

## **EXECUTIVE SUMMARY**

### **CHILD PROTECTION IN PENNSYLVANIA: PROPOSED RECOMMENDATIONS REPORT OF THE TASK FORCE ON CHILD PROTECTION - November 2012**

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In December 2011, the General Assembly established a Task Force on Child Protection to conduct a comprehensive review of the laws and procedures relating to the reporting of child abuse and the protection of the health and safety of children. The Task Force represented a broad cross-section of the Commonwealth, in terms of profession, experience, expertise, philosophy and geography. The Department of Public Welfare, the Joint State Government Commission and the Juvenile Court Judges' Commission provided administrative and technical assistance to the Task Force.

The Task Force conducted 17 public hearings and working sessions throughout the Commonwealth. More than 60 individuals presented testimony during the public hearings, on such topics as procedures regarding county children and youth social service agencies and the Department of Public Welfare, the definition of child abuse and child neglect, differential response, multidisciplinary teams, multidisciplinary investigative teams, law enforcement investigations and prosecutions, children's advocacy centers, mandated reporters of suspected child abuse, abuse in schools and of school-age children, the training of physicians and school personnel, the provisions of the Child Protective Services Law, child dependency and court procedures, ChildLine (the Statewide Child Abuse Hotline), county agency intake procedures, county agency assessments and investigations, data collection and confidentiality, administrative subpoenas, and Department of Public Welfare technology. In addition, numerous other individuals and organizations provided written testimony to the Task Force.

At the direction of the Task Force, the Joint State Government Commission conducted extensive research regarding how other states address the following topics in their statutory and regulatory law: the definition of child abuse and child neglect, perpetrators, voluntary and mandated reporters of suspected child abuse, procedures and standards for reporting child abuse, differential response, the investigation and disposition of reports of suspected child abuse, temporary or emergency custody without a court order, expungement of records, dependency proceedings, and confidentiality and the release of information. The Task Force also reviewed information regarding prevention efforts, partnerships with the courts, the Permanency Practice Initiative, child welfare, budgetary impacts, professional licensure, training, and the hiring and retention of caseworkers.

After considerable review and deliberation, the Task Force proposes a number of policy and statutory recommendations. For example, with respect to general recommendations, the Task Force recognizes the importance of children's advocacy centers (CACs) and multidisciplinary investigative teams (MDITs) and favors a dedicated funding source to establish new CACs and sustain existing CACs. The Task Force further recommends that (1) the Pennsylvania Commission on Crime and Delinquency conduct a thorough study of the existing CACs and MDITs throughout the Commonwealth, (2) the Pennsylvania State Police and municipal police departments train troopers and police officers regarding the efficacy of forensic interviewing within the CAC setting in the investigation of child abuse and child sexual abuse and (3) the medical model employed by the Philadelphia Department of Human Services be reviewed and implemented.

The Task Force also recommends an analysis of Pennsylvania's statutes and regulations that require, or fail to require, the disclosure of a licensed professional's sexual misconduct, arrests, and convictions to the relevant licensing or certifying body. The goal should be uniformity in the information to be disclosed, procedures to assure the safety of children, and appropriate licensure or certification sanctions.

The Task Force favors several approaches to develop funding sources to support child protection efforts, such as the issuance of a special license plate by PennDOT at an increased fee and a check-off in connection with vehicle registration or income tax filings.

The Task Force supports the enactment of legislation to expand reporting requirements where allegations of sexual misconduct have been made. Such legislation should include barring school entities from entering into confidentiality agreements with educators accused of misconduct.

Given the importance of prevention efforts, the Task Force also believes that evidence-based prevention programs should be encouraged and financially supported where feasible.

After lengthy discussion, the Task Force believes that minimum experience and training requirements for caseworkers should be increased, and county agencies should be given greater flexibility to test a prospective caseworker's ability to assess needs and work with families. Therefore, the Task Force recommends that civil service requirements be reviewed, revised and updated to enable county agencies to recruit qualified applicants and applicants with appropriate degrees commensurate with the positions sought. The Task Force also favors consideration of methods aimed at lowering high staff turnover rates and retaining qualified caseworkers. Training should be approved for supervisors and caseworkers, the structure and characteristics of a county agency should be analyzed, and ChildLine staffing levels and retention issues should be addressed, including the use of part-time ChildLine workers.

The use of electronic transmittal and dissemination of information, set forth in the proposed legislation as the use of advanced communication technologies, is strongly encouraged to facilitate the process and save time.

In addition, attention should be given to the training of all jurists to ensure that proceedings involving children are as child-friendly as possible, with consideration given to using language that children will understand and procedures that account for the intellectual development of children.

The Task Force supports more vigorous enforcement of school attendance rules by school districts and the improvement of programs to specifically address truancy, perhaps in association with appropriate local nonprofit organizations to help alleviate the disproportionate consumption of protective services by children who are not at risk of abuse or neglect.

The Task Force spent a considerable amount of time discussing the need to simplify the current ChildLine telephone number, ultimately supporting a three-digit number such as 611 for use by persons reporting suspected child abuse.

With respect to the issue of child pornography, the Task Force recommends that the Commission on Sentencing review the United States Sentencing Commission 2012 Guidelines Manual, in particular the federal sentencing guidelines provisions that allow for upward departures from the guidelines for aggravating circumstances in child crimes and sexual offenses. Specifically, the Task Force believes that sentencing enhancements should be adopted in cases involving child pornography, based on such aggravating circumstances as the age of the child, the number of images possessed by the defendant, and the nature and character of the abuse depicted in the images.

After considerable review of statutory law and regulations, the Task Force proposes an extensive re-write and reorganization of the Child Protective Services Law to afford greater protection from abuse for children. The definition of child abuse is amended to include recent intentional or reckless acts, attempts to act, and failures to act that cause or create a reasonable likelihood of bodily injury or serious bodily injury. Certain conduct toward a child is considered per se child abuse. Therefore, the definition concerns both the outcome of an action against a child and the action itself. Under the definition, child abuse also includes (1) any act or series of acts (or failure to act) that causes or significantly contributes to a child's serious mental injury, (2) an intentional or reckless act (or failure to act) that causes sexual abuse or exploitation of a child and (3) serious physical neglect of a child. Excluded from child abuse are, among other things, certain disciplinary actions, participation in certain events involving physical contact, and peer-on-peer contact.

The Task Force also recommends the amendment, addition, or repeal of the following definitions: advanced communication technologies; bodily injury; certified medical practitioner; child; child care services; child protective services; cooperation with an investigation or assessment; county agency; expunge; family members; founded report; founded report for school employee; general protective services; indicated report; indicated report for school employee; individual residing in the same home as the child; mandated reporter; near fatality; nonaccidental; paramour; parent; perpetrator; person responsible for the child's welfare; program, activity or service; protective services; recent acts or omissions; record; safety assessment; school; school employee; serious physical injury; serious physical neglect; sexual abuse or exploitation; Statewide database; student; and subject of a report.

Numerous individuals are added to the list of mandated reporters, including individuals who accept responsibility for a child in a program, activity or service; social service workers; law enforcement; attorneys; public librarians; EMS providers; film processors; information technology repair or service personnel; and employees or independent contractors of other mandated reporters. However, any individual may, and is encouraged to, report suspected child abuse whenever and wherever it occurs. A reporter of suspected child abuse does not need to attempt to identify the perpetrator, and knowledge of the perpetrator's identity is not necessary for a report to be made. Provisions are added to the Child Protective Services Law regarding those circumstances when a child makes a specific disclosure of abuse or an individual discloses that he or she committed child abuse. An individual in an institutional setting must report child abuse immediately to the Department of Public Welfare, as well as to his or her supervisor. Procedures regarding such reports are detailed in the proposed legislation. In addition, there is no distinction between a school employee committing child abuse against a student and another individual who commits child abuse.

The proposed legislation specifies how child abuse and neglect reports are made, reinforcing the "no wrong door" policy and reflecting the use of advance communication technologies, and how such reports are investigated. Investigations of child abuse by a perpetrator (as defined) are generally reserved for the appropriate county agency, child abuse by a perpetrator involving a crime against a child necessarily requires the involvement of law enforcement as well, and abuse by a "stranger" to the child will be the sole responsibility of law enforcement. A county agency is responsible for assessing the risk of harm and threat to safety of the child when the child is not being abused but is still in need of some form of protective services. Statutory provisions also account for (1) child abuse occurring in another state where the child is a resident of Pennsylvania, (2) a report of child abuse occurring in another state where the perpetrator is a Pennsylvania resident and (3) cross-reporting so that the Department of Public Welfare (through ChildLine), county agencies and law enforcement are appropriately informed about a report of suspected child abuse.

The proposed legislation strengthens and further develops the role of a multidisciplinary investigative team (MDIT) in investigating cases of child abuse involving criminal offenses against the child. Each county is mandated to establish an MDIT, whose membership will fluctuate depending on the type of case being investigated and the information available. Each MDIT is required to establish protocols for receiving and reviewing reports, coordinating investigations and developing a system for sharing information obtained in interviews, to minimize the trauma of multiple interviews of a child and to avoid duplication with other fact-finding efforts. The use of services provided by children's advocacy centers are encouraged where appropriate.

The Task Force favors new statutory provisions involving the maintenance and use of reports of child abuse or neglect, with the elimination of the pending complaint file, the unfounded report file, the founded and indicated report file, and the central registry, to be replaced by a Statewide database containing all the information regarding reports of child abuse (regardless of their outcome) and general protective services cases. The Statewide database would be maintained indefinitely, and the current expungement process would be eliminated. The Statewide database would be restricted and confidential, with access limited to authorized county agency personnel and law enforcement personnel for purposes of assessing and investigating allegations of child abuse and neglect. Access would be available on a 24-hour-a-day, 7-day-a-week basis. The statute would continue to provide for the disclosure of information for background clearances.

The Task Force supports the revision of the requirements regarding background clearances for persons having contact with children, in paid and unpaid positions (including for volunteers), with permanent or temporary bans on employment or volunteer activity depending on the information contained in the Statewide database. A permanent ban would occur if the individual was convicted of certain violent or sex crimes involving children, including endangering the welfare of children or the corruption of minors, or if the individual is identified as a perpetrator in a founded or indicated report of sexual abuse or exploitation. A temporary ban would occur for other specified offenses committed and other founded reports of child abuse.

The proposed legislation also provides a statutory framework for what happens when an investigation is complete: a report could be founded, indicated or unfounded, and a child may be accepted for protective services. Special provisions are made for the treatment of indicated reports. The revised Child Protective Services Law also provides for a detailed appeals process that is more "child-friendly" and incorporates several provisions from the Judicial Code.

Provisions regarding the review and oversight of child abuse and neglect investigations are moved into the same chapter. These provisions involve citizen review panels, multidisciplinary review teams, child fatality and near fatality review teams, departmental reviews and reports of child fatalities and near fatalities, county performance reviews, reports to the Governor and the General Assembly, and legislative oversight.

The Task Force also recommends detailed provisions in the Child Protective Services Law regarding the responsibilities of county agencies and the Department of Public Welfare, as well as enforcement provisions and how violations of the law are handled.

The recommendations also include provisions regarding the reporting of felony convictions of licensed health care professionals, education and training for mandated reporters of suspected child abuse and others responsible for administering the Child Protective Services Law, oaths to accompany professional licensure applications and renewals, confidential communications, and custody determinations.

To continue the focus on child protection efforts, the Task Force recommends the creation of three entities: a child protection advisory council, a children's justice task force, and a child protection policy academy. The advisory council would, among other things, examine and analyze the practices, processes and procedures relating to effective responses to child abuse and neglect; review and analyze law, procedures, practices and rules relating to the reporting of child abuse and neglect; and hold public hearings to take testimony and request documents. The task force would, among other things, provide technical assistance to persons providing education training programs or child protective services in Pennsylvania; review and evaluate investigative, administrative and civil and criminal judicial handling of cases of child abuse and neglect; and make policy recommendations. The academy would, among other things, review, approve and assist in developing training and curricula for specified persons and make policy recommendations.

Finally, the Task Force recommends the amendment of (1) the Crimes Code regarding simple assault, aggravated assault, the crime of endangering the welfare of children, administrative subpoenas, false reports of child abuse, and intimidation or retaliation in child abuse cases; (2) the Domestic Relations Code regarding factors to consider when awarding custody, consideration of child abuse and involvement with child welfare, and the commencement of proceedings and (3) the Judicial Code regarding courses of training and instruction, confidential communication between spouses and to attorneys and clergymen, and reports by district attorneys.