



## Defining Child Abuse in Pennsylvania

Final written testimony for the Senate Aging and Youth Committee Hearing

Presented by Cathleen Palm, Executive Director

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Good afternoon Senator Ward, Senator Washington, Senator Vance and Members of the Senate Aging and Youth Committee.

On behalf of the Protect Our Children Committee thank you for convening today's hearing.

Included in your packet are forensic pictures and x-rays of five Pennsylvania children each of whom was evaluated by a board-certified child abuse physician who gave a diagnosis of child physical abuse.

None of these children, however, were determined to be a victim of child abuse.

Physicians shared these images and x-rays in order to highlight the frequency and severity of the problem they are diagnosing and treating.

Children and youth caseworkers, Children's Advocacy Center staff, law enforcement, school nurses, and child advocates will tell you there are more of these stories; they appear to be more than aberrations or odd examples of bad investigative practice.

In each of our lives and within the policy arena, there are critical tipping points – the times when we evolve beyond what we think we are and self imposed limitations to what we can and must become.

POCC experienced a tipping point in April 2009 in response to research from Children's Hospital of Pittsburgh of UPMC physicians.

In 2008, these physicians were concerned that they were seeing more cases of abusive head trauma (e.g., Shaken Baby Syndrome). In fact, in 2008, for the first time, there were more deaths from abusive head trauma (AHT) at Children's Hospital of Pittsburgh than from non-inflicted (accidental) brain injuries for all ages of children. Research, which will be published next month in the journal *Pediatrics*, demonstrated significant increases in the number of cases and in the rate of unequivocal AHT in a twenty-three county region of Western PA during the recent economic recession compared to the five years before the recession. The number of cases of AHT which were substantiated as child abuse in this same region, however, remained stable.

POCC then became acquainted with a related research effort headed by Dr. Mark Dias from Penn State Hershey Medical Center. Dr. Dias and his research team are assessing a method of preventing AHT through education of parents in the newborn nursery. To determine the effectiveness, the team is tracking the number of medically indicated AHT cases across the Commonwealth. The research team recognized early that assessing the full reach of the prevention methods would be very difficult because the number of substantiated cases of child abuse maintained at ChildLine is not an accurate reflection of the actual number of cases of AHT.

Finally, Dr. David Rubin and his research team at the PolicyLab at Children's Hospital of Philadelphia recently unveiled preliminary research which demonstrates an increase in the number of hospital admissions due to unequivocal physical abuse without a concomitant increase in the number of substantiated child abuse cases.

These physician-led research efforts add a new dimension to a long simmering debate as to why Pennsylvania is a statistical outlier in investigating and substantiating child abuse.

*"A more specific definition as to 'serious physical injury - I've seen bruising on young children which is not according to the law a serious physical injury and yet indicates to me physical abuse (e.g., a black eye caused by the caregiver striking the child)."* – Westmoreland County Children's Bureau caseworker

*"More specific and more protective; one of the most lenient state laws in the country."* – Cumberland County pediatrician.

*"While I understand the need for focused criteria, it is sometimes hard to understand that a child who is receiving persistent maltreatment physically and mentally may not rise to the level of concern because the injuries weren't serious by the criteria. My school colleagues throughout the state have said that unless it is, 'blood and broken bones' it will not become a case."* – School social worker

*"I think the definition of 'serious injury' should be spelled out. A judge recently defined this in court as 'damage to a major organ'"* – Domestic violence advocate

In 2009, Pennsylvania had a substantiated rate of child abuse of 1.4 per 1,000 children, while the national rate was 9.3 per 1,000 children. Pennsylvania's investigation rate – the times a call to ChildLine triggered an investigation of the report – was 8.3 per 1,000 children in 2009 compared to the national rate of 40.3 per 1,000 children.

Why does our rate of investigation and substantiation look so different?

Historically our approach to neglect cases was the cited explanation for the statistical variations. This involves Pennsylvania's differential response. That is the distinction we make between Child Protective Services (CPS) and General Protective Services (GPS).

These cases are generally considered to involve “non-serious injury or neglect” (e.g., inadequate shelter, truancy, inappropriate discipline, abandonment or other problems that threaten a child's opportunity for healthy growth and development).

However this recent medical data requires we take a closer look.

Together there is synergy in the converging of multi-disciplinary perspectives scattered across the Commonwealth. We are discovering that we are not alone in our view or worry that too many children, who suffer significant injury or die, are or have fallen through the cracks.

Acknowledging the cracks and those children who fall through them is far from an exercise in debating the statistics or ascribing labels (victim, perpetrator, etc). It also should not be interpreted as a push for more children to be removed from their home and placed into foster care.

Rather it is a compelling invitation to critically examine core elements of our child welfare system including: defining, reporting, investigating and treating child abuse to better ensure our system is child-centered, prevention-focused and prioritizing safety and protection.

The definition and other front-end elements of our child welfare system are so consequential, that today **we renew our call for a Child Protection and Accountability Commission.**

This Child Protection and Accountability Commission would be directed by the General Assembly to make timely and specific recommendations intended to:

- Maximize access to and positive outcomes within evidence-based voluntary home visiting services targeting resources toward the most at-risk children and families;
- Determine whether to amend the state's definition of child abuse (e.g., threshold for substantiation and undetermined perpetrator);
- Improve the quality and measurement of the state's differential response (e.g., General Protective Services) specific to response times, types of cases referred, services delivered and data collected and publicly reported;
- Minimize challenges to timely appeal and expungement procedures related to the Central Register;
- Improve mandatory reporting of suspected child abuse and the multidisciplinary investigation of child abuse; and
- Ensure greater transparency and independent oversight of the child welfare system.

Changed and strengthened leadership is urgently needed to better protect our children. We believe the Child Protection and Accountability Commission is the first step toward securing that leadership.

*“The thresholds are too high especially for physical abuse.”* –Private child welfare caseworker

*“Modify the use of serious; it is a high marker to achieve and many children have injuries; which don't rise to that level.”* –Public child welfare caseworker

*“I believe the bar is set too high in terms of ‘severe’. If the bar was lower we might be able to help more families keep their children safe.”* – Victim services advocate

*“I think that the bar is set too high and often violent, abusive acts are not meeting the ‘level’ of impairment, pain, or suffering needed to indicate.”* – Public child welfare caseworker

Since our initial call in April we've benefited from the feedback of a variety of stakeholders including district attorneys. A suggested route has been to build upon prior work on services to children and youth accomplished by the Joint State Government Commission (JSGC).

### ***Positive test at birth for a controlled substance***

POCC took an organic approach to our testimony about defining child abuse and as such we did not have the opportunity to fully vet and adopt an informed position on Senate Bill 753. We did start to gather initial feedback, interpretations and comments and understand that a number of our partners, who help inform and determine POCC positions, oppose the legislation.

14 States address prenatal exposure to the mother's use of an illegal drug or other substance within the context of how they define child abuse. Arizona's definition includes where a health care professional has determined that a newborn was exposed prenatally to a controlled substance that was not as a result of medical treatment to the mother. That state also includes the diagnosis of an infant under one with fetal alcohol syndrome or fetal alcohol effects as child abuse. Colorado also defines child abuse as when an infant test positives for a Schedule I or II controlled substance that is outside a prescription given to the mother.

The legislation and today's hearing permit us the opportunity to stress the importance of prevention and access to effective prenatal and postpartum care for every Pennsylvania mother and child. It is critical that we target dwindling public dollars to the most at-risk and into services that have proven effective.

To that end, a bright spot in the recently enacted state budget was the investment in voluntary evidence-based home visiting services. These services are a proven tool to improve maternal and child outcomes and strengthen the confidence and competence of parents.

Governor Corbett and the General Assembly's long standing support for Nurse-Family Partnership and the restored resources for Family Centers recognized that even in tight budget times it is wise to invest in evidence-based programs for some of our most fragile infants and children because of the solid return on investment.

Your support and advocacy was especially prudent because Pennsylvania – long known as a leader in its approach to early childhood care and education – is now strategically positioned to compete for and hopefully receive both a share of federal Maternal, Infant and Early Child Home Visiting funds as well as those put forth in the Race to the Top Early Learning Challenge Fund.

### ***The implications of the terms "Serious" and "Severe"***

Based on the state's current definition, the substantiation of child abuse - regardless the type of abuse (e.g., physical, emotional, sexual, neglect, or student abuse) – is rare and not easily achieved in this Commonwealth.

***"My local CYS agency does have a policy that gets us involved in these instances anyway, but a law would define it better for citizens."*** – Public child welfare caseworker

***"Mixed feelings, if it mandates that the mother get assistance in addressing this issue and the child be followed more closely, then yes."*** – Bucks County pediatrician

***"We know that alcohol, which is not a controlled substance, can have serious and long lasting effects on a fetus. We do not have information about long-lasting, irreversible effects of many substances. Also, this could serve as a deterrent for a woman to get treatment. Also, we have some information about substance abuse in fathers and the effect on conception and development, yet this amendment would focus only on women. Treatment is more important than labeling."*** – Social worker

***"Should be expanded to allow for exemption if the mother is showing a good faith effort at substance abuse treatment."*** – Physician with Lehigh Valley Health Network

***"The problem with this change is that hospitals are not consistent in the method of testing, testing all babies, and/or the reasons. Passage of this law could encourage hospital shopping or even deliveries at home which could cause more harm. It does not address the larger problem of prenatal care and having D&A services available to the mom during pregnancy. The positive part of changing the law is it will get some families in the system. I believe some counties completely ignore these types of reports."*** – Former Director of a public child welfare agency

How child abuse is defined directly impacts how calls are screened at ChildLine, how quickly a child's safety is assured via face-to-face or collateral contact, the decision-making of the child welfare workforce, and whether direct services for the child or to improve the parent-child bond become mandatory or voluntary.

***“I think the restrictions on what constitutes child abuse are too stringent and not reflective of the plight of children. I supervise and try the child abuse prosecutions.... approximately 35% of our cases have been unfounded.”***- Assistant District Attorney

***“It should be more detailed in explaining certain points such as non-accidental serious mental injury.”*** – Domestic violence advocate

***Under the current law, a child can be emotionally or physically abused, but the interpretation of the courts is that of serious physical or mental damage, which leaves out children who have persistent mistreatment that does not rise to that level.”*** – Family therapist

Pennsylvania law requires that a child has to endure an injury that causes them “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, invites its own set of nuances and complications.

The forensic photographs shared earlier showed bruising and other injuries that were likely painful when inflicted, but were unfounded as abuse.

And then there is defining who can be a “perpetrator” of child abuse, according to the law (a parent, parent’s paramour, a person over age 14 living in the same household or a person responsible for the welfare of a child).

We discovered that other states do not include serious or severe in their definition. They also do not link a finding of abuse to an assessment of pain. Instead a number of states enumerate the types of injuries that constitute child abuse. For example, in Hawaii the following injuries when they are “not justifiably explained” or as a result of an accidental occurrence would constitute child abuse:

- Substantial or multiple skin bruising or other internal bleeding
- Injury to skin causing substantial bleeding
- Malnutrition or failure to thrive
- Burns or poisoning
- Fracture of any bone
- Subdural hematoma or soft tissue swelling
- Extreme pain or mental distress
- Gross degradation and
- Death

Wisconsin also defines physical injury, in part, through an enumeration of types of injuries that occur through an “accidental means” including lacerations, fractured bones, and severe or frequent bruising. And Montana talks about acts, omissions or gross negligence which results in injuries inclusive of burns and bone fractures.

Between 2002 and 2010, at least 377 Pennsylvania children died from child abuse.

With the leadership of Senators Washington and Baker the Commonwealth has recently enacted legislation to standardize county and state level reviews of suspected child abuse fatalities and near fatalities and to require public release of the reports. Complementary to the abuse-related reviews was enactment of legislation codifying Pennsylvania’s long-standing public/private partnership aimed at a comprehensive public health related review of all child fatalities.

These standardized child abuse-related reviews have helped inform the debate and they have illustrated that:

- More children die from abuse-related injuries than are captured within the official statistics,

- Significant numbers of children who die or nearly die had prior contact with a children and youth agency;
- In addition to the complexities associated with the definition of abuse, the application of it varies from county to county;
- Children die or nearly die, criminal charges are brought against a perpetrator(s) with convictions upheld, but child abuse is never substantiated

Altering the state’s child abuse definition and differential response to promote and permit earlier and more intensive interventions with at-risk families is one way in which the state can commit to reducing child abuse fatalities and near fatalities.

### ***Undetermined perpetrator equals no child abuse victim***

As I already noted, under Pennsylvania law there are limitations on those persons who can be considered a perpetrator of child abuse.

A baseball coach, member of the clergy, family member not living in the child’s home are among those who would not be considered a perpetrator of child abuse under state law.

This is fairly consistent with the approach taken in other states.

Within this context of who can be a perpetrator, substantiating child abuse also requires that an investigation determine who specifically inflicted the injuries on the child.

So if one alleged perpetrator points the finger at another potential perpetrator and answering the *who did this* cannot be determined, abuse is not substantiated.

This is a remarkable illustration of how our state approach to child abuse is adult-driven versus child-centered.

We have increasingly learned about cases where broken bones, injuries resulting from sexual violence, or abusive head trauma have been unfounded as child abuse, because the perpetrator was undetermined.

These victims and the injuries they endured are therefore not represented in the very statistics we put forth as an accurate and effective measurement of the incidents of child abuse in the Commonwealth.

We can all understand why such a case where a perpetrator is undetermined may not result in a person or persons being included on the state child abuse registry, but it defies logic to exclude the child as a victim of child abuse within our state statistics.

As we readied for this hearing a child welfare caseworker asked us “Are we saying the injuries to the child were not real, measurable?”

A community-based physician expressed frustration saying, “Permitting a case to be unfounded simply because we do not know who did this terrible thing is wrong,”

We have asked the Department of Public Welfare (DPW) to help determine the frequency of child abuse being unfounded solely as a result of an undetermined perpetrator.

***“If a child has been seriously injured or even dies, it makes no sense for the case not to be indicated just because any of several people could have caused the injuries.”*** – Social work professor and member of a county fatality/near fatality review team.

***“I think a child with significant injuries that is medically documented as abuse should be counted as an abuse case even if we do not know who abused the child.”*** – Children’s Advocacy Center employee

***“Unknown perpetrator should be added to the law. In some cases the child’s injuries rise to the level of serious injury and could be determined as indicated but there is not enough evidence at the time of determination to identify the perpetrator.”*** – Public child welfare caseworker

Beyond the frequency, there is needed understanding as to if and how a child's access to services and/or victim compensation could be impacted by the unfounded status.

Then there is a need for guidance about the implications, if any, of a recent Commonwealth Court decision issued in April (B.B v. DPW). The court reversed a decision by the Bureau of Hearings and Appeals to keep a grandmother on the child abuse registry.

This case involved two siblings who were unequivocally victims of child physical abuse – one who suffered three fractured ribs and the other had a subdural hemorrhage of the brain.

In reversing, the Court said the Bureau had “erred as a matter of law in applying the presumption of Section 6381(d) of the CPSL where it was found that the children herein were, during the period in which the medical evidence shows the children were abused, in the care and/or custody of more than one caregiver.”

### ***Confronting repeat referrals and “discipline”***

Pennsylvania children can and do have multiple contacts with a children and youth agency, including for injuries that require medical attention and treatment, but under our current law they are not victims of child abuse.

For too many children it takes a lethal or near-lethal event following a pattern of concern, injury and child welfare involvement before child abuse is substantiated.

We've found it hard to find reliable statewide (and county-specific) data about how many children are and for what reasons intersecting with a children and youth agency multiple times. It is also hard to determine whether services are routinely provided and, if so, what types and what outcomes are achieved.

We can gain some insight by reviewing what the state reports in its annual report specific to near fatalities and fatalities.

Specific to a focus of today's hearing – Senate Bill 753 – we found that three children who have died since 2008 lived within a family that had a prior contact with the children and youth agency because a child in the family tested positive for a controlled substance at birth.

There are still others where parental drug use, housing conditions, and inappropriate supervision are frequently at the heart of repeated referrals.

When we looked at prior referrals for “inappropriate physical discipline” we found that since 2008:

- 2 children died after being shot by their father, there were three prior involvements with a children and youth agency;
- A 2-month-old nearly died after suffering from brain bleeding and fractures to his shoulder, leg and skull, the family had been evicted from their home “due to the father's physical discipline of the children;”
- A 2-month-old died from suffocation and mom tested positive for marijuana at the time of the fatality
- A 1-year-old died from multiple subdural hematoma and contusions and who also had a “spinal cord injury that extended from the back of his neck through his thoracic vertebrae”
- A 16-year-old with developmental disabilities related to autism and two prior referrals to children and youth died as a result of a gunshot wound
- A 6-year-old nearly died from a gunshot wound and “multiple referrals” had been made on the family
- A 1-year-old died from a traumatic head injury

*“As a former child abuse investigator of 10 years, the present CPSL definitions leave too much of a gray area for injuries from ‘punishment’. I understand that there is no law against physical discipline, and I agree with that piece. There are times when a soft slap on the hand to deter dangerous touching of a hot stove or heater may be appropriate, for example. There is no need, however, to allow the use of any implement as a form of punishment. The consequences also need to be re-defined.”*

-Public child welfare caseworker

- A 12-year-old died from a gunshot wound after being instructed during a domestic dispute between the father and his paramour to retrieve a gun for the father
- A 4-year-old died from smoke inhalation after being left home alone with his 3-year-old sibling who nearly died
- A 3-year-old nearly died from intra-cranial bleeding after 3 prior referrals

It is essential to consider the “inappropriate discipline” fatalities and near fatalities and the prior contact with a children and youth agency first with the understanding that the annual report provides limited information (and there are no publicly released Act 33 reports on these fatalities or near fatalities to review) and also within how child abuse is defined or interpreted by the courts.

In 2002, the Pennsylvania Supreme Court decided *P.R. v. the Commonwealth of PA*.

Before the court was a case involving a serious injury to a child’s eye after the mother was striking her with a belt “as a form of corporal punishment.” The child attempted to avoid being hit by the belt which led to the belt buckle striking the child’s eye and causing an injury requiring surgery. The child’s mother was named as a perpetrator of child abuse. She pursued expungement of the indicated report of child abuse stipulating that the injury was a result of an accident not abuse.

The PA Supreme Court reversed the decision that this was child abuse and required that the mother’s name be removed from the state registry.

The court stipulated, “One can question the wisdom of a parent’s decision to use a belt with a buckle attached to administer a spanking. However, in most circumstances the decision to use a belt that bears a buckle cannot be viewed, as a gross deviation from the standard of care a reasonable parent would observe in the same situation.”

The court noted the tension in resolving “cases where a parent or guardian is accused of child abuse when an act of corporal punishment results in a serious injury.” They decided that “the standard that best comports with the problem of defining abuse in terms of nonaccidental injury is criminal negligence.”

The General Assembly followed the P.R. decision by amending the Child Protective Services Law to include a definition of nonaccidental defining it as “an injury that is the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk.”

Then last September, Commonwealth Court in *F.R. v. Department of Public Welfare* decided that criminal negligence remains the “proper standard in corporal punishment cases.”

In corporal punishment case before Commonwealth Court, they found that by the General Assembly including “substantial and unjustifiable risk” in the amendment of the CPSL, they intended “to codify” the Supreme Court P.R. decision “not circumvent it.”

They did acknowledge that “permissible acts of corporal punishment can cross the line into the impermissible” and in the context of the CPSL knowing when that line has been crossed relates to the definition of “serious physical injury” - an injury that “causes a child severe pain or significantly impairs a child’s physical functioning, either temporarily or permanently.”

Sixteen states include “physical discipline” as an exception to the definition of child abuse “so long as it is reasonable and causes no bodily injury to the child.”

Florida stipulates that corporal discipline by a parent is not abuse when “it does not result in harm to the child.” Georgia excludes physical discipline from their child abuse definition as long as “there is no physical injury to the child.” Minnesota also sets the standard at the absence of an injury to the child.

The District of Columbia provides for an exception for discipline so “long as it is reasonable in manner and moderate in degree.” However, this exception **does not** extend to striking a child with a closed fist, threatening a child with a dangerous weapon, burning, biting or cutting a child as well as physical abuse of a child under 18 months.

### ***Serious bodily injury and school abuse***

How child abuse is defined also invites rethinking of our current approach to reporting, investigating and substantiating physical abuse by a school employee.

Under current law reporting and substantiating suspected physical abuse by a school employee is required **only when the abuse rises to the level of “serious bodily injury”** – injury that “creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.”

Earlier this year, your Committee advanced Senate Bill 549 sponsored by Senator Fontana. The senator’s legislation makes the standard for reporting and then substantiating physical abuse the same regardless of whether the perpetrator was a parent or a school teacher.

### ***In Conclusion***

Too often despite a report from a mandated reporter and investigation by a children and youth agency, Pennsylvania children remain exposed to repeated injury or a pattern of harm unconnected to needed services and interventions.

There is a growing body of research that illustrates that adverse childhood experiences, including exposure to abuse and violence, have long-term consequences not just for the child but our society. Beyond the adverse consequences for the child, we daily confront the societal impact -- bullying, drug and alcohol addiction, school failure, domestic violence, incarceration rates, truancy, and criminal justice costs.

We can’t afford to overlook the powerful message being sent to a child when an adult can hit, shake, burn, sexually violate, or punch a child so significantly that a trip to a health care facility is needed, but we then tell the child and the person who inflicted the injuries – this was not abusive.

We look forward to working together to realize a Child Protection and Accountability Commission intended to better balance the scales of protection and justice for this state’s fragile children, youth and families.