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Children's Justice & Advocacy Report

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

In the January 2nd edition:

PA has a new definition of child abuse, effective date waits until last day of 2014

In November 2012, The Task Force on Child Protection offered an "extensive" rework of Pennsylvania's Child Protective Services Law (CPSL) in order "to afford children greater protections from abuse" and to "make the law child-centered in the sense of recognizing child abuse in all contexts."

The Task Force also was attempting to be responsive to the longstanding concern that Pennsylvania is a statistical outlier in when a report of suspected child abuse triggers an actual investigation as well as - when and if - a child is determined to be a victim of child abuse.

In 2012, the state had a substantiated rate of child abuse of 1.2 per 1,000 children, the national rate was 9.2 per 1,000 children. Meanwhile, PA investigated child abuse reports at a rate of 8.6 per 1,000 children compared to the national rate of 42.7 per 1,000 children. (NOTE: Date taken from Tables 3-1 and 3-4 in Child Maltreatment 2012.)

Last month as Pennsylvania Representative Scott Petri (R-Bucks) was watching his legislation to change the definition of child abuse signed into law he remarked, "These numbers are not, however, a positive sign that the children of Pennsylvania are safe and protected. Instead it is indicative of a weak definition of child abuse, with an extremely high threshold and unclear guidelines that results in stolen childhoods and, for too many children, death or near-death experiences."

Dr. Cindy Christian, who is nationally known for her expertise on recognizing and treating child abuse and who served on the Task Force, has said the state's definition of child abuse, particularly related to physical abuse, is "incredibly problematic…vague and open to interpretations".

And Casey Family Programs Executive Vice President David Sanders has testified that PA has the "narrowest definition of physical abuse" and that "serious physical neglect is narrower" than how other states define neglect.

In an intentional and child-centered way, the Task Force put forth a plan in 2012 to have the state rework the definition in order "to lower the threshold for substantiating child abuse."

House Bill 726, which was signed into law (Act 108) on December 18th by Governor Tom Corbett, translates nearly two decades of concerns as well as the Task Force's recommendations into a law that should now be more child-centered and prevention-focused.

Current Pennsylvania law, which will remain in effect until December 31, 2014, defines "serious physical injury" as an injury to the child that caused them to experience "severe pain" or "significantly impairs a child's physical functioning, either temporarily or permanently." Determining whether the "severe pain" threshold was met, as a result of the injuries, has invited its own set of nuances and complications.

Pennsylvania children were child abuse victims in 2012.

In 2012, PA had a substantiated rate of child abuse of 1.2 per 1,000 children, the national rate was 9.2 per 1,000 children. PA investigation rate was 8.6 per 1,000 children compared to the national rate of 42.7 per 1,000 children.

The Task Force recommended and Act 108 advances the lowering of the threshold for what constitutes child abuse from serious bodily injury to bodily injury.

Bodily injury is defined as "Impairment of physical condition or substantial pain." Meanwhile, seriously bodily injury is defined as an injury "which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

Under current law, allegations involving a "serious physical injury" opens the door, but doesn't require, that the child receive an examination by a certified medical practitioner.

However, another bill signed by Corbett on December 18th – Senate Bill 1116 known now as Act 123 of 2013 – invites such an exam when an investigation of a report of suspected child abuse "indicates bodily injury."

More expansive language to again encourage, but not require, medical exams for other children living in the home with the child suspected to be abused or in situations where there is a suspected "history" of neglect were eventually taken out of Senate Bill 1116 before Corbett signed it into law.

Included in the reworked definition of child abuse includes "intentionally, knowingly or recklessly" causing bodily injury by "any recent act or failure to act." Also included is "fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act."

There are important modifications to the definition of "serious physical neglect" providing clarification that a child can be the victim of this type of neglect as a result of a singular event.

Current law defines "serious physical neglect" as that which constitutes "***prolonged or repeated*** lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning."

Included in the future will be "any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(1) A repeated, prolonged or unconscionable egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities."

The definition of child abuse overall also includes a list of per se acts, although not as extensive as the Task Force had recommended. In the per se list a specific injury or level of injury is not required to determine child abuse rather the act itself against a child can be substantiated as child abuse.

For instance, engaging in an act of "kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child" is included as a per se act of child abuse. Additionally, "unreasonably restraining or confining a child, based on consideration of the

method, location or duration of the restraint or confinement." Also, "forcefully" shaking a child under the age of one or "forcefully slapping or otherwise striking" a child under one are included in the per se elements of this new definition. Finally, having a child present at a location where a methamphetamine lab is being operated and "being investigated by law enforcement" as well as leaving a child "unsupervised" with an individual (other than the child's parent) who is subject to registration as a result of a serious sexual offense are included on the per se list.

Current exclusions from child abuse are largely intact and expanded, including a parent's right to reasonably discipline a child.

The legislation did alter the religious exemption whereby a child can be denied "needed medical or surgical care because of sincerely held religious beliefs."

House Bill 726 removed that the exception can be claimed by a "person responsible for the welfare of the child" in addition to the child's parent or guardian. Also guardian is changed to a "relative within the third degree of consanguinity and with whom the child resides." The final revision to this section of the Child Protective Services Law (CPSL) is that the exemption will not be applicable "if the failure to provide needed medical or surgical care causes the death of the child."

Before signing House Bill 726 into law, Governor Corbett remarked that enhanced protections will materialize only if the law is "enforced and followed." He also acknowledged that there is a need for a good deal of training and education to have the changes be realized in a protective way for our children noting this might require some additional funding from the state.

Powerful as the ramifications from the Governor's signature are so too was there power and passion in his words and actions at the bill singing.

He assured, with emotion, that placing his signature on House Bill 726, Senate Bill 23 and other child protection measures would be a "highlight" when he looks back on his professional career observing what he did with the power when he had it.

Who can be a perpetrator of child abuse to broaden in 2014

Under current Pennsylvania law – the Child Protective Services Law - a parent, a paramour of a parent, an individual (over the age of 14) living in the same home as the child, or a person responsible for the welfare of a child can be considered a perpetrator of child abuse.

Beyond this limited definition of who can be a perpetrator, substantiating child abuse in PA also requires that a child welfare investigation determine the specific person(s) responsible for the abuse.

In situations where the exact perpetrator(s) was unknown (e.g., the child was in the care of multiple caregivers over a period of time in which medical examination suggests when the injuries could have occurred) or even based on case law where there have been multiple alleged perpetrators, cases have been unfounded. And practice varies from county-to-county. At times the practice might be to indicate all of the alleged perpetrators while in other counties it might be to indicate none and list the case as unfounded.

Pennsylvania children who have suffered broken bones, been sexually abused or diagnosed with abusive head trauma are among the cases where abuse was not substantiated, the child determined **not to be** a victim of child abuse, because the perpetrator was undetermined. These victims and the injuries they experienced are therefore are often not represented in official statistics by the Commonwealth. There have also long been fundamental questions about the reliability of statistics as well as how this status then impacts a child's pathway to treatment and services.

On December 18th, Governor Corbett signed Senate Bill 23 (Act 117 of 2013) broadening the definition of who can be a perpetrator.

Senator Lisa Baker (R-Luzerne, Monroe), who was the prime sponsor of Senate Bill 23, described her legislation and the rework of how child abuse is defined as "needed and well considered responses to some of the hardest

and saddest situations our society must confront." And she stressed that the definition of perpetrator needed to change because "It is the immoral and illegal act that constitutes the offense not the relationship between the abuser and victim."

In 2012, the Task Force sought to expand the definition of perpetrator to include:

- Employees or volunteers who have direct or regular contact with a child as a result of involvement in programs, services or activities such as: camps, athletic programs, enrichment programs and troops.
- School teachers and employees
- Persons employed in programs, activities or services which includes enrichment and other programs, clubs and coaches.
- Any person present in the child's home when the alleged abuse occurred.
- An individual related to the child by birth, marriage or adoption to the fifth degree.
- Former paramours of a child's parent and former step-parents.

Senate Bill 23 now Act 117 of 2013 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 that has yet to be finalized by the General Assembly.

When the Task Force unveiled its recommendations in 2012, Chairman David Heckler stressed that the Task Force intended to make it clear "that persons in Sandusky's position are recognized as perpetrators of child abuse under the Child Protective Services Law."

Finally the perpetrator issue was addressed as well in the definition of child abuse bill signed by Corbett (House Bill 726). Once the new law is effective, a report can be indicated as a case of child abuse, a child determined to be a victim "regardless the number of alleged perpetrators" or if the perpetrator is "unknown." In the case of unknown perpetrators, substantiation could occur "if substantial evidence of abuse by a perpetrator exists, but the department or county agency is unable to identify the specific perpetrator."

PA Superior Court deals blow to landmark conviction related to endangering the welfare of children

In 2006, child advocates along with law enforcement fought to clarify and strengthen the state statute that defined and graded the offense of Endangering the Welfare of Children (EWOC).

Today journalists and legal experts, in the wake of a December 26th PA Superior Court decision, are debating whether the 2006 changes were in fact a substantial change to whom and how EWOC was applied or whether the changes were merely a clarification. In many ways the change was both providing a distinct clarification to the law, but in providing the clarification the law was also strengthened to more fully and firmly hold perpetrators accountable.

The December 26th Superior Court decision reversed the EWOC conviction of and ordered released Monsignor William Lynn, who was a high ranking official with the Archdiocese of Philadelphia prior to his conviction and incarceration.

Lynn, his legal team and staunch supporters have asserted from moment one that the case brought against him did not involve conduct that was within the reach of the pre-2007 EWOC statute (the law was changed in 2006 but only effective in 2007).

Prior to the EWOC changes effective in 2007, the law defined the offense when "a parent, guardian, other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support." Post the change, the offense now included "a person that employs or supervises" a person "supervising the welfare of a child under 18 years of age." The change was not retroactive.

Between 1992 and 2004, Lynn was the Secretary for the Archdiocese, which included a wide range of duties including "handling clergy sexual abuse issues." While he did not have "direct authority to transfer, remove or even restrict the nature of a priest's ministry," he was the "sole 'funnel' for information concerning clergy sex abuse, and it was his office alone that could pass on vital information about priests and their young victims up the chain of command."

Lynn was initially charged with two counts each of EWOC and conspiracy to commit EWOC connected to the supervision of two priests – one of whom pled guilty to involuntary deviate sexual intercourse and conspiracy to commit EWOC in March 2012. Lynn was later convicted on the EWOC charge related to the priest who pled guilty. He was acquitted of the other EWOC change as well as the conspiracy related charge. He was sentenced in July 2012 to incarceration for 3 to 6 years.

He appealed his conviction asking the court to review ten questions including whether the pre-amended version of EWOC "did not properly apply" to Lynn because he was not a "parent, guardian or other person supervising the welfare of a child" and he "had no direct involvement with the child, never met and never knew the child."

Lynn and his legal team challenge that the pre-amended EWOC statute imposed criminal liability only on those persons directly supervising children with it limited in its application to "parents and parental surrogates."

In the court's opinion they write that "In essence, he argues that the legislature's inclusion of the 'or a person that employs or supervises such a person' language….indicated an intent to add a class of persons not originally subject to liability under the pre-amended version."

The Commonwealth, on the other hand and those who believe that Lynn's conviction was justifiable and just, assert that the plain meaning of the law pre-2007 captured the class of persons specifically included with the statutory change and thus the legislative action then was a mere clarification versus a significant change in intent, applicability and liability.

At trial the difference between a "person supervising the welfare of a child" and a "supervisor of a child" was determined to be "syntactically small, but far from trivial."

In its opinion, the Superior Court noted that it nor the PA Supreme Court (pre-2007 EWOC changes) "has ever affirmed a conviction where the accused was not actually engaged in the supervision of, or was responsible for supervising, the endangered child." The court also reinforced that prior court decisions (Halye, 719 A.2d at 765) are "unmistakable" that "actual supervision of children to be an element of the offense of EWOC."

In its decision, the three justices of the Superior Court wrote, "We cannot dispute that the Commonwealth presented more than adequate evidence to sufficiently demonstrate that Appellant prioritized the Archdiocese's reputation over the safety of potential victims of sexually abusive priests..." However, they continue that the question of Appellant's priorities and whether they "were more with the reputation of the church, or, instead, with the victims of sexual abuse at the hands of Archdiocese priests, is not an issue in this case."

Following the Superior Court decision, Lynn was granted bail. The Archdiocese assisted in Lynn making bail, which invoked intense ire from Philadelphia District Attorney Seth Williams on New Year's Eve. Williams at a hastily convened press conference said it was "disgusting" that the Archdiocese had helped to "free this man."

Today the Associated Press reported that Monsignor Lynn left prison after 18 months to await the next stage of legal maneuverings.

The Superior Court decision, which will be appealed, didn't escape notice of the legal teams representing former senior leadership officials at Penn State University, including Graham Spanier, Tim Curley and Gary Schultz.

Each of these men face two EWOC counts in addition to other criminal charges including failure to report suspected child abuse and perjury.

The Grand Jury presentment from late 2012 speaks to the EWOC changes referencing the 2001 incident where Mike McQueary witnessed and reported a sexual assault of a child by Mr. Gerald Sandusky. The presentment finds that the PSU administrators should have immediately made a "report to law enforcement and a child protective services agency." The presentment continues, "We find that Spanier, Curley, and Schultz had an ongoing duty to report this behavior and the overall supervisory responsibility for minor children they knew to frequent the campus with Sandusky. Their failure to report Sandusky to authorities from 2001 through 2011 directly endangered Victims 1, 2, 3, 5 and 9 and allowed Sandusky to abuse them between 2001 and 2008."

JSGC releases report on preventing violent crime and mass shootings

Pennsylvania lawmakers knew in the wake of the senseless mass murder of school children at the Sandy Hook Elementary School in Newtown, Connecticut that the public was demanding answers and action.

In early 2013, the Pennsylvania Senate adopted Senate Resolution 6 sponsored by Senate Judiciary Committee Chairman Steward Greenleaf.

The adopted resolution directed the Joint State Government Commission (JSGC), which also recently provided the study and staff for the Task Force on Child Protection, to convene a committee of "public officials and experts on the issue of violent crime, which is balanced so that it encompasses a wide range of backgrounds and viewpoints."

JSGC was to enlist these experts to undertake a comprehensive analysis of violent crime and mass shootings and related issues exploring the inter-connectedness of mental health treatment, access to firearms by criminals and the mentally ill, how safe children are at school, the role of bullying and violent video games. JSGC was to then issue a report no later than December 31, 2013 with recommendations related to any amendments needed to state law (e.g., the Mental Health Procedures Act and the Uniform Firearms Act) as well as ways to develop education, awareness and prevention related to violent crime.

The resulting report assures that it is not a "comprehensive analysis of all violent behavior" nor was it able to tackle "many of the suspected causes of violence – poverty, family disintegration and changing societal norms" noting these are all very "complex issues beyond the scope of the study."

Instead the Advisory Committee "aspired to recommend realistic policy and statutory steps that can improve prevention and augment responsiveness to sudden, sensational outbursts of violence in school and other public gathering places, ensuring safer schools and preventing those persons most likely to act out violently from doing so."

The recommendations are directed at the media, pursuit of amendments to the Mental Health Procedures Act, the promotion of "responsible gun ownership" and school safety. Here is a sampling of the recommendations offered:

- The media should "to the extent possible" work to "deny notoriety and celebrity status to perpetrators of violence;"
- Parents and guardians "should take a more active role in screening and limiting children's exposure to media violence;"
- The Mental Health Procedures Act "should be thoroughly reviewed to determine whether to amend involuntary commitment standards to assure greater access to treatment or to add alternatives to treatment, such as assisted outpatient treatment;"
- Funding is needed for community mental health services with such funding "desperately needed;"
- The background checks required under Pennsylvania law prior to the purchase of a firearm suffice and need not be expanded further;"
- Reduce from 60 days to 72 hours "the time for persons disqualified from gun ownership to dispose of their firearms" and clarify the law so that when a "person is disqualified from gun ownership, all weapons in the household should be removed;" and
- "Add a new provision to the Uniform Firearms Act to require prompt reporting of lost or stolen firearms."

It is worth noting that legislation is already pending to provide for amendment of the Mental Health Procedures Act related to involuntary commitments as well as bills to require the reporting of a lost or stolen firearm. Also JSGC was separately directed by House Resolution 226 adopted by the PA House of Representatives in 2013 to study all aspects of Pennsylvania's mental health system and then issue a report to the General Assembly.

You can read the JSGC report on violence prevention at this link.

Lawmaker who sought dedicated funding stream for CACs beginning in 2004 passes away

This week, former state representative Merle Phillips passed away at the age of 85.

The news provided a reminder of how much protecting children by working to improve state laws requires perseverance.

It was 2004, when Phillips introduced legislation to create a dedicated funding stream for the state's current or emerging Children's Advocacy Centers (CACs). His legislation (House Bill 2932) established a Child Abuse Multidisciplinary Response Account and emphasized the importance of responding to child abuse with a team approach at both a local and state level. His legislation saw a role, at the state level, for officials from the Departments of Health and Public Welfare as well as the PA Commission on Crime and Delinquency (PCCD), the Attorney General as well as external government stakeholders (e.g., district attorneys, CACs, rape crisis centers).

His legislation was never enacted. However, similar versions have routinely been introduced and finalized in the PA House of Representatives with leadership from Lehigh County Representative Julie Harhart. The most recent bill – House Bill 316 – unanimously passed the PA House last February and is now sitting in a PA Senate Committee. Another CAC funding bill – House Bill 89 – also passed the full PA House and is awaiting Senate action.

Pre and post the commitment of Representative Phillips, the stumbling blocks have always been how to generate the revenue (e.g., fees on criminal defendants) and getting sufficient enough traction in the Pennsylvania Senate.

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