days in a calendar year

8. School employees

Required background checks include:

1. PA State Police Criminal History Record Information (\$10 cost).
2. Child Abuse History certified by the department as to whether the person is named as a perpetrator of an indicated or founded child abuse report (\$10 cost).
3. Federal Criminal History Background Check (with submission of fingerprints at a cost of \$28.75).

The legislation provides some limited grandfathering related to employees, foster and adoptive parents with existing background checks.

An employee, foster or adoptive parent with valid background checks - completed within 36 months of the effective date of House Bill 435 (December 31, 2014) - will be in compliance with the law. Updated background checks for these individuals will have to occur within 36 months of the most recent certification. However, if the current certifications were completed before December 31, 2011, then new checks will be required within a year (December 31, 2015).

Meanwhile, volunteers will be required to obtain background checks beginning July 1, 2015 and then have such checks updated every three years. Volunteer are subject to the three checks outlined above (e.g., PA State Police, Child Abuse history and FBI). However, a volunteer may be relieved of undergoing the FBI check if they have lived in PA continuously for the last ten years.

New checks will be required when an employee begins employment "with a new agency, institution, organization or other entity that is responsible for the care, supervision, guidance or control of children shall be required to obtain a new certification of compliance."

Other provisions in House Bill 435 require that notice be given to employers (or foster care agencies or an agency engaging volunteers) when a person has been arrested or convicted

of a criminal offense or named as a perpetrator of child abuse in the statewide database. The person must notify the employer or volunteer agency within 72 hours of the arrest or conviction. Failure to disclose this information can result in a misdemeanor of the 3rd degree and can lead to discipline including termination or denial of employment or becoming a volunteer.

It was this provision that resulted in negative votes within the PA House.

House Bill 435 took much longer than most child protection bills to reach Governor Corbett's desk, in part, because of outstanding concerns about what should prove a disqualifier for employment or volunteering with children.

Lawmakers decided to avoid the issue for now. Opting instead to require that the Department of Human Services (DHS), Department of Education and the PA Commission on Crime and Delinquency (PCCD) "analyze and make recommendations on employment bans for those having contact with children in the Commonwealth." This study must offer recommendations on changes in permanent and temporary employment bans and the appeals process. This report is due to the PA General Assembly no later than December 31, 2015.

Left intact, for now, is the current legal requirements that a person cannot be hired (or now be permitted to volunteer) if the person has been convicted of certain crimes (e.g., homicide, sexual crimes, endangering the welfare of children). Also where the applicant has, within the last five years, been convicted of a felony drug conviction or been named as a perpetrator in a founded child abuse report.

Another enacted bill – [House Bill 434](#) – requires comprehensive background checks for school employees, including student teachers, who are not subject to background provisions within the Public School Code.

**HB 434 = Act 45 of 2014** (some provisions effective immediately, the remaining on 12/31/14)  
**HB 435 = Act 153 of 2014** (background checks provisions for employees effective 12/31/14, those for volunteers 7/1/2015)



## **CHILD PORNOGRAPHY**

[House Bill 321](#) (Representative Marcy Toepel) provided for sentencing enhancements in child pornography cases that have “aggravating circumstances” (e.g., age of the child or number of images).

**HB 321 = Act 105 of 2013** (effective January 1, 2014)



## **CHILD PROTECTION OMBUDSMAN (AKA CHILD ADVOCATE)**

Pennsylvania children, youth and families benefit from child-welfare services delivered by public and private providers as part of a state-supervised and county-administered system that has many strengths. Still, too often the child welfare system does not function as needed to effectively assess and assure the safety of a child as well as guard the rights of parents, children and alleged perpetrators.

Decisions made and public resources spent have a profound impact on the safety, liberty and custody of children and families.

Mechanisms to respond to child-welfare complaints or to report concerns about specific decisions for an individual child or a class of children exist within the Department of Human Services (DHS), the county child welfare agencies and their contractors.

This approach directly impacts the opportunity for objectivity and independence as well as impacts public confidence in this system.

When the Task Force on Child Protection released its recommendations in November 2012, Chairman David Heckler offered some insight as to why the Task Force opted against recommending an independent state-level Office of Child Advocate or Child Protection Ombudsman. The explanation was that since decisions are made locally and the county children and youth agency is under the jurisdiction of a local board of commissioners; there are ample local mechanisms where complaints can be lodged and resolved.

The ability to call the county CYS administrator and/or the County Commissioners have merit, to

some degree, in that all operations should have quality assurance mechanism as well as complaint resolution. However, even if such efforts were to exist (and that is questionable in every county), they would remain insufficient if the goal is to have an independent place to have a flag raised, a bell rung louder, especially in a system as consequential – in dollars and lives – as child welfare.

The rationale against recommending an Ombudsman in PA also overlooked that there are 9 states (California, Colorado, Minnesota, New York, North Carolina, North Dakota, Ohio, Virginia) including Pennsylvania that are state supervised and county administered or implemented. And some of these states have created – in statute or administratively – an independent advocate/ombudsman.

Representative Scott Petri (R-Bucks County) has routinely introduced legislation to create such an independent office. [House Bill 116](#) would have established a Children’s Advocate within the Office of PA’s Attorney General (OAG). The person tapped to serve as the Advocate would have to be confirmed by the PA Senate and operated with the following “powers and duties:”

1. To receive, process and investigate complaints under this subchapter.
2. To pursue legislative advocacy in the best interests of children.
3. To examine policies and procedures utilized by administrative agencies, including investigatory protocols, reporting systems and emergency response procedures.
4. To identify and make appropriate recommendations to the Governor, the General Assembly, the Supreme Court and the Attorney General concerning issues affecting the welfare of children.
5. To identify and make appropriate recommendations to the department regarding uniformity of procedures utilized by administrative agencies.

**Inaction on [House Bill 116](#) means that the legislation died and now requires re-introduction in the next two-year legislative session (2015 - 2016).**



## **CHILDREN'S ADVOCACY CENTER DEDICATED FUNDING STREAM**

[House Bill 316, which was signed into law on April 7<sup>th</sup>](#), that is projected to bring \$2.86 million in annual funding to further the child-centered, coordinated and specialized interventions that occur as part of a Children's Advocacy Center or to further the investigative work of Multidisciplinary Investigative Teams (MDITs).

Legislation to develop a dedicated funding stream for CACs was first introduced in 2004.

House Bill 316 increases the cost of a certified birth certificate from \$10 to \$20 beginning July 1<sup>st</sup>. Initially the revenue generated, which is expected to be \$3.813 million annually, will be directed to the Department of Human Services (formerly known as the Department of Public Welfare) for training of mandated reporters and other child abuse costs related to implementing the comprehensive child protection reforms enacted in 2013 and 2014. Beyond the initial year, 75 percent of the funding or about \$2.86 million will annually be directed to CACs/MDITs and the remaining \$950,000 (give or take a little) will remain available to DHS for training of mandated reporters or other child abuse related costs.

[House Bill 89](#) (Representative Ron Marsico), which was also signed on April 7<sup>th</sup>, repealed a part of the state vehicle code that authorized the sale of DARE (drug abuse resistance education) specialty license plates. Revenue remaining in this restricted account will be directed to the PA Commission on Crime and Delinquency (PCCD) to help fund CACs. Approximately \$410,000 remained in the DARE account.

CACs/MDITs will not go without until July 2015, because the recently enacted 2014-2015 state budget ([House Bill 2328](#)) along with the budget implementation bill ([House Bill 278](#)) included a total of \$2,250,000 for CACs. Within that appropriation, \$250,000 was earmarked by the PA Senate for a mobile CAC.

In addition, federal Children's Justice Act (CJA) dollars are supporting CACs/MDITs and the Pennsylvania Chapter of CACs/MDITs. DPW and PCCD have also announced a mini-grant program where MDITs can apply for up to \$10,000 to build or enhance local MDITs.

**HB 316 = Act 28 of 2014** (effective July 1, 2014)  
**HB 89 = Act 27 of 2014** (effective June 7, 2014)



## **CHILDREN'S JUSTICE ACT TASK FORCE**

Among the recommendations of the PA Task Force on Child Protection in 2012 was to statutorily create the Children's Justice Act (CJA) Task Force. They noted that such a task force was not only required by federal law but had great value in that it "would bring real-world experience to the discussion of future child protection policy." It was also envisioned as "providing technical assistance and conducting review of actual cases."

House Bill 316, while creating a CAC Advisory Committee, is silent about the required CJA Task Force and whether it will continue to function and, if so, how its work and role is similar to or in conflict with this newly created CAC Advisory Committee housed within the PA Commission on Crime and Delinquency (PCCD).

In 2006, Act 146 assured Pennsylvania became fully compliant with the federal Child Abuse Prevention and Treatment Act (CAPTA). With full CAPTA compliance achieved, Pennsylvania became eligible for a share of federal prevention dollars as well as Children's Justice Act (CJA) funding.

CJA provides states with funding intended "to improve the investigation, prosecution and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim." PA annually receives approximately \$570,000 in CJA funding.

Among the funding priority areas: child sexual abuse, child abuse fatalities and near-fatalities, and tackling the added complexities present when responding to an abused child with

physical or intellectual disabilities or serious health problems.

This federal funding comes through the Victims of Crime Act (VOCA) specifically the Crime Victims Fund which collects fines, forfeitures and special assessments charged of persons convicted of federal crimes.

States are required to maintain a state level CJA Task Force and to initially and then every three years conduct “a comprehensive evaluation of the State’s systems related to the investigative, administrative and judicial handling of child abuse, neglect and exploitation cases and child maltreatment-related fatalities and make recommendations for improvements to those systems.”

States are required to document that the state established CJA Task Force conducted a comprehensive review and evaluation of the state’s “Investigative, administrative and both civil and criminal judicial handling of cases of child abuse and neglect, including child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities....” The assessment requires documentation that a study was conducted as well as identify all Task Force recommendations “adopted and/or comparable alternatives designed to carry out the purposes of the Act.”

Pennsylvania submitted its latest CJA application and 3-year assessment in May 2014. This application and final assessment was submitted to federal officials without having been vetted or approved by the CAPTA/CJA Task Force.

PA’s CJA Task Force is also the state’s CAPTA Work Group, which has at times included more than 80 people. This CAPTA/CJA Task Force, which is organized and convened at the direction and discretion of the Department of Public Welfare (DPW) now the Department of Human Services (DHS), was last convened in June 2012.

High quality work is being undertaken by a very effective and well-intentioned smaller group known as the CJA subcommittee. However, the agenda, decision-making, including on how to

spend the state’s CAPTA and CJA funding, is entirely driven by the Corbett Administration versus an inter-disciplinary, independent and accountable body that operates with transparent decision-making.

The absence of any objective state-level mechanism to examine child protection decision-making and systems improvement proved a barrier in 2010-2011 when advocates raised concerns about Pennsylvania being a statistical outlier in when it investigates child abuse (e.g., approximately 9 per 1,000 children while nationally the rate is 42 per 1,000 children) and if a child is determined to be a victim of child abuse (1.2 per 1,000 children in Pennsylvania; 9.3 per 1,000 children nationally).

In the absence of an existing state-level objective mechanism to dig deeper, advocates considered the CAPTA/CJA table as an option. A push for study of state statistics and what might be driving the outlier status, including how child abuse is defined in Pennsylvania, was rejected as an area of review and action at this CAPTA/CJA table. This rejection was fueled by DPW’s own resistance.

Advocates turned instead to the PA General Assembly calling for a Task Force on Child Protection and Accountability. Eventually such a task force was created via legislative resolution in December 2011.

**Legislation was never introduced on this front and no administrative action was taken by the Governor.**



## **CUSTODY AND CHILD WELFARE INVOLVEMENT**

House Bill 414 (Representative Bernie O’Neill) was signed into law in December 2013. The legislation addresses the “factors” to be considered by the courts when they are asked to determine a child’s custody.

When custody “of any form” is to be decided by the court, they are to consider whether a child is the “subject of an indicated or founded report of child abuse” or whether a party involved in the pursuit of custody or a member of their household “has been identified as a the perpetrator in an indicated or founded report of

child abuse.” The court should also determine whether a party involved in the pursuit of custody (or a member of the household) have been provided child welfare services (Child Protective or General Protective Services). Also the type and reason for the provision of services to the involved party. The legislation directs the Department of Public Welfare (DPW) and county children and youth service (CYS) agencies to “fully cooperate with the court and assist the court in fulfilling its duties.”

**HB 414 = Act 107 of 2013** (Effective January 1, 2014)



## **DATA, GENERAL PROTECTIVE SERVICES**

**Senate Bill 24** (Senator Randy Vulakovich) was signed into law on April 7th. This legislation requires that the Commonwealth finally track **both** Child Protective Services (CPS) **and** General Protective Services (GPS) reports.

The state’s child abuse registry will be renamed the statewide database and include enhanced information, including tracked GPS reports as well as false reports. Information in this database will not be shared with the general public, but rather is available to and shared with key stakeholders. For instance, information like GPS data will be available to law enforcement as they are investigating a potential crime against a child, but this data will not be available to the public or potential employers.

Senate Bill 24 also provided further clarification about how information should be shared when abuse may have happened in another state, but the victim child and alleged perpetrator are residents of Pennsylvania.

**SB 24 = Act 29 of 2014** (Effective December 31, 2014)



## **DEFINITION OF CHILD ABUSE & WHO CAN BE A PERPETRATOR**

**House Bill 726** (Representative Scott Petri) was signed into law in December 2013 bringing about historic and child-centered change to how child abuse is defined.

Most significant is the lowering of the bar to bodily injury for what can constitute child abuse. Bodily injury results in “impairment of physical condition or substantial pain.” Serious physical injury, which has required “severe pain” and injuries that “significantly impairs a child’s physical functioning,” is eliminated.

Bodily injury will be the standard, as well, in a school setting, which reverses the long practice in Pennsylvania of requiring a higher bar (e.g., serious bodily injury) before a child’s injuries – occurring in a school setting - could be substantiated as child abuse.

Also, certain acts (known as per se acts) which endanger a child – regardless of whether an injury occurs – can be child abuse (e.g., kicking, biting, burning, throwing or forcefully shaking or slapping a child under age one).

And serious physical neglect no longer requires that it be repeated or prolonged, but instead could be a singular egregious event.

Non-accidental is eliminated. Determining child abuse will be linked to whether a person acted (or failed to act) “intentionally, knowingly or recklessly.”

The law retains a parent’s right to discipline their child and other exclusions, including the denial of “needed medical or surgical care” based on a parent or relative - with whom the child resides - having “sincerely held religious” reasons for denying the treatment. This religious exclusion, however, will not apply if the child dies from the withheld medical or surgical care.

House Bill 726 resolves situations where child abuse was documented (often medically diagnosed), but the exact perpetrator could not be determined and thus the report would be unfounded. Going forward a report of child abuse can be substantiated in situations where there are multiple perpetrators or if the perpetrator is unknown.

Also enacted in December was **Senate Bill 23** (Senator Lisa Baker). This legislation expanded the list of persons who can be a perpetrator of child abuse as defined by the Child Protective Services Law (CPSL). Going forward, a

perpetrator will now include a parent's spouse or former spouses, a parent's former paramour as well as relatives (over the age of 18) not living with the child.

The legislation also includes a requirement that if a young person (under the age of 18) is placed on the state child abuse registry (known as the database going forward), generally there should be an automatic removal of the youth at the age of 21 or after five years have elapsed from the youth being added to the database. There are some circumstances that would result in the youth remaining on the registry beyond age 21, including that the report was founded (vs. indicated), the youth was involved in a subsequent incident, the youth is a sexually violent delinquent subject to registration, or a deadly weapon was involved.

**HB 726 = Act 108 of 2013** (Effective December 31, 2014)

**SB 23 = Act 117 of 2013** (Effective December 31, 2014)



## **DUE PROCESS & INDICATED REPORTS**

**Senate Bill 30** (Senator Ted Erickson) was signed into law in December. The legislation provides for timely hearings when a person is pursuing an administrative appeal of a child abuse report that was indicated by child welfare officials. The Bureau of Hearings and Appeals (BHA) must schedule a hearing within 10 days of the request being filed. A hearing date and proceedings would have to be held within 90 days unless all parties agree to a delay. Decisions after the hearing must be rendered within 45 days.

Senate Bill 30 also assured that the level of evidence to retain a perpetrator of an indicated report of child abuse within the statewide database would be substantial. This resolves an outstanding issue that has complicated child welfare investigations after a Pennsylvania appeals court established the threshold at "clear and convincing." With enactment of Senate Bill 30, the evidentiary standard of substantial is affirmed by the General Assembly.

**SB 30 = Act 119 of 2013** (effective July 1, 2014)



## **FALSE REPORTS**

**Senate Bill 28** (Senator Pat Browne), which was signed into law by Governor Corbett in December, amended the Crimes Code to include false reports of child abuse. "Intentionally or knowingly" making a false report of child abuse or "inducing" a child to make a false claim of child abuse is a misdemeanor of the 2<sup>nd</sup> degree.

**Act 118 of 2013** (Effective January 1, 2014)

**Senate Bill 30** (Senator Ted Erickson) was also signed into law in December. This legislation requires that the Department of Public Welfare (DPW) retain "false reports of child abuse" and also required tracking of "invalid General Protective Services" reports within the statewide database to be able to track "patterns" of "intentionally" false reports. However, House Bill 434, which became Act 45 of 2014, removed the language around "invalid general protective services" reports.

**SB 30 = Act 119 of 2013** (Effective July 1, 2014)



## **FOUNDED and INDICATED REPORTS**

For founded reports, House Bill 726 (the larger child abuse definition legislation) expanded the types of judicial adjudications that can serve as the basis for determining a report of child abuse to be a founded report when the alleged child abuse involves the same "factual circumstances" that led to the judicial adjudication. Going forward founded reports can also be determined based on the following:

1. A person is accepted into an accelerated rehabilitative disposition program (ARD),
2. A consent decree has been entered in a juvenile proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters); or
3. A final protection from abuse order has been granted under section 6108 (relating to relief), when the child who is a subject of the report is one of the individuals protected under the protection from abuse order.

Indicated reports, which are determined based on available medical evidence or the children and youth investigation or the admission of the

perpetrator, will now require a review before a final determination is made about substantiating the report and placing the alleged perpetrator in the statewide database.

If it is the county children and youth agency that undertook the child abuse investigation, then a review of indicated reports will need to be done by the CYS administrator (or their designee) as well as the county agency solicitor.

If the investigation was conducted by the regional or state office of the Department of Public Welfare (DPW) then a review by the Secretary of DPW (or their designee) and DPW's legal counsel will be required.

The evidentiary standard for indicated cases remains substantial.

**HB 726 = Act 108 of 2013** (Effective December 31, 2014)



## **INVESTIGATION OF CHILD CARE OR SCHOOL EMPLOYEES**

Since 1994, Pennsylvania law has required that if a report of suspected child abuse involved child care service personnel (broadly defined), the child care agency must implement a "plan of supervision or alternative arrangement" toward ensuring the safety of the child "and other children" who are in the care of the agency. State regulations (55. Pa.Code 3490.56) have included a safety plan if the person who is the subject of the child abuse report at a child-care agency is a "volunteer."

**Senate Bill 1116** amended this section of the CPSL to now make the plan of supervision or alternative arrangement applicable to child-care services and school employees, including an "independent contractor" of the agency or school. Consistent with current law, this plan must be "approved by the county agency and kept on file with the agency until the investigation is completed."

Child-care services includes, but is not limited to, child day care centers, group day care homes, family day care homes, foster homes, adoptive parents, early intervention services for children, and juvenile detention center services

or programs. School is also now broadly defined, including but not limited to, public and non-public K-12 school and institutions of higher education. In addition the definition of school employee now includes a person "who provides a program, activity or service sponsored by a school."

**SB1116 = Act 123 of 2013** (effective March 18, 2014)



## **MEDICAL & CYS SHARING INFORMATION**

**Senate Bill 27** (Senator Bob Mensch) creates a new section in the Child Protective Services Law (CPSL) related to the exchange of information between certified medical practitioners and children and youth service (CYS) professionals.

With the legislation, a certified medical practitioner "shall" provide in a "timely manner" information to the county CYS agency about "circumstances which negatively affect the medical health of a child." The medical professionals would have to provide information as part of the following:

- A child abuse investigation;
- Assessment of a child/family for general protective services (GPS) in non-abuse cases, or
- After a family has been accepted for services by the CYS agency.

Information required to be shared by the medical professional includes:

1. Relevant medical information regarding the child's prior or current health.
2. Information from a subsequent examination.
3. Relevant medical information known regarding any other child in the child's household, when such information "may contribute to the assessment, investigation or provision of services" to the child or other children in the home.

Medical professionals can share this information with CYS without securing the permission of the parent(s).

CYS, meanwhile, shall provide the child's primary care physician or another medical professional with information that includes:

1. The final outcome of a child abuse investigation or GPS assessment, including whether the child abuse report was substantiated (e.g., indicated or founded).
2. Information on an unfounded report, if the medical professional made the report.
3. The types of services, if any, that will be provided or arranged for by the CYS agency.
4. Identification of other medical professionals providing medical care to the child "to allow for coordination of care between medical practitioners."

**SB27 = Act 176 of 2014** (effective December 31, 2014)



## **MULTIDISCIPLINARY INVESTIGATIVE TEAMS**

**Senate Bill 1116** (Senator LeAnna Washington) was signed into law on December 18, 2013. This legislation reaffirms the value of a multidisciplinary approach to responding to and investigating child abuse, which has been a legal requirement for PA counties (e.g., children and youth and the district attorney) since the 1990s.

The legislation renames the current multidisciplinary team to the multidisciplinary review team. It does not alter what the role of this review team is still requiring that it meet "at any time, but not less than annually." Teams are to be convened to review substantiated cases of child abuse and the response of the agency and other agencies providing services to the child.

The legislation also then renames the current Investigative team to now refer to it as the multidisciplinary investigative team (MDIT). This bill adds some clarifying language to the Child Protective Services Law (CPSL) stipulating that the team "shall be used to coordinate child-abuse investigations between county agencies and law enforcement." The recent change

retrained the requirement that the county agency and district attorney develop a protocol for convening the MDIT. The protocol is to be developed toward avoiding "duplication of fact-finding efforts and interviews to minimize the trauma to the child."

Senate Bill 1116 didn't address another team required at the county level – the Act 33 or Fatality/Near-Fatality Review Team. This may well represent a missed opportunity to better outline the distinct role and interplay between the varied required teams (e.g., multidisciplinary review team, the MDIT and the Act 33 fatality/near-fatality review team).

This legislation does address the actions county children and youth agencies are to take when they receive a child abuse report, including that if the investigation "indicates bodily injury" a medical exam may be pursued. Initially as drafted, the legislation permitted that the other children living in the household also be considered as in need of a medical exam, but that language was eventually eliminated. Further medical tests were also permitted where there is "reasonable cause to suspect that there is a history of prior or current abuse." This was broader to include "neglect," but that has been taken out of the pending legislation.

A report will still be referred to law enforcement when the person alleged to have abused the child could not be considered a "perpetrator" under the CPSL. These are known – now and going forward - as law enforcement only (LEO) cases.

Also the child welfare agency can still respond with an assessment for General Protective Services (GPS) "if the investigation determines that the child is being harmed by factors beyond the control of the parent or other person responsible for the child's welfare." In these cases the county is to "take all steps available to remedy and correct these conditions, including the coordination of social services for the child and the family or referral of the family to appropriate agencies for the provision of services."

**SB1116 = Act 123 of 2013** (effective March 18, 2014)



## **MURDER OF INFANT PERSONS**

In 2010, [Act 204 of 2012](#) directed the Pennsylvania Commission on Sentencing to provide for a sentencing enhancement when a person is convicted of 3<sup>rd</sup> degree murder and the victim is under the age of 13. This move to increase the criminal penalties was spurred in response to the murder of 14-month-old [Zachary killed in 2005](#) by his mother's paramour. Zachary's mother and law enforcement officials were frustrated that, at the time, the sentence for 3<sup>rd</sup> degree murder could be as little as 6 years. Zachary's law in 2012 led to the ability for a sentencing enhancement in 3<sup>rd</sup> degree child murder cases.

House Bill 112, which was introduced in order to create a felony crime when a sports official (e.g., coach, volunteer or employee) of a nonprofit association sexually assaults a child involved in a sports program, was amended by Senate leaders to now require a mandatory 15 year minimum sentence when a persons is convicted of 3<sup>rd</sup> degree murder involving a child.

**HB 112 = Act 56 of 2014** (Effective August 17, 2014)



## **NEAR-FATALITY DEFINED, PUBLIC DISCLOSURE PROVISIONS**

Senate Bill 31 (Senator Wayne Fontana) redefines "near-fatality." Current law defines it as "An act that, as certified by a physician, places a child in serious or critical condition. With enactment of Senate Bill 31, it would be defined as, "A child's serious or critical condition, as certified by a physician, where that child is a subject of the report of child abuse."

Senate Bill 31 also grants to counties the same opportunity as the Department of Public Welfare (DPW) to publicly release certain information when it is suspected a child died or nearly-died from child abuse, but the investigation and required Act 33 (of 2008) fatality/near-fatality reports have not yet been completed.

Even as the legislation would permit public disclosure of certain information by counties as well as DPW, it rescinds the ability of either party to disclose the identity of a child who experienced a near-fatality.



## **PASS THE TRASH, MISCONDUCT BY SCHOOL EMPLOYEES**

When the Pennsylvania Senate unveiled its dozen plus bills in response to the 2012 recommendations of the Task Force on Child Protection, they included [Senate Bill 46](#) as a priority.

The bill, which is not a first attempt by Pennsylvania Senator Antony "Tony" Williams (D-Philadelphia), is often referred to as "pass the trash" legislation. This reference relates to situations where a school may know about or even have investigated a school employee for misconduct, including sexual misconduct with a student, but the information is not included in the employee's record or "confidentiality agreements" have been negotiated so any such information is not shared as the employee moves on to another career setting – often another school.

Representative David Maloney (R-Berks), who is a former school board member, also championed legislation in the PA House of Representatives ([House Bill 2063](#)).

Eventually the contents of these stand-alone bills were folded into another legislative vehicle – [House Bill 1816](#).

The legislation amends the Public School Code to add a section on Employment History Review requiring an "extensive employment review for applicants that have direct contact with children." Among the information an application would have to provide:

- All information about current and former employers "that were school entities or where the applicant was employed in positions that involved direct contact with children;"
- Written authorization for any employment information or history documents to be shared with the hiring school; and
- "A written statement disclosing whether the applicant has been a subject of an

abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency or child protective services agency, unless the investigation resulted in a finding that the allegations were false.” This statement would also address whether the applicant was ever “disciplined, discharged, nonrenewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of abuse or sexual misconduct were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct.”

Abuse in House Bill 1816 mirrors the Child Protective Services Law (CPSL) while Sexual Misconduct is more fully defined in the proposed legislation.

**HB 1816 = Act 168 of 2014** (Effective December 26, 2014)



## **PREVENTION**

In June 2013, the PA House of Representatives unanimously adopted [House Resolution 163](#). The resolution gave the Joint State Government Commission (JSGC) 18 months to study the degree to which “evidence-based child abuse and neglect prevention programs” are operating in Pennsylvania and across the country.

JSGC was also to evaluate the “effectiveness and relative costs” of these evidence-based programs. They were to explore opportunities for child abuse and neglect prevention methods to be integrated into programs and policies. Finally, the report and recommendations expected by the PA House should dig deeper on “all existing” federal, state and local funding streams that pay for child abuse prevention and neglect services and then to identify ways to “create incentives for the adoption and implementation of evidence-based child abuse and neglect prevention programs” across the Commonwealth.

Meanwhile, legislation to raise additional revenue for Pennsylvania’s Children’s Trust Fund remained stalled.

Since 1988 (Act 151), the Children’s Trust Fund (CTF) has been funded via a \$10 surcharge on marriage licenses and divorce filing fees. The raised revenue is directed, by the CTF, into community-based child abuse prevention strategies. The CTF is governed by a 15-member public/private board (6 legislative, 9 non-legislative Pennsylvanians appointed by the Governor) and is housed within the Office of Child Development and Early Learning (OCDEL). Successful CTF grantees engage in collaboration with local partners, including across multiple systems, meet demonstrated benchmarks and are sustained by resources beyond CTF dollars. Collected revenue from the fees are managed by the PA Department of Treasury’s Commonwealth Investment Program.

There have been repeated attempts to increase the prevention resources available through the CTF by:

- Increasing the marriage license and divorce filing fee (increase to \$35 the marriage license fee and to \$25 the fee on divorce filings);
- Voluntary check off on PA individual tax returns to designate a contribution to the CTF

As those efforts stalled, Representative Angel Cruz (D-Philadelphia) introduced [House Bill 2054](#) to create a specialty license plate to “Stop Child Abuse.” The \$15 fee per plate would be directed to the Department of Public Welfare’s Bureau of Child Welfare Services not the CTF. Also outstanding is the degree to which there is a common understanding and consistency – across child-serving systems – as how best to define “prevention” and “evidence-based.”

Legislation was enacted (Act 71 of 2014) to realize an effort by Representative Maureen Gingrich to bring child sexual abuse and exploitation education into school health curriculums for children in grades K-8.

Beginning with the 2015-2016 school year, each school entity “may develop an age-appropriate child exploitation awareness education program.” School entities may also include training “in the professional development plan” submitted to the PA Department of Education showing how the school entity will “provide four hours of such training every five years for professional educators assigned to teacher courses into which child exploitation awareness education has been incorporated.”

The PA Department of Education, in consultation with “at least one organization addressing child exploitation” shall develop a “model” curriculum and “compile, develop and post” on its website “recommended guidelines and educational materials” related to this training.

Child exploitation is not defined in the adopted legislation, but the legislative record and transcripts of hearings on Gingrich’s efforts underscore that it is about education related to preventing child sexual abuse or exploitation. A school entity includes a school district, cyber charter school, intermediate unit and area vocational-technical school.

**HB 1559 = Act 71 of 2014** (effective August 26, 2014)



### **PRIVACY FOR CHILD VICTIMS**

When a person is a victim of sexual or physical abuse their identity cannot be released by the courts. If court proceedings are commenced after the child victim is over the age of 18, the victim may give consent to be identified.

**HB 1201 = Act 109 of 2013** (Effective February 16, 2014)



### **REPORTING CHILD ABUSE**

**Senate Bill 21** (Senator Kim Ward) the omnipotent mandatory reporting bill was signed into law on April 15, 2013 by Governor Corbett. This legislation expands the list of

enumerated persons legally responsible to make a report of suspected child abuse to authorities. For instance, the bill further delineates the types of persons working in varied (and vast) “schools” that have a mandate to report, including institutions of higher learning.

The legislation also makes the duty to report requirement applicable to persons “paid and unpaid” working or volunteering directly with children in a “program, activity or service” (e.g., youth camp, youth sports program, troop or club).

The legislation also repeals the perennial practice permitting employees inside of schools or other institutions to report inside the institution’s chain of command before the report ever made it to outside authorities.

**House Bill 436** (Representative Todd Stephens) was drafted as a comprehensive remedy to bring greater clarity and streamlining to PA’s mandatory child abuse reporting law. As part of the negotiations between the PA Senate and House, this legislation became the vehicle for penalties when a person “willfully fails” to make or cause a report to be made related to suspected child abuse.

Current law sets a violation for “willfully” failing to report as a misdemeanor of the 3<sup>rd</sup> degree the first time it happens and a misdemeanor of the second degree “for a second or subsequent violation.” HB 436 generally grades the offense as a misdemeanor of the 2<sup>nd</sup> degree, but stiffer penalties are possible.

Offense	Longest permitted Minimum confinement	Longest permitted Maximum confinement	Maximum Fine
<b>Summary</b>	90 days county jail	90 days county jail	\$300
<b>Misdemeanor 3<sup>rd</sup> degree</b>	6 months	1 year	\$2,500
<b>Misdemeanor 1<sup>st</sup> degree</b>	2.5 years	5 years	\$10,000
<b>Misdemeanor 2<sup>nd</sup> degree</b>	1 year	2 years	\$5,000
<b>Felony 3<sup>rd</sup> degree</b>	3.5 years	7 years	15,000

For instance, it would be a felony of the 3<sup>rd</sup> degree if a person “willfully” fails to report and the “child abuse constitutes a felony of the 1<sup>st</sup> degree or higher” and the person “has direct knowledge of the nature of the abuse.”

House Bill 436 also assures that there is no wrong door in reporting. In other words while the preferred method is for reports to go through the state’s child abuse reporting hotline – ChildLine, a person who calls a local children and youth agency or law enforcement directly instead would not be considered a violation of the reporting requirements. The legislation also provides for statute of limitations (SOL) that is either five years or the same SOL applicable to the crime committed against the child.

[Senate Bill 33](#) (Senator Bob Mensch) provides for employment protection when a person either as a mandated or permissive reporter and they acted in “good faith” in making the report. The protection is not applicable to a person who is later found to be a perpetrator or a person who is criminally convicted for failing to make a report.

[Senate Bill 24](#) (Senator Randy Vulakovich) provides the tools for modern reporting and sharing of information by permitting the use of “electronic technologies.”

**SB 21 = Act 33 of 2014** (Effective December 31, 2014)  
**HB 436 = Act 32 of 2014** (Effective June, 16 2014)  
**SB 33 = Act 34 of 2014** (Effective December 31, 2014)  
**SB 24 = Act 29 of 2014** (Effective December 31, 2014)



## **REPORTING INFANTS AFFECTED BY ILLEGAL SUBSTANCE ABUSE, WITHDRAWAL SYMPTOMS OR FASD**

Senate Bill 29 requires a health care provider to “immediately” make a report or cause a report to be made if the health care provider is involved in the delivery or care of an infant or child under the age of one affected by any of the following:

“(1) Illegal substance abuse by the child’s mother.

(2) Withdrawal symptoms resulting from prenatal drug exposure.

(3) A Fetal Alcohol Spectrum Disorder.”

A health care provider in Senate Bill 29 is defined as “A licensed hospital or health care facility or person who is licensed, certified or otherwise regulated to provide health care services under the laws of this Commonwealth, including a physician, podiatrist, optometrist, psychologist, physical therapist, certified nurse practitioner, registered nurse, nurse midwife, physician's assistant, chiropractor, dentist, pharmacist or an individual accredited or certified to provide behavioral health services.”

Upon receiving a report required by Senate Bill 29, the county children and youth agency would then have to perform a safety and/or risk assessment to determine if the child is in need of protective or general protective services. The county would have to respond “immediately” if the child needs to be taken into protective custody or the need for such an action isn’t certain from the report. Children and youth would also have to be in contact with the parents within 24 hours and then see the child within 48 hours of the report. Finally the agency would be responsible for providing or arranging “reasonable services to ensure the child is provided with proper parental care, control and supervision.”

Senate Bill 29 included language similar to a [recommendation made by the Task Force on Child Protection](#), which indicated they were addressing the issue to ensure state law was “consistent with the assurance and requirements provisions” of the federal Child Abuse Prevention and Treatment Act (CAPTA). The Task Force, however, limited the applicability to newborns.

**SB 29 = Act 4 OF 2014** (effective April 22, 2014)



## **3-DIGIT REPORTING OF CHILD ABUSE**

[Senate Bill 26](#) (John T. Yudichak) has been stalled in the PA Senate and similar legislation was never introduced in the PA House. This legislation, which mirrored a recommendation of the Task Force on Child Protection, directed the Department of Public

Welfare (DPW) to work with the Federal Communications Commission to establish a 3-digit reporting system (e.g., 611).

**Inaction on this legislation means that it died and now requires re-introduction in the next legislative session.**



## **SCHOOL ABUSE**

[Senate Bill 31](#) (Senator Wayne Fontana) repeals the separate subsection in the Child Protective Services Law (CPSL) that, since 1994, has uniquely defined abuse in a school setting and provided for reporting practices different than abuse in other settings.

The legislation also includes a comprehensive definition of “school” which proved problematic in the wake of the Sandusky child sexual abuse scandal which gave rise to questions about whether a university setting was a “school” and thus subject to mandatory reporting provisions. This same definition was included in the enacted Senate Bill 21 (signed by Governor Corbett on April 15<sup>th</sup>).

Fontana’s legislation also requires that a report of suspected child abuse not be reported up and inside a school or institution rather than reports “immediately” be made to ChildLine or law enforcement and then “thereafter” notify the person in charge at the school/institution.

Fontana’s legislation to end the bifurcated approach to abuse in a school setting generated a companion bill from Representative David Maloney ([House Bill 434](#)), which was also signed into law in May.

**SB 31 = Act 44 of 2014** (Effective 12/31/14)  
**HB 434 = Act 45 of 2014** (some provisions effective immediately, the remaining on 12/31/14)



## **STATUTE OF LIMITATIONS**

Pennsylvania law includes statute of limitations (SOLs) on criminal and civil child sexual abuse cases. Recently the New York Times Editorial Board acknowledged a central lesson of the Gerald Sandusky serial child sexual abuse scandal - “It can take years before victims are emotionally and psychologically ready to come forward.”

The PA criminal SOL extends to the child victim’s 50<sup>th</sup> birthday, while the civil SOL is extended to the victim’s 30<sup>th</sup> birthday.

Attempts to alter the SOLs have been waged on several legislative fronts:

- Eliminate the criminal SOL;
- Eliminate the civil SOL;
- Equalize the criminal and civil SOL (so both SOLs equally extend to the victim’s 50<sup>th</sup> birthday); and
- Create a time-limited (e.g., 2-year) retroactive window by which a child sexual abuse victim, previously barred by SOLs, could file a civil claim against the perpetrator.

The Task Force on Child Protection opted against taking testimony on SOLs and putting forth any SOL-related recommendations.

In turn, the PA General Assembly also opted against any debate about or action on SOLs.

**Inaction on this legislation means that it died and now requires re-introduction in the next legislative session.**



## **TRAINING FOR MANDATED REPORTERS**

House Bill [431](#) (Representative Gingrich) was originally introduced as a bill solely aimed at requiring that each licensing board within the [Pennsylvania Department of State](#) (DOS) with “jurisdiction over professional licensees identified as mandated reporters” assure these persons document they have been trained to recognize and report suspected child abuse.

Eventually the Pennsylvania Senate combined another Gingrich bill ([House Bill 432](#)) into House Bill 431 ensuring that this bill is now far more comprehensive in its applicability applicable to “operators of institutions, facilities or agencies which care for children and are subject to supervision” by the Department of Public Welfare (DPW) and who have “direct contact with children.”

“Operators and caregivers” would have to receive three hours of training “prior to the

issuance of a license, approval or registration certificate” and then three hours of training “every five years thereafter.” Direct contact with children is defined as the “care, supervision, guidance or control of children or routine interaction with children.”

Meanwhile, persons applying for a license or certification (e.g., Medicine, Dentistry, Psychology, Social Workers) would have to provide “acceptable documentation” that they have completed “at least three hours of approved child abuse recognition and reporting training.” The training would have to be approved by the Department of Public Welfare (DPW) and may occur “as part of the continuing education requirement of the license.” Persons applying for a renewal license or certification would have to demonstrate that they had completed “at least two hours of approved continuing education per licensure cycle.” The training for new applicants and those renewing a

license or certification would have to “address,” but not be limited to “recognition of the signs of child abuse and the reporting requirements for suspected child abuse in the Commonwealth.”

All the mandated reporters covered by the amended House Bill 431 could be exempted by from the training or continuing education requirement if the person can submit “acceptable” documentation that the person has “already completed child abuse recognition training” so long as the training was one approved by the Department of Education in consultation with DPW or was a training program approved by DPW. Exemption could also occur if the training received “equals or exceeds” the training required in House Bill 431.

**HB 431 = Act 31 of 2014** (Effective December 31, 2014)