October 15, 2013

The Honorable Joseph B. Scarnati III
President Pro Tempore
Senate Box 203025
Harrisburg, PA 17120-3025

The Honorable Dominic Pileggi
Majority Leader, PA Senate
Senate Box 203009
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The Honorable Jay Costa
Democratic Leader, PA Senate
Senate Box 203043
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The Honorable Samuel Smith
Speaker of the House
PO Box 202066
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The Honorable Mike Turzai
Majority Leader
PA House of Representatives
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The Honorable Frank Dermody
Democratic Leader
PA House of Representatives
PO Box 202033
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RE: Affirming substantial evidence as the standard of proof in certain child abuse cases

Dear Pennsylvania Senate and House Leaders:

We are significantly encouraged by the very intentional child protection reforms being considered within both the Pennsylvania Senate and House of Representatives.

We are particularly grateful that both chambers share our vision that the state's child abuse definition must be far more protective and child-centered than existing state law.

Change cannot come soon enough for our at-risk and abused children. Pennsylvania remains a statistical outlier in when it determines a child has been a victim of child abuse - 1.2 per 1,000 Pennsylvania children were victims of child abuse in 2011 whereas nationally 9.1 per 1,000 children were victims.

In the midst of encouraging legislative steps, we are deeply troubled by attempts to codify a July 2012 Commonwealth Court decision (*G.V. v. Department of Public Welfare*) – a decision that is being reviewed by to the Pennsylvania Supreme Court. The Pennsylvania Supreme Court has scheduled oral arguments for this week and then will decide whether the Commonwealth decision was wrong.

We believe that it is and puts children at greater risk of abuse by raising the standard of proof required before an abused child can be believed.

This 2012 Commonwealth Court decision raised the standard of evidence to clear and convincing versus substantial in determining whether a named perpetrator in an indicated child abuse report will remain on the child abuse registry. The registry is intended to protect the collective community of children by informing decision-making when a person seeks to work directly with children. Adopting a clear and convincing standard – the highest burden required in civil law – will likely assure Pennsylvania remains a statistical outlier since we would be 1 of only 2 states with such a legal threshold.

The Commonwealth Court decision, which was not sufficiently focused on child safety, addressed the impact of placement on the registry on an adult's "reputation." Today we'd urge you to instead carefully consider the implications of a *clear and convincing* standard on the safety and well-being of very young children and children with intellectual disabilities as they disclose and testify to physical and sexual abuse. The burden to meet this higher standard is quite significant:

"The witnesses must be found to be credible, that the facts to which they have testified are remembered distinctly, and that their testimony is so clear, direct, weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.
T.T., 48 A.3d at 567 (citation omitted).

Right now, counties are not substantiating some child abuse cases fearing they will lose on appeal based on the *clear and convincing* standard. Child welfare workers, pediatricians, solicitors, victims and child advocates are outraged by the cases that are not being substantiated (e.g., a child who has looped cord injuries deep enough to leave permanent scars and determined to be child abuse after medical examination, but the child's intellectual disabilities may impact whether the child's testimony is "*so clear, direct, weighty and convincing*" with regard to the precise timing of the injuries).

The court's G.V. decision has led to numerous, time consuming and costly appeals. These appeals require that already scarce resources cover legal costs instead of providing direct services for children to be safe and heal from abuse.

For example, in April, Commonwealth Court vacated a decision to keep a Cambria County father on the child abuse registry for the sexual abuse of his young daughter. The child testified to being touched repeatedly by her father on her chest and pelvic region. The court determined, "It is reasonable to infer from this testimony that B.G. understands what constitutes bathing and what does not, that C.G.'s touching of B.G.'s chest and pelvic region was for purposes other than bathing, and that this purpose was sexual gratification." The court said the testimony "remained consistent throughout direct and cross-examination" and constituted "substantial evidence of an accurate and properly indicated report of child abuse." Still the Court then sent the case back to DPW requiring that they "demonstrate by clear and convincing evidence" that the father should remain on the registry and in doing so providing prospective employers with critical information about the sexual abuse he had perpetrated against his own child.

We recognize that there are stakeholders much better resourced than victimized children intent on raising the bar, including in cases reasonable parties can agree constitute child abuse.

We will continue to monitor whether the Pennsylvania Supreme Court will reverse the Commonwealth Court decision. In the meantime, we urge the General Assembly to affirm and sustain substantial evidence as the standard of proof in these cases. It better protects children from abuse and neglect and is the standard already established by the General Assembly and followed in nearly every state in the country.

We look forward to working with you and appreciate your continued leadership to better protect every Pennsylvania child.

Sincerely,

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Pennsylvania Coalition Against Rape
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