

# ***Child Abuse and the Law***

Seventh Edition

Juvenile Law Center

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Juvenile Law Center is a non-profit, public-interest law firm that advances the rights and well-being of children in jeopardy. JLC ensures that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become happy, healthy, productive adults. Founded in 1975, JLC is the oldest multi-issue, public interest law firm for children in the United States.

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## INTRODUCTION

The Juvenile Law Center prepared this manual to familiarize both the professional and the lay reader with Pennsylvania laws and regulations that address child abuse and neglect. Reports of suspected child abuse and/or child dependency invoke policies and procedures under several Pennsylvania statutes and codes that both overlap with and diverge from each other. The aim of this publication is to clarify the role of these various laws and regulations so that one may better understand and implement the often complicated process of state intervention in the family. The following acts and regulations may all, at one time or another, pertain to actions taken for alleged child abuse or child dependency: the Pennsylvania Juvenile Act (Act 333), 42 Pa. C.S.A. §6301 *et seq.*; the Child Protective Services Law (Act 124), 23 Pa. C.S.A. §6301 *et seq.*; the regulations governing county children and youth agencies, 55 Pa. Code §3130 *et seq.*; the child protective services regulations, 55 Pa. Code §3480 *et seq.* and §3490 *et seq.*; the Protection from Abuse Act, 23 Pa. C.S.A. §6101 *et seq.*; and the Pennsylvania Rules of Juvenile Court Procedure - Dependency Matters, Pa.R.J.C.P 1100 *et seq.* This manual will focus on distinguishing between the Juvenile Act and the Child Protective Services Law, on when and how to take action under each of these two statutes, and on the critical responsibilities of children and youth agencies under the §3130 regulations.

Since the publication of the Sixth Edition of this manual in 2000, new rules of court procedure for dependency matters have been adopted and the Child Protected Services Law has been amended by Act 179. The rules of juvenile court procedure were adopted in order to assure uniformity among the jurisdictions and quality control in dependency court practice. The rules, in large part, incorporate already existing provisions in the Child Protective Services Law and the Juvenile Act. However, where there are conflicts or major changes, the reader is clearly notified. Furthermore, in 2006, the governor of Pennsylvania signed Act 179 into law, which broadened the scope of mandatory reporting requirements in child abuse situations. The law no longer requires the child to actually come before the reporter to trigger a duty to report, nor does it require only abuse committed by a “perpetrator” to be reported. Part III provides a more detailed explanation of the changes in this law.

Part I of the manual provides a brief overview of federal legislation that affects Pennsylvania child welfare practice. Part II compares and contrasts the two major Pennsylvania laws that govern child abuse. Part III provides an overview of the Child Protective Services Law written especially for the lay reader and details the law’s safeguards and procedures. Part IV contains the text of pertinent state regulations governing county children and youth agencies. Part V summarizes cases that interpret the Juvenile Act and the Child Protective Services Law. Finally, the appendices include a directory of county children and youth agencies in Pennsylvania, the definition of a dependent child, excerpts from the Protection from Abuse Act (which deals with child abuse in a limited way), a list of publications addressing the “reasonable efforts” requirement and a sample “CY47” form for reporting abuse.

# I. FEDERAL CHILD WELFARE AND ADOPTION LEGISLATION AND ITS IMPACT ON PENNSYLVANIA PRACTICE

## FEDERAL LEGISLATION

Two major federal laws governing adoption and child welfare directly affect child welfare practice in Pennsylvania. They are the Adoption Assistance and Child Welfare Act of 1980 and the Federal Adoption and Safe Families Act of 1997.

Congress enacted the Adoption Assistance and Child Welfare Act of 1980<sup>1</sup> by amending the Social Security Act to provide fiscal incentives to states to reduce the unnecessary placement of children in foster care and to ensure periodic review of the cases of children in placement. The amendments require that before a state may receive federal reimbursement for a child in foster care:

1. a judge must in each case find that the state has made “reasonable efforts” to prevent placement of the child or to reunite the child with his or her family; and
2. the state must develop a written case plan for the child; and
3. the state must ensure that the case is reviewed every six months by a court or administrative body, with a full judicial review within 18 months of the child’s placement.

The requirements of the Adoption Assistance and Child Welfare Act of 1980 remain in effect. However, in an effort to further shorten the time children spend in foster care and to speed the process of adoption, Congress passed the Federal Adoption and Safe Families Act of 1997 (“ASFA”), which, among other things, modifies the “reasonable efforts” requirement of the 1980 Act. Congress found that courts and agencies had misinterpreted the “reasonable efforts” requirement of the 1980 Act, causing attempts to reunite even those families where children remained at risk of dangerous abuse and neglect. As a result, some children’s stays in foster care were unnecessarily prolonged and the state agencies’ ability to place children with adoptive families was impeded. Recognizing that there are some cases in which “reasonable efforts” do not need to be made to reunify children with dangerous adults, Congress passed ASFA to delineate certain aggravated circumstances under which a court may determine that family reunification efforts are not required.

In 1998, Pennsylvania amended its Juvenile Act to incorporate the amendments mandated by ASFA, and to make other changes which were not required under the federal legislation.

## REASONABLE EFFORTS

The reasonable efforts requirement is in fact two requirements. First, each state, in its state plan submitted to the federal government, must agree to make reasonable efforts to prevent placement and to reunify a family once placement has occurred. Second, in order for any individual child to be eligible for federal foster care payments, there must be a judicial determination that reasonable efforts have been made to prevent placement.

The “reasonable efforts” language in the Adoption Assistance and Child Welfare Act is one of the most critical but least understood requirements of the 1980 Act. While it did not define the meaning of “reasonable efforts,” the structure of the 1980 Act and its legislative history make it clear that the provision is intended to require children and youth agencies to offer a full range of services as an alternative to foster care placement. It is this requirement that makes the “reasonable efforts” language so critical to advocates, and provides a legal handle on which to place a request for a range of services, including those which the agency claims are not available. By law, the agency must provide a service if it is logically included in “reasonable efforts” to prevent placement or to reunify a family.

For example, in *In Interest of S.A.D.*<sup>2</sup>, an eighteen-year-old single mother voluntarily placed her child with the county children and youth agency (at their suggestion) to enable her to obtain housing and work. When the mother requested the return of her child, the agency refused. At the adjudicatory hearing that followed, the court made a

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<sup>1</sup> P.L. 96-272, 42 U.S.C. §§ 608, 621-626, 628, 670-676.

<sup>2</sup> 382 Pa. Super. 166, 555 A.2d 123 (1989).

specific finding that the agency had made reasonable efforts to prevent a foster care placement. On appeal, Pennsylvania's Superior Court found that the agency's directions to a young mother that she get a job and a place to stay did not satisfy the "reasonable efforts" standards set by the Act.

Furthermore, in *In Interest of Feidler*<sup>3</sup>, Pennsylvania's Superior Court held that the "clear necessity" standard for removing children from the home is satisfied only when the record demonstrates that every reasonable effort has been made to keep the family together. The *Feidler* court also noted that, under the "reasonable efforts" requirement, the agency may be required to provide services that generally fall outside its province.

#### **THE REASONABLE EFFORTS REQUIREMENT MODIFIED: AGGRAVATED CIRCUMSTANCES**

In determining what efforts are reasonable and in making those efforts, the county agency must maintain the child's health and safety as its paramount concern.<sup>4</sup> In accordance with this guiding principle, both ASFA and the Juvenile Act now specify circumstances in which a court may determine that family reunification efforts are NOT required after adjudicating a child dependent. These situations arise when a court determines by clear and convincing evidence that a parent has subjected the dependent child to "aggravated circumstances."<sup>5</sup> The Juvenile Act defines "aggravated circumstances" to include the following:

1. The child is in the custody of a county agency and either the identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child within three months of the date the child was taken into custody; or the parents, whose identity or whereabouts are known, have failed to maintain substantial and continuing contact with the child for a period of six months.
2. The parent has subjected the child or another child of the parent to physical abuse that results in serious bodily injury, sexual violence, or aggravated physical neglect.
3. The parent of the child has been convicted of any of the following offenses where the victim was a child:
  - A. Criminal homicide.
  - B. Aggravated assault, rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, or aggravated indecent assault.
  - C. Misdemeanor indecent assault.
  - D. An equivalent crime in another jurisdiction.
4. The parent has been convicted of the attempt, solicitation or conspiracy to commit any of the crimes listed in paragraph (3) above.
5. The parental rights of the parent have been involuntarily terminated with respect to a child of the parent.<sup>6</sup>

An allegation of aggravated circumstances may be brought (1) in a motion in the petition for dependency, or (2) in a motion at a later stage of the proceeding, such as the permanency hearing for a dependent child.<sup>7</sup> Either the

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<sup>3</sup> 392 Pa. Super 524, 573 A.2d 587 (1990).

<sup>4</sup> 42 U.S.C. § 671(a)(15)(A).

<sup>5</sup> 42 Pa. C.S.A. § 6351(e)(2).

<sup>6</sup> 42 Pa. C.S.A. § 6302.

<sup>7</sup> 42 Pa. C.S.A. § 6334(b); Pa.R.J.C.P. 1330(c); Pa.R.J.C.P. 1701.

county agency or the child's attorney may allege that aggravated circumstances exist in a certain case.<sup>8</sup> If the county agency "reasonably believes" that aggravated circumstances exist, it must file the appropriate motion as soon as possible, but no later than 21 days from its initial determination.<sup>9</sup> A dependency petition or a petition for a permanency hearing that is accompanied by a motion alleging the existence of aggravated circumstances must include a statement of the facts which the county agency or the child's attorney intends to prove to support the allegation.<sup>10</sup> A criminal conviction is *not* required to allege the existence of aggravated circumstances.<sup>11</sup>

Once an allegation of aggravated circumstances has been brought to the court's attention, the court must determine, by clear and convincing evidence, if aggravated circumstances exist.<sup>12</sup> If the court finds that aggravated circumstances do exist, then the court *may* determine that county agencies are not required to make reasonable efforts to preserve or reunify the family.<sup>13</sup> A finding of aggravated circumstances, however, does *not* amount to a finding that reasonable efforts are no longer required.<sup>14</sup> The court must make that decision separately, based on a consideration of all the evidence. If the court decides that aggravated circumstances exist *and* that reasonable efforts need not be made, the court is required to hold a permanency hearing within 30 days.<sup>15</sup> Furthermore, ASFA also requires reasonable efforts to find permanent homes for children in cases in which reunification efforts either have been terminated or were never ordered in the first place.<sup>16</sup>

If a party alleges aggravated circumstances during the adjudicatory phase of the proceeding, the court must first determine whether the child is dependent before moving on to determine whether aggravated circumstances exist.<sup>17</sup> If the court finds from clear and convincing evidence that aggravated circumstances exist, the court must determine whether or not reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family should be made or continue to be made and schedule a permanency hearing.<sup>18</sup>

A judge's determination that aggravated circumstances exist in a given case is only the first step in making the final decision to suspend the requirement that the county agency make reasonable efforts to reunite a family. A finding that aggravated circumstances exist *does not* compel the judge to discontinue the reasonable efforts requirement.<sup>19</sup> The Juvenile Act clearly indicates that a judge's decision to suspend the reasonable efforts requirement is discretionary.<sup>20</sup> Therefore, the judge should base the decision on an evaluation of the totality of the circumstances, not solely on a determination that aggravated circumstances exist.

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<sup>8</sup> 42 Pa. C.S.A. § 6334(b); Pa.R.J.C.P. 1330(c); Pa.R.J.C.P. 1701.

<sup>9</sup> 42 Pa. C.S.A. §6334(b); Pa.R.J.C.P. 1330(c); Pa.R.J.C.P. 1701; Pa.R.J.C.P. 1702.

<sup>10</sup> 42 Pa. C.S.A. §6334(b).

<sup>11</sup> 42 Pa. C.S.A. §6334(b).

<sup>12</sup> 42 Pa. C.S.A. §§ 6351(e)(2), 6341(c)(1); Pa.R.J.C.P. 1705.

<sup>13</sup> 42 Pa. C.S.A. §§ 6351(e)(2), 6341(c)(1); Pa.R.J.C.P. 1705.

<sup>14</sup> 42 Pa. C.S.A. §§ 6351(e)(2), 6341(c)(1); Pa.R.J.C.P. 1705.

<sup>15</sup> 42 Pa. C.S.A. § 6351(e)(3).

<sup>16</sup> 42 U.S.C. § 671(15)(C)(D).

<sup>17</sup> 42 Pa. C.S.A. §§ 6341(c.1), 6351(e); Pa.R.J.C.P. 1705.

<sup>18</sup> 42 Pa. C.S.A. §§ 6341(c.1), 6351(e). Presumably, this hearing could occur immediately, just as in a typical initial disposition hearing under 42 Pa. C.S.A. § 6341(c).

<sup>19</sup> 42 Pa. C.S.A. §§ 6341(c.1), 6351(e).

<sup>20</sup> 42 Pa. C.S.A. §§ 6341(c.1), 6351(e).

The Juvenile Act removes discretion from the county agencies regarding cases in which aggravated circumstances exist. The agency *must* request a finding of aggravated circumstances in *every* case it identifies in which it reasonably believes that aggravated circumstances exist.<sup>21</sup> Because the agency is not permitted to “weed out” those cases which it may believe are viable reunification cases, the court must take on that responsibility.

For further information on the practice implications of ASFA’s modifications to the reasonable efforts requirement, the reader is referred to the *Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children in Pennsylvania* (Juvenile Law Center, Fourth Edition, 2004).

## **SERVICES AVAILABLE IN MAKING REASONABLE EFFORTS**

While federal law doesn’t define “reasonable efforts,” federal regulations do require that states, in their state plans, list available preplacement prevention and reunification services. Such services could include: preplacement preventive services programs; services designed to help children return to families or be placed for adoption or in some other permanent living arrangement; services designed to provide follow-up care to families to whom a child has been returned; respite care of children to provide temporary relief to parents or other caregivers; services designed to improve parenting skills; and case management services such as assistance with transportation, housing, utilities and health care.<sup>22</sup>

As a means of implementing the federal law, Pennsylvania law requires every county children and youth agency to provide the following four prevention or reunification services: 1) counseling; 2) parent education; 3) homemaker/caretaker services; and 4) part day service.<sup>23</sup> In addition to these four required services, The Pennsylvania Code requires each county agency to provide or arrange for the provision of *any* service that the court orders.<sup>24</sup> Thus, if an advocate can convince a court that the provision of any service is required by the “reasonable efforts” language, the court has the authority to order the agency to provide that service and the agency is required both by the court order and by the Code to do so.<sup>25</sup>

## **JUDICIAL OVERSIGHT AND STATUS REVIEWS IN PENNSYLVANIA**

In Pennsylvania, a court must make a determination of whether reasonable efforts were made to prevent placement within 72 hours of placement of a child alleged to be dependent.<sup>26</sup> After the initial “reasonable efforts” determination has been made and federal financial participation triggered, status reviews of a case must take place as required by ASFA and the Juvenile Act. In accordance with (but exceeding)<sup>27</sup> the requirements of ASFA, the Juvenile Act renames disposition review hearings “permanency hearings.” The first hearing must be held immediately following the adjudicatory hearing or at a postponed hearing, occurring not later than 20 days after adjudication if the child has been removed from the home.<sup>28</sup> Then, the court must conduct permanency hearings according to a set schedule in an ongoing dependency case:

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<sup>21</sup> 42 Pa. C.S.A. § 6334(b)(2).

<sup>22</sup> 45 C.F.R. §§ 1357-10 and 1357-15.

<sup>23</sup> 55 Pa. Code § 3130.35.

<sup>24</sup> 55 Pa. Code §3130.38(a)

<sup>25</sup> 55 Pa. Code §3130.38(a)

<sup>26</sup> 42 Pa. C. S.A. § 6332.

<sup>27</sup> Whereas ASFA requires that permanency hearings be held not later than 12 months after the date the child enters foster care, the Juvenile Act makes such a permanency hearing mandatory no later than six months after the date the child first enters care.

<sup>28</sup> 42 Pa. C. S.A. § 6341(c).

1. Within six months of the removal of a child from the home of the parent, guardian, or custodian for placement pursuant to a transfer of temporary legal custody or other disposition<sup>29</sup>
2. Within six months of every previous permanency hearing until the child is returned home or removed from the jurisdiction of the court<sup>30</sup>
3. Within 30 days of an adjudication of dependency at which the court determined that aggravated circumstances exist and that family reunification efforts are not required<sup>31</sup>
4. Within 30 days of a permanency hearing during which the court determined that aggravated circumstances exist and family re-unification efforts are not needed, if the child's existing permanency plan is incomplete or inconsistent with the court's determination<sup>32</sup>
5. Within 30 days of the filing of a motion alleging that aggravated circumstances exist regarding a child previously adjudicated dependent<sup>33</sup>
6. Within 30 days of the filing of a petition alleging that the hearing is necessary to protect the physical, mental or moral welfare of a dependent child<sup>34</sup>

The Juvenile Act lists all matters that must be determined at permanency hearings.<sup>35</sup> Thus, in addition to findings regarding the need for placement, the appropriateness and feasibility of the child's permanency plan and goal, the extent of compliance with the permanency plan, the extent of progress toward alleviating the circumstances that caused removal of the child, and the projected date for achievement of the child's goal, the court must also determine the following:

1. whether the child is safe;
2. if the child has been placed outside the state, whether the placement continues to be best suited to the protection and physical, mental and moral welfare of the child;<sup>36</sup>
3. the services needed to assist a child who is 16 years-old or older to make the transition to independent living;<sup>37</sup>

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<sup>29</sup> 42 Pa. C.S.A. § 6351(e); Pa.R.J.C.P. 1607(B)(1).

<sup>30</sup> 42 Pa. C.S.A. § 6351(e); Pa.R.J.C.P. 1607(B)(2).

<sup>31</sup> 42 Pa. C.S.A. § 6351(e); Pa.R.J.C.P. 1607(A)(1).

<sup>32</sup> 42 Pa. C.S.A. § 6351(e); Pa.R.J.C.P. 1607(A)(2).

<sup>33</sup> 42 Pa. C.S.A. § 6351(e); Pa.R.J.C.P. 1607(A)(3).

<sup>34</sup> 42 Pa. C.S.A. § 6351(e); Pa.R.J.C.P. 1607 (A)(4).

<sup>35</sup> 42 Pa. C.S.A. § 6351(f); Pa.R.J.C.P. 1608.

<sup>36</sup> This provision parallels section 675(5)(C) of the federal Adoption Assistance and Child Welfare Act. See 42 U.S.C. § 675(5)(C). It was added to federal law in 1994.

<sup>37</sup> This provision parallels section 675(5)(C) of the federal Adoption Assistance and Child Welfare Act. See 42 U.S.C. § 675(5)(C). It was added to federal law in 1988.

4. whether the county agency has filed a petition to terminate parental rights if the child has been in placement for 15 of the previous 22 months or if the court has previously suspended reunification efforts due to a finding that aggravated circumstances exist.<sup>38</sup>

The Juvenile Act also details the court's responsibilities during a permanency hearing, requiring the court to determine if and when the child:

5. should be returned to the parents, guardian or other custodian;
6. will be placed for adoption
7. will be placed with a legal custodian or in another living arrangement intended to be permanent in nature. Either of these alternatives is allowed under the Act *only* if the county agency has documented a compelling reason that it would not serve the child's physical, mental or emotional health, safety or morals to return home or to be placed for adoption.<sup>39</sup>

Finally, in addition to the determinations made by the court at the permanency hearing, the county agency must also review the permanency plan or family service plan at least every six months. When the plan is modified, copies must be provided to all parties and the court, if requested, at least fifteen days prior to the permanency hearing.<sup>40</sup> It should be the practice of advocates to keep the court informed of changes in the family service plan so that it may consider the plan in its determinations. As was previously the case in a disposition review hearing, the court at a permanency hearing must order the continuation, modification or termination of placement or other disposition best suited to the protection and physical, mental and moral welfare of the child. For a further discussion of how permanency hearings under ASFA and the Juvenile Act differ from disposition hearings, the reader is referred to *Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children in Pennsylvania* (Juvenile Law Center, Fourth Edition, 2004).

In addition to the "reasonable efforts" requirement, another federal requirement merits the special attention of advocates. If a child is placed, federal law requires the case plan to provide placement "in the least restrictive (most family-like) setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child."<sup>41</sup> This provision provides advocates with a strong tool against institutional or group placements if inappropriate and against placements a long distance from the parent's residence.

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<sup>38</sup> This provision parallels section 675(5)(C) of the federal Adoption Assistance and Child Welfare Act. See 42 U.S.C. § 675(5)(C). It was added to federal law in 1988.

<sup>39</sup> 42 Pa. C.S.A. § 6351(g).

<sup>40</sup> Pa.R.J.C.P. 1608(E).

<sup>41</sup> 42 U.S.C. § 675(5).

## II. THE PENNSYLVANIA LAWS: THE JUVENILE ACT AND THE CHILD PROTECTIVE SERVICES LAW COMPARED

There are two distinct laws in force in Pennsylvania governing child abuse: the Pennsylvania Juvenile Act, 42 Pa. C.S.A. §6301 *et seq.*, and the Child Protective Services Law, 23 Pa. C.S.A. § 6301 *et seq.* These laws have discrete purposes, yet they often overlap in mysterious ways. The text that follows contrasts the laws where they address the same issues.

### THE JUVENILE ACT: AN INTRODUCTION

The Pennsylvania Juvenile Act<sup>42</sup> (“The Act”), was first enacted in 1972 as part of the general legal trend granting children a variety of constitutional protections. The Act is the Commonwealth’s chief vehicle for intervening in the lives of children who arguably need state protection. The Act sets forth a statutory scheme that delicately balances the right of children to be protected against the right of families to be free of state intrusion.<sup>43</sup>

The Act enables the Commonwealth to intervene when a child is alleged to be “dependent.” The Juvenile Act recognizes ten categories of dependent child. (See appendix B.) Most commonly, when an allegation of child abuse is the basis for a dependency petition, dependency is found pursuant to the first definition of dependent child, i.e., a child who “is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals.”<sup>44</sup> If the petitioner proves “dependency” by clear and convincing evidence, the court may enter an adjudication of dependency. Following such adjudications, children may be separated from their parents only if there is “clear necessity” for such action.<sup>45</sup>

In 1998, the Pennsylvania General Assembly amended the Juvenile Act to bring it into compliance with the requirements of the Adoption and Safe Families Act of 1997 (“ASFA”). As described in Part I, ASFA imposed substantive and procedural requirements on state courts and welfare systems to better promote the safety and stability of abused and neglected children. The new law incorporated those requirements, which are addressed in the discussion below, and made other changes to the Juvenile Act which were not required under ASFA.

### THE CHILD PROTECTIVE SERVICES LAW (CPSL): AN INTRODUCTION

The Child Protective Services Law (“CPSL”) (Act 124), 23 Pa. C.S.A. § 6301 *et seq.*, is primarily a reporting statute and was enacted in 1975 in response to a national effort to increase reporting of child abuse. The CPSL integrates the reporting, investigating and recording of child abuse and also provides for the swift delivery of protective services. The CPSL aims to protect children from serious physical or mental injury, sexual abuse or sexual exploitation, and serious physical neglect. The CPSL also requires counties to provide general protective services designed to address conduct that falls outside the definition of child abuse, such as less severe forms of neglect and parenting deficiencies. The CPSL requires each county children and youth agency to provide services intended to keep children in their homes, wherever possible, prevent abuse and neglect, overcome dependency, provide temporary placement, reunite families, if possible, provide permanent placement for children outside the home, if needed, and provide services for children adjudicated dependent.

The CPSL also has a discrete section that covers abuse by school employees. A report of serious bodily injury, sexual abuse or sexual exploitation alleged to have been committed by a school employee against a student must be investigated and recorded in a central registry following procedures specified in the CPSL. The CPSL also mandates background checks of prospective school employees to determine whether the applicant has a history of child abuse or abuse as a school employee against a student.<sup>46</sup>

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<sup>42</sup> 42 Pa. C.S.A. § 6301 *et seq.*

<sup>43</sup> See *In the Interest of LaRue*, 244 Pa. Super. 218, 366 A.2d 1271 (1976); 42 Pa. C.S.A. § 6301(b).

<sup>44</sup> 42 Pa. C.S.A. § 6302.

<sup>45</sup> *In Interest of Clouse*, 244 Pa. Super. 396, 368 A.2d 780 (1976).

<sup>46</sup> The amended CPSL also requires thorough background checks of all persons living in a prospective foster or adoptive home. 23 Pa. C.S.A. § 6344.

The CPSL is structured so that a report is entered into a central statewide register if the report is “founded,” meaning there has been “any judicial adjudication based on a finding that a child who is a subject of the report has been abused,” or if the report is “indicated,” meaning that the “investigation by the child protective service determines that substantial evidence of the alleged abuse exists....” The register retains such information whether or not there has been an adjudication of dependency – and thus offers statewide protection for those who rely on the CPSL.

In 2006, Governor Rendell signed Act 179 into law. Act 179 amended the CPSL to broaden the scope of the mandatory reporting requirements. This most recent amendment imposes mandatory child abuse reporting obligations on more individuals and broadens the definition of who is considered a perpetrator of child abuse. These amendments are discussed in greater detail in Part III. Also, in 1999, the Department of Public Welfare amended the Chapter 3490 regulations of Title 55 Pennsylvania Code, which govern child protective services. It is important to note, however, that the 1999 regulatory changes do *not* incorporate the 1998 or 2007 amendments to the CPSL. Instead, the 1999 modifications to Chapter 3490 reflect the 1994 amendments to the CPSL, which were reported in the fifth edition of this manual. The Department of Public Welfare may soon be amending their 3490 regulations. The reader is referred to the Juvenile Law Center website ([www.jlc.org](http://www.jlc.org)) for updates.

## THE LAWS COMPARED

### ***Abused or Dependent?***

Many examples of dependency under the Juvenile Act do not fall within the reporting requirements of the CPSL. A mandated reporter under the CPSL is required to report only the more serious instances of abuse, neglect or endangerment. Current law requires mandated reporters to report child abuse “when they have reasonable cause to suspect” that such abuse has occurred.<sup>47</sup>

The Juvenile Act does not require that reporters call the child abuse hotline to report dependency cases, such as those concerning an ungovernable child. Similarly, even if a court finds what may be an “founded” instance of child abuse under the CPSL, the court does not have to enter an adjudication of dependency. For example, although an isolated incident of abuse has occurred, its isolated nature may lead a court to find that a child nevertheless has adequate parental care.<sup>48</sup> In practice, however, most courts will adjudicate as dependent the victim of even a single incident of abuse, even if they allow the birth parents to maintain physical or legal custody of the child.

### ***Abuse or Aggravated Circumstances?***

As previously explained, under the Juvenile Act, the “reasonable efforts” requirement may be relaxed when certain aggravating circumstances exist. A natural question that will arise for judges and for agencies applying the provisions of the Juvenile Act is “How do aggravated circumstances cases compare with cases of child abuse or neglect under the Child Protective Services Law (CPSL), 23 Pa. C.S.A. § 6301 *et seq.*?” The answer, simply put, is that indicated and founded cases of child abuse or neglect under the CPSL *do not* necessarily constitute cases of aggravated circumstances under the amended Juvenile Act.

### ***The Definition of a Perpetrator***

The CPSL defines “perpetrators” of abuse to include not only the victim’s parents, but also “a person responsible for the welfare of a child, an individual residing in the same home as a child, or a paramour of a child’s parent.”<sup>49</sup> In other words, a parent, a parent’s paramour, or any unrelated adult caring for the child can be charged with abusing a child under the CPSL. In contrast, in order for aggravated circumstances to exist in a dependency case, the “perpetrator” of the alleged behavior *must* be a parent of the child.<sup>50</sup> Thus, for example, should a child be sexually abused by her mother’s paramour and a dependency proceeding brought, aggravated circumstances could not be established because the *mother* is not the perpetrator of the abuse. Although the behavior at issue might qualify as

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<sup>47</sup> 23 Pa. C.S.A. § 6311.

<sup>48</sup> See *In Interest of R.T.*, 405 Pa. Super. 156, 592 A.2d 55 (1991).

<sup>49</sup> 23 Pa. C.S.A. § 6303.

<sup>50</sup> 42 Pa. C.S.A. § 6302.

an aggravated circumstance if the perpetrator had been the child's parent, in this instance, the perpetrator is *not* the child's parent. Under the CPSL, however, the mother's paramour, the perpetrator of the abuse, would be guilty of child abuse. Before Act 179 amended the CPSL, a duty to report was only triggered when there was suspicion of abuse by a person who was a "perpetrator" as defined by the CPSL. However, Act 179 amended the CPSL to now require mandated reporters to report abuse when they have reasonable cause to suspect that the child has been abused by any individual, not just those limited to the definition of "perpetrator" above.<sup>51</sup>

### ***Defining "Serious Bodily Injury"***

Aggravated circumstances include situations in which the child or child's sibling has suffered "physical abuse resulting in serious bodily injury."<sup>52</sup> The definition of "serious bodily injury" included in the Juvenile Act matches the definition of that term in the CPSL.<sup>53</sup> Thus, any case that would qualify as involving "serious bodily injury" that would constitute abuse under the CPSL would also constitute aggravated circumstances under the Juvenile Act. Note, however, that "serious bodily injury" cases constitute only a subset of physical abuse cases under the CPSL.<sup>54</sup> Therefore, not every indicated or founded physical abuse case will warrant a finding that aggravated circumstances exist.

### ***The Difference Between "Sexual Violence" and "Sexual Abuse"***

Aggravated circumstances include situations in which the child or child's sibling has been the victim of "sexual violence" by the parent.<sup>55</sup> The definition of "sexual violence" included in the Juvenile Act is very similar to the definition of "sexual abuse or exploitation" in the CPSL, with a few exceptions. The major difference is that the definition of "sexual abuse or exploitation" in the CPSL includes rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, sexual abuse, and sexual exploitation.<sup>56</sup> And, the definition of sexual violence in the Juvenile Act includes rape, indecent contact, or incest.<sup>57</sup> Aside from these exceptions, it appears that any other indicated or founded case of sexual abuse by a parent *would constitute* aggravated circumstances under the Juvenile Act.

### ***The Difference Between "Aggravated Physical Neglect" and "Serious Physical Neglect"***

Aggravated circumstances include situations in which the child or a child's sibling has suffered "aggravated physical neglect" by the parent.<sup>58</sup>

Aggravated physical neglect, as used in the Juvenile Act, means "any omission in the care of a child which results in a life-threatening condition or seriously impairs the child's functioning."<sup>59</sup> In contrast, a finding of "serious physical

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<sup>51</sup> 23 Pa. C.S.A. § 6311.

<sup>52</sup> 42 Pa. C.S.A. § 6302.

<sup>53</sup> 23 Pa. C.S.A. § 6303.

<sup>54</sup> The CPSL defines "child abuse" to include cases involving "non-accidental serious physical injury." "Serious physical injury" is in turn defined to include an injury that either "causes a child severe pain" or "significantly impairs the child's physical functioning, either temporarily or permanently." This definition includes a much broader range of injuries than does the definition of "serious bodily injury" which is limited to injuries that create "a substantial risk of death or [cause] serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ." 23 Pa. C.S.A. § 6303.

<sup>55</sup> 42 Pa. C.S.A. § 6302.

<sup>56</sup> 23 Pa. C.S.A. § 6303.

<sup>57</sup> 42 Pa. C.S.A. § 6302.

<sup>58</sup> 42 Pa. C.S.A. § 6302.

<sup>59</sup> 42 Pa. C.S.A. § 6302.

neglect” under the CPSL requires the “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.”<sup>60</sup> A comparison of these two definitions reveals that the definition of “aggravated physical neglect” included in the Juvenile Act encompasses only the most serious of those child abuse cases that involve “serious physical neglect” under the CPSL.

For example, an infant diagnosed with failure to thrive might qualify as a victim of “serious physical neglect” under the CPSL, because the diagnosis necessarily includes a danger to the child’s development. The failure to thrive diagnosis, however, might not support a finding of aggravated circumstances under the Juvenile Act because the effects on the child may not rise to the level of serious functional impairment. Thus, courts and agencies should take care to avoid assuming that every neglect case under the CPSL will become an aggravated circumstances case under the Juvenile Act.

### ***Protective Custody***

Under the CPSL, a child may be taken into custody by a physician or director (or designee) of a medical institution when it is immediately necessary to protect the child from further serious injury.<sup>61</sup> The CPSL also provides that the child may be taken into custody pursuant to the Juvenile Act.<sup>62</sup> In relevant part, the Juvenile Act permits taking a child into custody pursuant to court order or by a law enforcement officer or duly authorized court officer “if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his surroundings, and that his removal is necessary.” The Rules of Dependency Court Procedure outline the guidelines that must be followed, including provisions for notifying parents, when a child is taken into protective custody.<sup>63</sup> For example, the Rules specify that a child may not be held in protective custody for longer than 24 hours unless the county agency is immediately notified and the county agency obtains an order permitting the child to remain in custody longer.<sup>64</sup>

### ***Place of Protective Custody***

The Juvenile Act, in authorizing detention of dependent children, permits placement in<sup>65</sup>

- a licensed foster home or home approved by the court;
- a facility operated by a licensed child welfare agency or one approved by the court;
- any other suitable place or facility, designated or operated by the court and approved by the Department of Public Welfare.

In most cases of child abuse, the CPSL authorizes all of the above as well as placement “in an appropriate medical facility.”<sup>66</sup> Through Act 179, the amended CPSL also requires background checks for all individuals over the age of 14 years old living in prospective foster and adoptive homes as well as prospective employees of care services in which children might be placed.<sup>67</sup>

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<sup>60</sup> 23 Pa. C.S.A. § 6303.

<sup>61</sup> 23 Pa. C.S.A. § 6315(a).

<sup>62</sup> 42 Pa. C.S.A. § 6324.

<sup>63</sup> Pa.R.J.C.P. 1201; 1202.

<sup>64</sup> Pa.R.J.C.P. 1201.

<sup>65</sup> 42 Pa. C.S.A. § 6327.

<sup>66</sup> 23 Pa. C.S.A. § 6315(e).

<sup>67</sup> 23 Pa. C.S.A. § 6344.

## ***The Informal Hearing***

The Juvenile Act, the Rules of Juvenile Court Procedure, and the CPSL, mandate an informal hearing, called the shelter care hearing, within 72 hours of a child's being taken into custody.<sup>68</sup> At this hearing, the court must determine whether the child should remain in protective custody. The CPSL authorizes continued custody if "it is determined that protective custody shall be continued and the child is alleged to be without proper parental care or control or is alleged to be a dependent child..."<sup>69</sup> The Juvenile Act authorizes continued custody if it "is required to protect...the child..." The Act also provides for the situation in which a parent or guardian fails to appear for the hearing or is incapacitated, authorizing continued custody if the child "has no parent, guardian, or custodian or other person able to provide supervision and care..."<sup>70</sup>

At the hearing under the Juvenile Act, the court must also determine whether "reasonable efforts" were made to prevent placing the child in protective custody and to return the child to the home.<sup>71</sup> The Rules of Juvenile Court Procedure also provide that if services were not offered because it was an emergency placement, the court must determine whether the lack of efforts was indeed reasonable.<sup>72</sup> See Part I for further discussion of reasonable efforts.

## ***The Petition***

### ***(a) Who Can File and When***

The Juvenile Act provision that allowed "any person, including a law enforcement officer" to file a petition alleging facts to support a finding that a child is dependent has been suspended by the recently promulgated Rules of Juvenile Court Procedure.<sup>73</sup> Previously, the child did not need to be in protective custody in order for a person to file a dependency petition. Under the Rules of Juvenile Court Procedure, however, in order for a person, other than the county agency, to file a petition, the person first must present an application to file a private petition to the court.<sup>74</sup> The application must contain specific information about the child and the allegations. Within 14 days of receipt of the application, the court will conduct a hearing to determine if there are sufficient facts to support a petition for dependency and whether the person making the application is a proper party to the proceedings.<sup>75</sup> If the court finds that there are indeed sufficient facts to support a petition, the county agency must then file the petition for dependency.<sup>76</sup> At this time, if the county agency wishes to allege aggravated circumstances, it must include a motion for a finding of aggravated circumstances along with the petition for dependency.<sup>77</sup>

At the informal hearing, if it is determined that protective custody should continue, the child protective service agency must within 48 hours file a petition with the court pursuant to the Juvenile Act alleging that the child is dependent, invoking Juvenile Act procedures.<sup>78</sup>

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<sup>68</sup> 42 Pa. C.S.A. § 6332; Pa.R.J.C.P. 1242(D); 23 Pa. C.S.A. § 6315(d).

<sup>69</sup> 23 Pa. C.S.A. § 6315(d).

<sup>70</sup> 42 Pa C.S.A. § 6325.

<sup>71</sup> 42 Pa. C.S.A. § 6332(a).

<sup>72</sup> Pa.R.J.C.P. 1242(C).

<sup>73</sup> 42 Pa. C.S.A. § 6334(a); Pa.R.J.C.P. 1800(8).

<sup>74</sup> Pa.R.J.C.P. 1320.

<sup>75</sup> Pa.R.J.C.P. 1321.

<sup>76</sup> Pa.R.J.C.P. 1330.

<sup>77</sup> Pa.R.J.C.P. 1330; 1701.

<sup>78</sup> See 23 Pa. C.S.A. § 6315(d).

If a child is alleged dependent and is taken to a place of protective custody, the Juvenile Act authorizes intake officers to make an immediate investigation and to release the child unless it appears that shelter care is warranted or required. If the child is not then released, a dependency petition must be presented to the court within 24 hours or the next business day.<sup>79</sup> Thus, under the Juvenile Act, the filing of the petition normally precedes the hearing.

In cases of child abuse, the CPSL has a timetable for the filing of a petition which differs from that set forth in the Juvenile Act. Because child abuse demands swift intervention, the CPSL anticipates situations that require protective custody even though a petition has not been filed. If the court determines at the hearing that protective custody shall be continued for an alleged child abuse victim, the county child protective services agency must file a petition under the Juvenile Act within 48 hours.<sup>80</sup> Thus, unlike the Juvenile Act's timetable, the CPSL's timetable calls for the filing of the petition *after* the informal hearing. The Rules of Juvenile Court Procedure do not speak specifically to this time line, but do provide that in *lieu* of a shelter care application, which invokes the shelter care, or informal, hearing, the county agency may file a petition alleging dependency.<sup>81</sup>

### **(b) Contents of the Petition**

All petitions filed in dependency cases, even if child abuse is alleged, must meet the minimum requirements of the Juvenile Act and the Rules of Juvenile Court Procedure, which include:<sup>82</sup>

1. The facts which bring the child within the jurisdiction of the court, with a statement that it is in the best interest of the child and the public that the proceeding be brought.
2. The name, age, and residence address, if any, of the child on whose behalf the petition is brought.
3. The names and residence addresses, if known to the petitioner, of the parents, guardian, or custodian of the child and of the spouse, if any, of the child. If no parent, guardian, or custodian resides or can be found within the Commonwealth, or if their respective places of residence address are unknown, the name of any known adult relative residing within the county, or if there be none, the known adult relative residing nearest to the location of the court.
4. Whether the child is in custody and, if so, the place of his detention and the time he was taken into custody.

### **(c) Alleging Abuse**

In cases of child abuse, child protective services (CPS) in many Pennsylvania counties often seek to ensure that the court makes a particularized finding or adjudication of abuse so that the original child abuse report will be "founded." However, neither the Juvenile Act nor the CPSL provides explicitly for an adjudication of abuse pursuant to the CPSL. Language in the petition asking for an adjudication of abuse may be helpful to the court, but such language is not the basis on which a report is founded. The report will be "founded" if the court makes clear that the adjudication of dependency is based on a finding of abuse.<sup>83</sup> The final adjudication in a Juvenile Act proceeding is one of dependency, not abuse.

The best practice in child abuse cases that result in dependency petitions is for the CPS to petition the court for a finding of abuse in addition to an adjudication of dependency. The petition will then alert the court to the factual findings sought by the CPS. It will also permit the introduction of evidence, pursuant to the CPSL, that might otherwise be excluded.

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<sup>79</sup> 42 Pa. C.S.A. § 6331.

<sup>80</sup> 23 Pa. C.S.A. § 6315(d).

<sup>81</sup> Pa.R.J.C.P. 1240 (comment).

<sup>82</sup> 42 Pa. C.S.A. § 6334; Pa.R.J.C.P. 1330.

<sup>83</sup> 23 Pa. C.S.A. § 6303.

#### **(d) Alleging Aggravated Circumstances**

Pursuant to ASFA and the Juvenile Act, under certain circumstances a court may determine that family reunification efforts are NOT required after adjudicating a child dependent. These situations arise when a court determines by clear and convincing evidence that a parent has subjected the dependent child to “aggravated circumstances.”<sup>84</sup> An allegation of aggravated circumstances may be brought (1) in a motion in the petition for dependency, or (2) in a motion at a later stage of the proceeding, such as the permanency hearing for a dependent child.<sup>85</sup> For a complete discussion of the definition of aggravated circumstances and how they may be alleged in a petition, the reader is referred to Part I, pages 2-4, of this manual.

#### **The Adjudicatory Hearing**

After a petition has been filed alleging the child to be dependent the court must set a time for an adjudicatory hearing. If the child is in protective custody, the hearing must be held within ten days of the petition’s filing. The court may allow a child to remain in shelter care for an additional 10 days when special circumstances exist, such as relevant evidence becoming available at a later date.<sup>86</sup>

At the hearing, the petitioner must prove by clear and convincing evidence that the child is dependent.<sup>87</sup> If the court finds that the evidence does not prove dependency, it may dismiss the petition, order the child to be discharged from custody and placed with any restrictions, or enter an order identifying who will have custody of the child.<sup>88</sup>

If a party alleges aggravated circumstances during the adjudicatory phase of the proceeding, the court must first determine whether the child is dependent before moving on to determine whether aggravated circumstances exist.<sup>89</sup> If the court finds from clear and convincing evidence that aggravated circumstances exist, the court must determine whether or not reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family should be made or continue to be made and schedule a permanency hearing.<sup>90</sup>

#### **The Permanency Hearing**

If the court finds the child dependent, the court must decide whether or not to permit the child to remain at home. These hearings, which were previously referred to as “disposition review hearings” are now termed “permanency hearings.” The reader is referred to Part I, pages 5-7, for a more complete description of the permanency hearing, including a timetable and enumeration of matters to be determined at such hearings.

The statutory change from disposition review hearings to permanency hearings brings with it heightened responsibilities and requirements for judges and advocates who are working to achieve permanency for dependent children. Permanency hearings are *meant* to be fundamentally different from the disposition review hearings under previous law. Pursuant to the Juvenile Act, a permanency hearing should result in a definitive and binding decision concerning what is to be the final direction of the case. For a discussion of the implications of the changes in forms of permanency (or dispositional options) now available under the Juvenile Act and recommendations for how permanency hearings should be conducted please see *Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children in Pennsylvania* (Juvenile Law Center, Fourth Edition, 2004).

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<sup>84</sup> 42 Pa. C.S.A. § 6351(e)(2).

<sup>85</sup> 42 Pa. C.S.A. § 6334(b); Pa.R.J.C.P. 1330(c); Pa.R.J.C.P. 1701.

<sup>86</sup> 42 Pa. C.S.A. § 6335; Pa.R.J.C.P. 1404.

<sup>87</sup> 42 Pa. C.S.A. § 6341; Pa.R.J.C.P. 1409.

<sup>88</sup> Pa.R.J.C.P. 1409.

<sup>89</sup> 42 Pa. C.S.A. §§ 6341(c.1), 6351(e).

<sup>90</sup> 42 Pa. C.S.A. §§ 6341(c.1), 6351(e). Presumably, this hearing could occur immediately, just as in a typical initial disposition hearing under 42 Pa. C.S.A. § 6341(c).

## Evidence

Pennsylvania law has opened to children several evidentiary doors that are closed to adults. In addition to the rules of evidence, the Juvenile Act and the CPSL provide children with specific evidentiary rights and protections during their involvement in abuse and dependency proceedings.<sup>91</sup>

In a dependency proceeding involving the child or other members of the child's family, a court may admit as evidence the child's statements describing sexual acts or attempted sexual acts that another person has performed with or on the child. Although such statements are not otherwise admissible by statute or court ruling, the court may admit such statements as evidence if the court finds that the time, content, and circumstances of the statements provide sufficient indicia of reliability.<sup>92</sup>

Because proof of child abuse is often circumstantial, the CPSL permits admission of evidence that would normally be barred under the Juvenile Act. When child abuse is alleged, the following three rules are operative:<sup>93</sup>

(1) Whenever any person required to report under this act is unavailable due to death or removal from the court's jurisdiction, the written report of that person shall be admissible in evidence... Any hearsay contained in the reports shall be given such weight, if any, as the court determines to be appropriate... However, any hearsay contained in a written report shall not of itself be sufficient to support an adjudication based on abuse.

(2) Except for privileged communications between a lawyer and his client and between a minister and his penitent, privilege or confidential communication...shall not constitute grounds for excluding evidence at any proceeding regarding child abuse or the cause of child abuse.

(3) Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child shall be *prima facie* evidence of child abuse by the parent or other person responsible for the welfare of the child.

The CPSL thus has its own webs of procedures and safeguards. These are described in detail in Part III of this manual.

The Juvenile Act requires that evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance, be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the dependency determination.<sup>94</sup> Evidence of conduct by the parent, guardian or other custodian that places the health, safety, or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance, may also be considered by the court in determining whether a child is dependent.<sup>95</sup>

In addition, the Juvenile Act requires that drug and alcohol treatment records or related information regarding a child who is alleged or who has been found to be dependent or delinquent, or the child's parent, be released to the county agency or court, upon the consent of the child or the child's parent or upon an order of the court.<sup>96</sup> The disclosure of drug and alcohol treatment records under this section must be obtained or ordered in a manner that is consistent with the procedures, limitations and criteria set forth in regulations adopted by the U.S. Department of Health and Human Services relating to the confidentiality of drug and alcohol treatment records.<sup>97</sup>

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<sup>91</sup> 23 Pa. C.S.A. § 6381, 42 Pa. C.S.A. §§ 5981-83, 5986-98.

<sup>92</sup> 42 Pa. C.S.A. § 5986.

<sup>93</sup> 23 Pa. C.S.A. § 6381.

<sup>94</sup> 42 Pa. C.S.A. § 6351(f.2). Note that evidence that is generally inadmissible at adjudication can be brought in during disposition. Pa.R.J.C.P 1512.

<sup>95</sup> 42 Pa. C.S.A. § 6351(f.2).

<sup>96</sup> 42 Pa. C.S.A. § 6352.1.

<sup>97</sup> 42 Pa. C.S.A. § 6352.1.

The Juvenile Act further provides that the county agency or court must limit use of the records to carrying out the purposes of the Juvenile Act and may not release the records to any other person. The court may order the participation of the county agency in the development of a treatment plan for the child as necessary to protect the health, safety or welfare of the child, to include discussions with the individual, facility or program providing treatment and the child or the child's parent in furtherance of a disposition.<sup>98</sup>

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<sup>98</sup> 42 Pa. C.S.A. § 6352.1.

### III. THE CHILD PROTECTIVE SERVICES LAW

#### WHAT IS THE PURPOSE OF THE CPSL?

The legislative purposes of the CPSL are to:<sup>99</sup>

1. encourage complete reporting of suspected child abuse;
2. involve law enforcement agencies in responding to child abuse;
3. establish in each county a child protective service capable of investigating reports swiftly and competently;
4. provide children with protection from further abuse;
5. provide rehabilitative services to the parents and child;
6. preserve and stabilize family life whenever appropriate and provide children with an alternative permanent family when family unity cannot be maintained;
7. ensure that each county children and youth agency establish a program of protective services to assess the risk of harm to a child, respond adequately and prioritize services to children most at risk.

#### WHO MUST REPORT SUSPECTED CHILD ABUSE?

In an effort to assure that all child abuse is reported and properly dealt with, Act 179 was recently enacted to broaden the scope of who is required to report child abuse. The current law requires any person who, in the course of employment, occupation, or practice comes into contact with children, to report when the person has reasonable cause to suspect on the basis of medical, professional or other training or experience, that a child *under the care supervision, guidance, or training of that person or of an agency, institution, organization or other entity with which that person is affiliated* is a victim of child abuse.<sup>100</sup> This law differs a great deal from the previous law, which required abuse to be reported only when the child came before the reporter in his or her official capacity.

Furthermore, under Act 179, these mandated reporters must also report child abuse committed by an individual who is *not* a "perpetrator".<sup>101</sup> Prior to Act 179's passage, mandatory reporters were only compelled under the CPSL to report child abuse committed by a "perpetrator" as that term is defined in the CPSL.<sup>102</sup> The current law requires mandatory reporters to make reports even when the abuse is committed by an individual who does not meet the CPSL's definition of "perpetrator." Traditionally, instances of child abuse that did not fall into the category of abuse by a perpetrator were dealt with under the criminal code. Rather than making mandatory reporters responsible for determining whether the abuse is a mandatory reporting situation dealt with under the CPSL or the criminal code, Act 179 gives the ChildLine hotline workers the responsibility of sorting through reports and referring reports of abuse by a non-perpetrator to appropriate law enforcement authorities rather than commencing a CPS investigation. See the definition of child abuse under the CPSL in the following pages for more discussion on this issue.

Individuals who are considered mandatory reporters of child abuse include but are not limited to:<sup>103</sup>

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<sup>99</sup> 23 Pa. C.S.A. § 6302.

<sup>100</sup> 23 Pa. C.S.A. § 6311.

<sup>101</sup> 23 Pa. C.S.A. § 6311.

<sup>102</sup> A perpetrator is defined as "a person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent." 23 Pa. C.S.A. § 6303.

<sup>103</sup> 23 Pa. C.S.A. § 6311(b).

1. Licensed physicians
2. Medical examiners
3. Coroners
4. Osteopaths
5. Dentists
6. Optometrists
7. Chiropractors
8. Podiatrists
9. Interns
10. Registered nurses
11. Licensed practical nurses
12. School teachers, administrators, and nurses
13. Social services workers
14. Child care or foster care workers
15. Mental health professionals
16. Law enforcement officials
17. Christian Science Practitioners
18. Hospital personnel engaged in the admission, examination, and care or treatment of persons
19. Members of the clergy

Except with respect to confidential communications an ordained member of the clergy, the privileged communication between a professional person required to report and his patient or client does not apply to situations involving child abuse and may not constitute grounds for failure to report suspected child abuse.<sup>104</sup> Upon the passage of Act 179, confidential communications made to an attorney also fall under the exception of this rule.<sup>105</sup> This change has not yet been reflected in the Pennsylvania Code.

Though a certain category of individuals are mandated to report child abuse under the CPSL, any person with reasonable cause to suspect that a child has been abused may make a report. Reports shall be accepted regardless of whether the person identifies himself.<sup>106</sup>

It is important to note that under the CPSL as amended by Act 179, a duty to report is not triggered when an individual admits to a mandated reporter that s/he has abused a child *unless* that child is also under the care, supervision, or guidance of the mandated reporter or of an agency, institution, organization, or other entity with which the reporter is affiliated. In other words, there still has to be some nexus between the reporter and the child victim to trigger the report.

#### **WHAT IS CHILD ABUSE UNDER THE CPSL?**

As expressed in the CPSL, child abuse means any of the following:<sup>107</sup>

- a) Any recent act or failure to act, which causes nonaccidental serious physical injury to a child under 18 years of age;
- b) An act or failure to act, which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age;
- c) Any recent act, failure to act or series of such acts or failures to act, which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age;

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<sup>104</sup> 23 Pa. C.S.A. § 6311(a); 55 Pa. Code § 3490.14.

<sup>105</sup> 23 Pa. C.S.A. § 6311(a).

<sup>106</sup> 23 Pa. C.S.A. § 6312; 55 Pa. Code § 3490.11.

<sup>107</sup> 23 Pa. C.S.A. § 6303(b).

d) Serious physical neglect by a perpetrator constituting 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.

Prior to Act 179, a mandatory report of child abuse was only triggered when the suspected abuse was committed by a perpetrator. A "perpetrator" is defined as "a person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent."<sup>108</sup> A person responsible for the child's welfare is one who "provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in any public or private school, intermediate unit or area vocational-technical school".<sup>109</sup> Act 179 eliminated the requirement that abuse must be committed by an individual who falls into this category of perpetrator to trigger a mandatory report of child abuse. Even child abuse committed by a non-perpetrator must be reported by mandatory reporters.<sup>110</sup> Therefore abuse committed by a school employee may now trigger a mandatory report of child abuse.<sup>111</sup> Refer to the section on abuse by a school employee on pages 35-37.

The CPSL specifically excludes harm to a child that is the result of environmental factors such as inadequate housing, furnishings, income, clothing and medical care which are beyond the control of parents or other persons responsible for the child's welfare.

In addition, a child will not be considered abused solely because the child is being treated for physical or mental illness through spiritual means in accord with the practice of a recognized church or religious denomination. However, the county agency must closely monitor the child and seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health.

#### **HOW DOES THE CPSL DEFINE ABUSE?**

1. **Serious Physical Injury** is an injury that:

- (1) causes a child severe pain; or
- (2) significantly impairs the child's physical functioning, either temporarily or permanently.<sup>112</sup>

2. **Serious Bodily Injury** is bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.<sup>113</sup>

3. **Serious Mental Injury** is a psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

- (1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or

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<sup>108</sup> 23 Pa.C.S.A. § 6303(a).

<sup>109</sup> Note that although the CPSL covers abuse by a school employee, such abuse is not called "child abuse", and thus a "perpetrator" of child abuse does not include a school employee. 23 Pa.C.S. 6311.

<sup>110</sup> Individuals who do not fall into the category of perpetrator can be any other individual, regardless of his/her relationship with the suspected victim of abuse. For example, this can include a school bus driver, volunteer baseball coach, priest, or local business owner.

<sup>111</sup> 23 Pa.C.S.A. § 6311.

<sup>112</sup> 23 Pa.C.S.A. § 6303(a).

<sup>113</sup> 23 Pa. C.S.A. § 6303(a).

(2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.<sup>114</sup>

4. **Serious Physical Neglect** is a physical condition caused by acts or omissions which endanger the child's life or development or impair his functioning as a result of:
  - A. prolonged or repeated lack of supervision; or
  - B. failure to provide essentials of life, including adequate medical and dental care.<sup>115</sup>
5. The definition of **Sexual Abuse or Exploitation** has changed slightly with the adoption of Act 179. The current definition describes sexual abuse or exploitation as:
  - A. The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct;
  - B. The employment, use, persuasion, inducement, enticement, or coercion of a child to engage in or assist another individual to engage in simulation of sexually explicit conduct for the purpose of producing visual depiction, including photographing, videotaping, computer directing and filming;
  - C. Any of the following offenses committed against a child: rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, sexual abuse, sexual exploitation.<sup>116</sup>

It is important to note that the new definition of sexual abuse or exploitation *does not* include statutory sexual assault in its list of offenses that are considered child abuse if committed against a child. Statutory sexual assault is defined as sexual intercourse between two unmarried people when one is under the age of 16 and the other is four or more years older. Although statutory sexual assault is still considered criminal conduct, it no longer triggers a mandatory report of child abuse.

Under the criminal code of conduct, the definitions of aggravated indecent assault and involuntary deviate sexual intercourse, both offenses listed above, include behaviors between unmarried individuals when one is under the age of 16 and the other is four or more years older. However, because the legislature expressly removed the offense of statutory sexual assault from its list of offenses that would be considered child abuse, it is reasonable to conclude that other sexual behaviors (oral sex, anal sex, penetration) between two unmarried individuals when one is under 16 years of age and the other is four or more years older, would also not trigger a mandatory report of child abuse.

#### **WHAT OBSERVATIONS WOULD SUGGEST THAT AN INJURY MAY BE THE RESULT OF ABUSE?**

When a person first observes what s/he believes may be examples of either serious physical injury, serious physical neglect, serious mental injury, or sexual abuse, s/he may look to other indicators to help decide whether or not there is reason to believe abuse has occurred. Observers may suspect abuse when they have evidence of a serious injury or condition *and* when:

1. A child seems unduly afraid of his/her parents; or
2. His/her parents inappropriately describe him/her as being "different" or place the total blame for the child's condition on the child; or

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<sup>114</sup> 23 Pa. C.S.A. § 6303(a).

<sup>115</sup> 55 Pa. Code § 3490.4.

<sup>116</sup> 23 Pa. C.S.A. § 6303(a).

3. Parents delay in seeking medical help for their child (and they are not delaying for religious reasons); or
4. The parents are secretive and reluctant to give information about the child's condition or offer bizarre or contradictory explanations; or
5. The parents seldom touch or have eye contact with the child or impatiently ignore the child's crying; or
6. The parents criticize or get angry with the child for being injured.

It must be remembered, however, that child abuse involves actual harm to the child or imminent danger of harm. For child abuse to exist under the law, there must be either serious physical or mental injury or serious physical neglect that poses an imminent danger to the child.

### **WHAT REGULATIONS PROMULGATED PURSUANT TO THE CPSL GOVERN COUNTY CHILD PROTECTIVE SERVICE AGENCIES?**

The Chapter 3490 regulations of 55 Pennsylvania Code, which govern child protective service agencies, set forth procedures and standards for the reporting of suspected child abuse, the confidentiality of child abuse information, the investigation of child abuse reports, the taking of a child into protective custody, and the requirement of acquiring criminal and child abuse record history information on prospective foster parents, adoptive parents, and applicants or prospective operators of a child care service. Although the Pennsylvania Department of Public Welfare amended the Chapter 3490 regulations in 1999 to implement earlier changes made to the CPSL the current regulations do *not* incorporate the most recent amendments to the CPSL (those made in 1998 and 2006). The instances in which the Chapter 3490 regulations have not yet been amended to incorporate the changes to the CPSL are indicated in the pages that follow. The provisions of the CPSL take precedence over the Chapter 3490 regulations in all instances where the two differ. It is possible that the Chapter 3490 regulations will be amended very soon. The reader is referred to the Juvenile Law Center website, [www.jlc.org](http://www.jlc.org), for changes to the Pennsylvania Code.

The following sections highlight several of the Chapter 3490 requirements and provide the citations to the corresponding provisions in the CPSL and the Rules of Juvenile Court Procedure where applicable.

### **HOW IS A CASE OF SUSPECTED CHILD ABUSE REPORTED?**

1. Any person may report suspected child abuse to:<sup>117</sup>
  - A. The toll-free Pennsylvania ChildLine and Abuse Registry at 1-800-932-0313; or
  - B. The child protective services unit of the county children and youth agency. (See appendix A.)
2. Required reporters must report suspected child abuse to ChildLine and may also report such abuse to the appropriate county agency.<sup>118</sup>
  - A. Required reporters who work in an institution, school, facility, or agency shall immediately notify the person in charge, or his/her designee, of the suspected abuse. The person in charge, or the designee, has a legal obligation to make a report to ChildLine immediately.<sup>119</sup>

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<sup>117</sup> 55 Pa. Code § 3490.11.

<sup>118</sup> 23 Pa. C.S.A. § 6313(a); 55 Pa. Code § 3490.12.

<sup>119</sup> 23 Pa. C.S.A. § 6311(c); 55 Pa. Code § 3490.13(a).

- B. The person in charge, or the designee, may not make an independent determination of whether to report. The employee who is a required reporter may make an independent report directly to ChildLine.<sup>120</sup>
- C. A required reporter must make a written report within 48 hours to the child protective service in the county where the suspected abuse occurred.<sup>121</sup>

### **WHAT ARE THE LEGAL EFFECTS OF REPORTING OR FAILING TO REPORT SUSPECTED CHILD ABUSE?**

Any persons required by the CPSL to report a case of suspected child abuse who willfully fail to do so may be criminally prosecuted for the failure to report. Prior to Act 179, the first failure to report was graded as a summary offense and subsequent convictions were graded as misdemeanors. Now, however, the failure to report or make a referral to the appropriate authorities is a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for subsequent violations.<sup>122</sup> Moreover, any person who, in his or her official capacity, prevents or interferes with the making of a report of suspected child abuse, shall be committing the offense of endangering the welfare of a child.<sup>123</sup>

The CPSL presumes that a person who reports a case of suspected child abuse has acted in good faith.<sup>124</sup> And, any person who makes a report in good faith is immune from criminal and civil liability.<sup>125</sup>

### **WHAT INFORMATION SHOULD REPORTS OF SUSPECTED CHILD ABUSE CONTAIN?**

When a written report of suspected child abuse is made, it should include the following information<sup>126</sup> if available:

1. The names and addresses of the child and the parents or other persons responsible for the care of the child if known.
2. Where the suspected abuse occurred.
3. The age and sex of the subjects of the report.
4. The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.
5. The name and relationship of the person or persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by that person or persons.
6. Family composition.
7. The source of the report.
8. The person making the report and where that person can be reached.

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<sup>120</sup> 23 Pa. C.S.A. § 6311(c) and § 6312; 55 Pa. Code § 3490.13(b) and (c).

<sup>121</sup> 23 Pa. C.S.A. § 6313(a) and (c); 55 Pa. Code § 3490.18.

<sup>122</sup> 23 Pa. C.S.A. § 6319.

<sup>123</sup> 18 Pa.C.S.A. § 4304.

<sup>124</sup> 23 Pa. C.S.A. § 6318(b).

<sup>125</sup> 23 Pa. C.S.A. § 6318(a).

<sup>126</sup> 55 Pa. Code § 3490.18.

9. The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.
10. Any other information which the department may require by regulation.

A sample report, officially Form CY47, appears as Appendix E.

#### **MAY PICTURES OR X-RAYS BE TAKEN OF THE CHILD?**

Any person or official required to report suspected child abuse may take photographs of areas of the child's body that show visible trauma. A child may also be referred by a physician for a radiological examination and other medical tests if medically indicated. The pictures and x-rays must be sent to the children and youth agency when the written report of suspected child abuse is submitted, or as soon thereafter as possible.<sup>127</sup>

#### **MAY A CHILD WHO IS SUSPECTED OF HAVING BEEN ABUSED BE TAKEN INTO PROTECTIVE CUSTODY?**

A child may be taken into protective custody in a hospital or medical facility by the physician, the director, or a person designated in writing by such director, if protective custody is immediately necessary to protect the child from further serious physical injury, sexual abuse, or serious physical neglect.<sup>128</sup> Also, law enforcement officers or duly authorized officers of the court may take a child into custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his surroundings and that removal is necessary.

Protective custody is merely an emergency protective measure to ensure that the child has a safe environment in which to live on a short-term basis. The county child protective service agency must be notified immediately and the protective custody may not last more than 24 hours unless a court orders that the child shall be held in custody for a longer period.<sup>129</sup>

To take a child into protective custody without a court order, the county agency or police must demonstrate that there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his or her surroundings and therefore removal is necessary.<sup>130</sup> The police or county agency shall request for an order of protective custody only if the child is at risk of immediate abuse and the immediate safety and well-being of the child require removal from the setting in which the alleged abuse occurred.<sup>131</sup> Generally, however, if the police officer or county agency feels that removal is necessary, it must make an application to the court. The court will then determine whether remaining in the home would be contrary to the child's welfare or best interests.<sup>132</sup> Then, the police or child protective service worker may take a child into protective custody only under a specific court order naming the individual child.<sup>133</sup>

#### **WHAT MUST BE DONE WHEN A CHILD IS TAKEN INTO PROTECTIVE CUSTODY?**

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<sup>127</sup> 23 Pa. C.S.A. § 6314; 55 Pa. Code § 3490.20.

<sup>128</sup> 23 Pa. C.S.A. § 6315(a); 55 Pa. Code § 3490.15(a) and (b).

<sup>129</sup> 23 Pa. C.S.A. § 6315(b); Pa.R.J.C.P. 1201 and 1202; 55 Pa. Code § 3490.15(c) and § 3490.16.

<sup>130</sup> Pa.R.J.C.P. 1202.

<sup>131</sup> 23 Pa. C.S.A. § 6369; Pa.R.J.C.P. 1210; 55 Pa. Code § 3490.57(b) and (c).

<sup>132</sup> Pa.R.J.C.P. 1202.

<sup>133</sup> Pa.R.J.C.P. 1202.

1. Any individual taking a child into protective custody must verbally notify the child's parent or guardian immediately of the child's whereabouts (unless prohibited by court order), the reason the child was taken into protective custody, and the telephone number of the local child protective service.<sup>134</sup>
2. The children and youth agency must also be verbally notified immediately.<sup>135</sup> If notice is given orally, it must be reduced to writing within 24 hours.<sup>136</sup>
3. Within 24 hours the parents must be notified in writing of the child's whereabouts (unless prohibited by court order), the reasons for taking the child into protective custody, and the telephone number of the local child protective service.<sup>137</sup>
4. Within 48 hours of taking a child into protective custody, the child protective service shall do the following:
  - A. Meet with the child's parents to assess their ability to assure the child's safety if the child is to be returned home.<sup>138</sup>
  - B. Meet with other individuals who may have information relating to the safety of the child in the home if the child is to be returned home.<sup>139</sup>
  - C. Determine if services that would alleviate the conditions necessitating protective custody could be provided to the family.<sup>140</sup>
  - D. Provide or arrange for necessary services.<sup>141</sup>
  - E. Meet with the parents to advise them of the decision to return the child to the child's home or explain to them why the child will be held in protective custody, the nature of future legal proceedings, and their legal rights.<sup>142</sup>
5. When a child is to be held in protective custody for longer than 72 hours, an informal hearing must be held within 72 hours to determine whether protective custody should be continued.<sup>143</sup> If the court at this hearing orders continued protective custody, the children and youth agency has 48 hours to file a dependency petition under the Juvenile Act alleging that the child is dependent.<sup>144</sup>

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<sup>134</sup> 23 Pa. C.S.A. § 6315(c); 55 Pa. Code § 3490.17.

<sup>135</sup> 23 Pa. C.S.A. § 6315(c); 55 Pa. Code § 3490.16.

<sup>136</sup> Pa.R.J.C.P. 1202(B)(2).

<sup>137</sup> 23 Pa. C.S.A. § 6315(c); Pa.R.J.C.P. 1202(B); 55 Pa. Code § 3490.17.

<sup>138</sup> 23 Pa. C.S.A. § 6315(f); 55 Pa. Code § 3490.57(f)(1).

<sup>139</sup> 55 Pa. Code § 3490.57(f)(2).

<sup>140</sup> 23 Pa. C.S.A. § 6370(a); 55 Pa. Code § 3490.57(f)(3).

<sup>141</sup> 23 Pa. C.S.A. § 6370(a); 55 Pa. Code § 3490.57(f)(4).

<sup>142</sup> 23 Pa. C.S.A. § 6315(f); 55 Pa. Code § 3490.57(f)(5).

<sup>143</sup> 23 Pa. C.S.A. § 6315(d); Pa.R.J.C.P. 1242(D).

<sup>144</sup> 23 Pa. C.S.A. § 6315(d).

6. If the child remains in protective custody and a petition has been filed, a full hearing must be held on the petition not later than ten days after the filing of the petition. At this hearing, the court determines whether the child is dependent.<sup>145</sup>

**ACCORDING TO THE LAW, WHAT MUST THE CHILDREN AND YOUTH AGENCY DO ONCE IT RECEIVES REPORTS OF SUSPECTED CHILD ABUSE?**

**THE COUNTY CHILDREN AND YOUTH AGENCY MUST:**

1. Have someone available on a 24 hour, seven day a week basis to receive reports of suspected child abuse.<sup>146</sup>
2. Begin an investigation immediately and see the child immediately, if emergency protective custody has been or shall be taken, or if it cannot be determined from the report whether such custody is needed. Otherwise, the agency shall begin its investigation within 24 hours of receiving a report and shall see the child as soon as possible.<sup>147</sup>
3. Refer to the district attorney, for the purpose of convening investigative teams, cases of child abuse involving any of the following:
  - A) criminal offenses of homicide, aggravated assault, harassment and stalking, kidnapping, unlawful restraint, rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, indecent assault, indecent exposure, incest, concealing the death of a child, dealing in infant children, a felony prostitution offense, offenses relating to obscene and other sexual materials and corruption of a minor;
  - B) child abuse perpetrated by persons who do not fall into the category of "perpetrator" as defined in the CPSL;<sup>148</sup>
  - C) repeated or serious physical injury; or
  - D) a missing child report.

In accordance with the protocol developed in conjunction with the county children and youth agency, the district attorney shall convene an investigative team consisting of those individuals and agencies responsible for investigation and providing services. Each team shall, at a minimum, consist of a health care provider, a county agency caseworker and a law enforcement official. The protocol developed by the county agency and district attorney (or the convening investigative team) shall include standards and procedures to avoid the duplication of fact-finding efforts and interviews to minimize trauma to the child.<sup>149</sup>

4. Immediately transmit a child abuse report summary to the state Department of Public Welfare, which report shall be held in the pending complaint file.<sup>150</sup>

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<sup>145</sup> 42 Pa. C.S.A. § 6335(a).

<sup>146</sup> 23 Pa. C.S.A. § 6366; 55 Pa. Code § 3490.52.

<sup>147</sup> 23 Pa. C.S.A. § 6368(a); 55 Pa. Code § 3490.55(a) and (b).

<sup>148</sup> Under Act 179, if the perpetrator of the suspected abuse does not fall under the category of perpetrator under the definition in the CPSL, and the county agency determines an investigation is still needed, it must notify the District Attorney or other law enforcement official in order to begin investigation. See 23 Pa.C.S.A. § 6368(d).

<sup>149</sup> 23 Pa. C.S.A. § 6365(2). This provision regarding the convening of investigative teams was added to the CPSL in 1998. However, this is not yet addressed in the Chapter 3490 regulations.

<sup>150</sup> 23 Pa. C.S.A. § 6367(a); 55 Pa. Code § 3490.55(c).

5. Not take custody of a child unless there is a court order naming the child.<sup>151</sup>
6. Hold a conference between the parents and the caseworker within 48 hours of when a child is taken into temporary protective custody, if the child is taken into such custody.<sup>152</sup>
7. Conduct and record in writing interviews with those persons who are known to have or may reasonably be expected to have information relating to the incident of suspected child abuse. The interviews and investigation must include a determination of the risk to the child if s/he remains in the home and a determination of the nature, extent, and cause of any condition enumerated in the report.<sup>153</sup>
8. Arrange for any services necessary to protect the child while the agency is making its determination.<sup>154</sup>
9. If the investigation indicates serious physical injury, arrange for a medical examination to be performed on the subject child by a certified medical practitioner.<sup>155</sup>
10. Obtain color photographs of injuries whenever possible and obtain medical evidence or expert consultation whenever appropriate.<sup>156</sup>
11. Prior to interviewing a subject of the report, orally notify the subject to be interviewed of the existence of the report, and the subject's rights in relation to the report.<sup>157</sup>
12. Determine within 60 days whether the report is "founded" (a judicial finding of abuse), "indicated" (substantial evidence of abuse), or "unfounded" (any report that is not founded or indicated). If, due to the particular circumstances of the case, the county agency cannot complete the investigation within 30 days, the particular reasons for the delay shall be described in the child protective service record and available to the department for review.<sup>158</sup>
13. Formulate a remedial plan and offer the parent or responsible person social services, free of charge, upon determining that the alleged abuse has occurred. These services are intended to keep the child in the home environment, if possible, or return the child to the home environment as soon as possible. If the children and youth agency and the parents or responsible persons or the child advocate cannot agree on a remedial plan, the children and youth agency must then file the necessary petitions to initiate court action.<sup>159</sup> If appropriate in a dependency proceeding, the county agency may petition the court for a finding of child abuse.
14. Continue to monitor the home environment of the alternative living situation to ensure that the child will live in a healthy home environment if the court, after a hearing, finds that the child was abused or a dependent child.<sup>160</sup>

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<sup>151</sup> 23 Pa. C.S.A. § 6369; 55 Pa. Code § 3490.57(c); Pa.R.J.C.P. 1202.

<sup>152</sup> 23 Pa. C.S.A. § 6315(f); 55 Pa. Code § 3490.57(f).

<sup>153</sup> 23 Pa. C.S.A. § 6368(a); 55 Pa. Code § 3490.55(d)(e).

<sup>154</sup> 23 Pa. C.S.A. § 6368(a).

<sup>155</sup> 23 Pa. C.S.A. § 6368(a); 55 Pa. Code § 3490.55(h).

<sup>156</sup> 55 Pa. Code § 3490.55(f)(g).

<sup>157</sup> 23 Pa. C.S.A. § 6368(a).

<sup>158</sup> 23 Pa. C.S.A. § 6368(c); 55 Pa. Code § 3490.67.

<sup>159</sup> 23 Pa. C.S.A. § 6368(b), 6370(a)(b) and 6371; 55 Pa. Code § 3490.59 and 3490.60.

<sup>160</sup> 23 Pa. C.S.A. § 6372; 55 Pa. Code § 3490.57(d) and § 3490.61(c)(2).

15. Maintain information concerning a report of suspected child abuse that the agency has determined to be unfounded for a period of one year.<sup>161</sup>
16. Expunge from its files, as soon as possible, but no later than 120 days after the one-year period following the date the department received the report, all information identifying the parties involved in a report of suspected child abuse, if the agency investigates and determines that the report is unfounded. A report is also considered to be unfounded and must be expunged within 120 days after the one-year period following the date the report was received if an investigation is not completed within 60 days (unless court action has been initiated and is responsible for the delay). The agency and ChildLine must notify each other of the status of any report, and ChildLine, as well as the agency, must expunge within 120 days after the one-year period following the date the report was received any identifying information in unfounded reports.<sup>162</sup>
17. Notify all subjects other than the victim child if a report is determined unfounded. ChildLine must give written notice of any record's expunction to the subject of such record who was responsible for the abuse.<sup>163</sup>

### **WHAT SHOULD BE DONE WHEN A CHILD IS SUSPECTED TO HAVE DIED AS A RESULT OF CHILD ABUSE?**

Any person required to report child abuse who has reasonable cause to suspect that a child has died as a result of child abuse must report that suspicion to the coroner, who will conduct an investigation. The required reporter must also send to the coroner of the county in which the death occurred a duplicate of the report sent to the children and youth agency. The agency itself must give telephone notice and forward immediately to the coroner a copy of reports made pursuant to the CPSL which involve the death of a child.<sup>164</sup>

### **ARE RECORDS CONFIDENTIAL?**

All reports as well as other agency information obtained under the CPSL and in possession of the state DPW or a county agency shall be confidential and only be made available to:

1. A duly authorized official of a county agency or of an agency of another state that performs child protective services in the course of the official's duties, multi-disciplinary team members assigned to the case, and duly authorized persons providing services.<sup>165</sup>
2. A physician examining or treating a child, or the director, or a person specifically designated in writing by such director, of any hospital or other medical institution where a child is being treated, where she suspects the child of being abused or in need of protection.<sup>166</sup>
3. A guardian *ad litem* or court designated advocate for the child.<sup>167</sup>

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<sup>161</sup> 23 Pa. C.S.A. § 6337(b). This provision – requiring that this information be maintained for one year – was added to the CPSL in 1998, but has not yet been incorporated into the Chapter 3490 regulations.

<sup>162</sup> 23 Pa. C.S.A. § 6337(a),(b), and (c). The corresponding regulations – 55 Pa. Code §§ 3490.34(c) and (d), 3490.69 and 3490.70 -- have not yet been modified to reflect the 1998 amendment to the CPSL requiring that such information be maintained for one year prior to expungement.

<sup>163</sup> 23 Pa. C.S.A. § 6341(f); 55 Pa. Code § 3490.58(b) and § 3490.40(b).

<sup>164</sup> 23 Pa. C.S.A. § 6317 and § 6367(b); 55 Pa. Code § 3490.19.

<sup>165</sup> 23 Pa. C.S.A. § 6340(a)(1); 55 Pa. Code § 3490.91(a)(1).

<sup>166</sup> 23 Pa. C.S.A. § 6340(a)(2); 55 Pa. Code § 3490.91(a)(2).

<sup>167</sup> 23 Pa. C.S.A. § 6340(a)(3); 55 Pa. Code § 3490.91(a)(3).

4. A duly authorized official or agent of DPW.<sup>168</sup>
5. A court of competent jurisdiction, including a district justice, a judge of the Philadelphia Municipal Court or a judge of the Pittsburgh Magistrates Court, pursuant to a court order or subpoena in a criminal matter involving a charge of child abuse.<sup>169</sup>
- 5.1 A court of common pleas in connection with any matter involving custody of a child.<sup>170</sup>
6. A standing committee of the General Assembly.<sup>171</sup>
7. The Attorney General.<sup>172</sup>
8. Federal auditors, if required for federal financial participation in funding of agencies, but federal auditors may not have access to identifying information.<sup>173</sup>
9. Law enforcement officials in the course of investigating cases of (i) homicide, aggravated assault, harassment and stalking, kidnapping, unlawful restraint, rape, statutory sexual assault, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, indecent assault, indecent exposure, incest, concealing the death of a child, endangering the welfare of a child, dealing in infant children, a felony prostitution offense offenses relating to obscene and other sexual materials, corruption of a minor, sexual abuse or exploitation, or serious bodily injury or serious physical injury perpetrated by persons whether related or not related to the victim; (ii) child abuse perpetrated by persons who are not family members; (iii) repeated physical injury to a child under circumstances indicating that the child's health or welfare is harmed or threatened; or (iv) a missing child report.<sup>174</sup>
10. The district attorney or his/her designee or other law enforcement officials shall receive for the purposes of convening investigative teams, immediately after the county agency has ensured the safety of the child, reports of abuse from the county agency in which the initial review gives evidence that the abuse is: homicide, aggravated assault, harassment and stalking, kidnapping, unlawful restraint, rape, statutory sexual assault, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, indecent assault, indecent exposure, incest, concealing the death of a child, dealing in infant children, a felony prostitution offense, offenses relating to obscene and other sexual materials and performances, offenses related to corruption of a minor, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether related or not related to the victim; child abuse perpetrated by persons who are not family members; or serious physical injury involving extensive and severe bruising, burns, broken bones,

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<sup>168</sup> 23 Pa. C.S.A. § 6340(a)(4); 55 Pa. Code § 3490.91(a)(4).

<sup>169</sup> 23 Pa. C.S.A. § 6340(a)(5). The corresponding regulatory provision, 55 Pa. Code § 3490.91(a)(5), has not yet been modified to reflect this language in the CPSL.

<sup>170</sup> 23 Pa. C.S.A. § 6340(a)(5.1).

<sup>171</sup> 23 Pa. C.S.A. § 6340(a)(6); 55 Pa. Code § 3490.91(a)(6).

<sup>172</sup> 23 Pa. C.S.A. § 6340(a)(7); 55 Pa. Code § 3490.91(a)(7).

<sup>173</sup> 23 Pa. C.S.A. § 6340(a)(8); 55 Pa. Code § 3490.91(a)(8).

<sup>174</sup> 23 Pa. C.S.A. § 6340(a)(9). The 1998 amendments to the CPSL expanded the number of matters that the county agency must refer to law enforcement officials for investigation. The corresponding provision in the regulations – 55 Pa. Code § 3490.91(a)(9) – has not been amended to reflect this expanded list. See also 55 Pa. Code § 3490.92 (regarding requests by and referrals to law enforcement officials).

lacerations, internal bleeding, shaken baby syndrome, choking or an injury that significantly impairs a child's physical functioning, either temporarily or permanently.<sup>175</sup>

11. Designated county officials for review if investigating the competence of county children and youth employees.<sup>176</sup>
12. A subject of the report upon written request.<sup>177</sup>
13. A mandated reporter of suspected child abuse who made a report involving the subject child. The information released shall be limited to the final status of the report (whether it was founded, indicated or unfounded) and any services arranged or provided by the county agency for the child.<sup>178</sup>
14. Persons required to make reports relating to students in schools. Information is limited to the final status of the report.<sup>179</sup>
15. A prospective adoptive parent, approved by an adoption agency, when considering adopting an abused child in the custody of a county agency. The county agency shall determine the scope and detail of the information which must be provided so that the prospective parent may make an informed decision to adopt.<sup>180</sup>
16. Appropriate officials of another county or state regarding an investigation related to child abuse or protective services when a family has moved to that county or state. Such information shall be provided within seven calendar days.<sup>181</sup>
17. A person, agency, or institution upon written consent of all subjects of the report.<sup>182</sup>
18. Individuals authorized by the department to conduct studies of data, if the study does not contain the name or other information by which the subjects of reports may be identified.<sup>183</sup>

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<sup>175</sup> 23 Pa. C.S.A. § 6340(a)(10). The corresponding regulatory provision – 55 Pa. Code § 3490.91(a)(10) -- has not been modified to reflect the CPSL provisions regarding matters to be referred to law enforcement officials and to the district attorney for the convening of investigative teams.

<sup>176</sup> 23 Pa. C.S.A. § 6340(a)(11); 55 Pa. Code § 3490.91(a)(11). Designated county officials for the purpose of this provision are limited to the following: (1) The board of commissioners in counties other than counties of the first class; (2) Mayor in a city of the first class under the act of April 21, 1949 known as the First Class City Home Rule Act; (3) An individual serving as a county chief executive as designated by a county home rule charter or optional plan form of government pursuant to the act of April 13, 1972, known as the Home Rule Charter and Optional Plans Law. See also 55 Pa. Code § 3490.93 (regarding requests by county officials for information).

<sup>177</sup> 23 Pa. C.S.A. § 6340(b); 55 Pa. Code § 3490.91(a)(12).

<sup>178</sup> 23 Pa. C.S.A. § 6340(a)(12); 55 Pa. Code § 3490.91(15). See also 55 Pa. Code § 3490.95 (regarding release of information to mandated reporters).

<sup>179</sup> 23 Pa. C.S.A. § 6340(a)(13). See also 55 Pa. Code § 3490.95 (regarding release of information to mandated reporters).

<sup>180</sup> 23 Pa. C.S.A. § 6340(a)(14); 55 Pa. Code § 3490.91(16)

<sup>181</sup> 23 Pa. C.S.A. § 6340(a)(15).

<sup>182</sup> 55 Pa. Code § 3490.91(a)(13).

<sup>183</sup> 23 Pa. C.S.A. § 6342; 55 Pa. Code § 3490.91(a)(14).

Except for reports pursuant to (9) and (10) above, the release of data that would identify the person who made a report of suspected child abuse, or the person who cooperated in a subsequent investigation, is prohibited unless the Secretary of DPW finds that such release will not be detrimental to the safety of such person.<sup>184</sup>

Prospective adoptive and foster parents, applicants or prospective operators of child care services, and persons seeking voluntary certification may request and receive information concerning whether there exists on file in the Central Register indicated or founded reports of child abuse, or founded or indicated reports for school employees, naming the person as perpetrator of child abuse.<sup>185</sup>

**WHAT BACKGROUND INFORMATION MUST BE OBTAINED ON PROSPECTIVE FOSTER AND ADOPTIVE FAMILIES, AND APPLICANT OR PROSPECTIVE OPERATORS OF CHILD CARE SERVICES?**

With the passage of Act 179, in addition to applicants or prospective operators of child care services, individuals who apply to DPW for a registration certificate to operate a family day-care home must also submit to a criminal history and child abuse record background check. An applicant or prospective operator of a child care service, or prospective operator of a family day-care home must submit a request for verification to DPW and must comply with the requirements for reports of child abuse history information and criminal record history information.<sup>186</sup>

A person may not hire an applicant nor may a prospective operator be issued a certificate of compliance or registration if:

- A. The applicant or prospective operator is named in the Central Register as an individual who committed a founded report of child abuse within five years or less prior to the request for verification.<sup>187</sup>
- B. Pursuant to Act 179, the applicant or prospective operator is named in the Central Register as a school employee who committed a founded report of child abuse within the five-year period immediately preceding verification.<sup>188</sup>
- C. Criminal record history information shows that the applicant or prospective operator has been convicted of a crime as specified in § 6344(c) of the CPSL, or an equivalent out-of-state or federal crime, within five years or less prior to the request for criminal record history information.<sup>189</sup>
- D. The criminal record history verification or the report of child abuse record information was obtained more than one year prior to the date of application.<sup>190</sup>

An individual who applies to DPW to operate a family day-care home shall not receive a registration certificate, or will have its registration certificate revoked if the applicant, or any individual 18 years of age or older who has resided in the home for at least 30 days in a calendar year:

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<sup>184</sup> 23 Pa. C.S.A. § 6340(c); 55 Pa. Code § 3490.94(a).

<sup>185</sup> 23 Pa. C.S.A. § 6344(b)(2); 55 Pa. Code § 3490.91(b).

<sup>186</sup> 23 Pa. C.S.A. § 6344 and 6344.1.

<sup>187</sup> 23 Pa. C.S.A. § 6344(b) and (c); 55 Pa. Code § 3490.122(a), (b) and (c).

<sup>188</sup> 23 Pa. C.S.A. § 6344(c).

<sup>189</sup> 23 Pa. C.S.A. § 6344(c); 55 Pa. Code § 3490.122(d).

<sup>190</sup> 23 Pa. C.S.A. § 6344(b); 55 Pa. Code § 3490.122(e).

- A. Is named in the Central Register as a person who committed a founded report of child abuse committed within the immediately preceding five-year period;<sup>191</sup>
- B. Has been convicted of a crime as specified in § 6344(c) of the CPSL.<sup>192</sup>

Act 179 also broadened the scope of what background checks will be required of prospective foster and adoptive families. Prior to Act 179, prospective adoptive and foster parents had to submit a request for verification to DPW and must submit state and out-of-state criminal record history information and certification as to whether they were named in the Central Register as the perpetrators of a founded or indicated report of child abuse. Now, in addition to submitting a request for verification for themselves, they must also verify that no person 14 years of age or older living in their home for 30 days in a calendar year has been named in the central register. A prospective family may not be approved by an agency if:

- A. The parent or any individual 14 years of age or older who resides for at least 30 days in a calendar year in the home has been named a person who has committed a founded report of child abuse within five years or less prior to the request for verification.<sup>193</sup>
- B. The parent or any individual 14 years of age or older who resides for at least 30 days in a calendar year in the home is named in the Central Register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification.<sup>194</sup>
- C. The parent or any individual 14 years of age or older who resides for at least 30 days in a calendar year in the home has been convicted of a crime under §6344(c) of the CPSL, or an equivalent out-of-state or federal crime, within five years or less prior to the request for verification.<sup>195</sup>
- D. The criminal history record information or the report of child abuse record information was obtained more than one year prior to the date of application to the agency for approval or one year prior to the date of commencement of the investigation.<sup>196</sup>

A child caretaker may request voluntary certification from DPW, and when doing so, must obtain and submit criminal history records to DPW.<sup>197</sup>

Act 179 broadened the scope of who will be required to submit to background checks. The Act provides that individuals who are likely to have significant contact with children in the course of their occupation, whether in the form of care, supervision, guidance, or training will be required to submit to all requirements for background checks and will be denied employment under the same grounds as those individuals seeking application to provide child-care services. These individuals include social service workers, hospital personnel, mental health professionals, members of the clergy, counselors, librarians, and doctors.<sup>198</sup>

**WHAT OTHER ACTIONS MAY A REPORTER OF ABUSE TAKE?**

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<sup>191</sup> 23 Pa. C.S.A. § 6344.1(c)(1).

<sup>192</sup> 23 Pa. C.S.A. § 6344.1(c)(2).

<sup>193</sup> 23 Pa. C.S.A. § 6344(o) and (p). Note that the corresponding Pennsylvania code provisions – 55 Pa. Code § 3490.123(a), (b), (c) and (d)(1) – have not been amended to reflect these changes in the CPSL.

<sup>194</sup> 23 Pa. C.S.A. § 6344(o) and (p).

<sup>195</sup> 23 Pa. C.S.A. § 6344(o) and (p). Note that the corresponding Pennsylvania code provision – 55 Pa. Code § 3490.123 (d)(2) – has not been amended to reflect this change in the CPSL.

<sup>196</sup> 23 Pa. C.S.A. § 6344(c); 55 Pa. Code § 3490.123(d)(3).

<sup>197</sup> 23 Pa. C.S.A. § 6344(j)and (b); 55 Pa. Code § 3490.125.

<sup>198</sup> 23 Pa. C.S.A. § 6344.2. See also 23 Pa. C.S.A. § 6344.1(b).

Although the CPSL, prior to the enactment of the Rules of Dependent Court Procedure, allowed *any* person to file a petition in alleging that a child is dependent or living without the proper care or control necessary for his or her physical, mental, moral or emotional health, the current law only allows the county agency to file such a petition. An individual who wishes to allege a child is dependent must now present an application to a court of competent jurisdiction to file a private petition.<sup>199</sup> If a person has reported a case of abuse and is dissatisfied with the investigation or remedy in the case, or feels that a child is dependent but not abused, the filing of an application to file a dependency petition under the Juvenile Act is one way to ensure that a court will review the matter when it has not already done so.<sup>200</sup> See pages 12-14 for more information on how to file an application to file a private petition.

### **WHAT MUST THE CHILDREN AND YOUTH AGENCY DO IF THE REPORT DOES NOT AMOUNT TO CHILD ABUSE AS DEFINED IN THE CPSL?**

Sometimes reported allegations do not rise to the level of abuse or serious physical neglect as they are defined in the CPSL, but still raise concerns about the child's well-being. In those cases, the county children and youth agency still has the responsibility to provide general protective services to children and their families.<sup>201</sup> County children and youth agencies are required to provide services to parents to remedy conditions that are harmful to their children and improve their ability to parent, thereby overcoming problems that may result in dependency if not addressed. Such assistance can include helping parents to obtain benefits and services for which they may qualify under Federal, state and local programs.<sup>202</sup>

### **REPORTS OF ABUSE AGAINST STUDENTS BY SCHOOL EMPLOYEES**

Prior to Act 179, a mandated reporter of child abuse, unless employed by the school, had no obligation to report child abuse committed by a school employee. Abuse committed by a school employee was considered separate from child abuse as defined in the CPSL, and was governed under a specific section of the CPSL.<sup>203</sup>

Prior to Act 179, the CPSL required school employees to report any abuse committed against a child by a fellow school employee, but did not require an outside individual, even if a mandatory reporter, to report abuse by a school employee because the school employee was not considered to be a "perpetrator" under the definition in the CPSL. However, since Act 179's passage, mandatory reporters are now required to report suspected child abuse committed by any individual, even if not a "perpetrator" under the CPSL definition.<sup>204</sup> Now that Act 179 has eliminated the need for the suspected abuse to have been committed by a "perpetrator" to trigger the duty to report, a mandatory reporter who suspects that a child is being abused by his or her teacher or another school employee *must* report this suspected abuse to ChildLine. This change in the law clearly indicates the legislature's intent to broaden the scope of mandatory reporting. Therefore, in addition to the school employee's obligation to report suspected abuse committed by school personnel, all other mandatory reporters must report suspected abuse committed by school personnel.

Teachers and other school employees are mandated reporters. When a teacher or school employee suspects child abuse by anyone other than a school employee, they must follow the same procedures set forth in Part III, and immediately call ChildLine. However, if a teacher learns that one of his students is being abused by another teacher, he must follow the guidelines in the CPSL governing reports of abuse by a school employee.

1. A school employee who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before him or her in the employee's official capacity is a victim of

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<sup>199</sup> Pa.R.J.C.P. 1320.

<sup>200</sup> 42 Pa. C.S.A. § 6334; Pa.R.J.C.P. 1320.

<sup>201</sup> 23 Pa. C.S.A. §§ 6373-6374.

<sup>202</sup> 23 Pa. C.S.A. § 6373(a) and (c).

<sup>203</sup> 23 Pa. C.S.A. § 6352.

<sup>204</sup> 23 Pa. C.S.A. § 6311.

serious bodily injury, sexual abuse or sexual exploitation by a school employee must immediately report the suspicion to the school administrator.<sup>205</sup>

2. If the school employee accused is the administrator, the employee who suspects the abuse must immediately report to law enforcement officials and the district attorney.<sup>206</sup>
3. The school employee may not reveal the existence or content of the report to any other person.<sup>207</sup>
4. A school employee who refers a report under this provision is immune from civil and criminal liability arising out of the report.<sup>208</sup>
5. A school employee who willfully violates the reporting requirement is subject to criminal penalties.<sup>209</sup>
6. An administrator or a school employee, if the employee has accused the administrator, must report immediately to law enforcement officials and the appropriate district attorney any report of serious bodily injury, sexual abuse, or sexual exploitation alleged to have been committed by a school employee against a student.<sup>210</sup>

### ***What Must the Report Include?***

A report of suspected abuse by a school employee must include the following information:<sup>211</sup>

1. Name, age, address and school of the student.
2. Name and address of the student's parent or guardian.
3. Name and address of the administrator.
4. Name, work and home address of the school employee.
5. Nature of the alleged offense.
6. Any specific comments or observations that are directly related to the alleged incident and the individuals involved.

An administrator who makes a report of suspected abuse is immune from civil or criminal liability arising out of the report.<sup>212</sup>

An administrator who willfully violates the reporting requirement has committed a third degree misdemeanor.<sup>213</sup>

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<sup>205</sup> 23 Pa. C.S.A. § 6352(a)(1); 55 Pa. Code § 3490.151(a).

<sup>206</sup> 23 Pa. C.S.A. § 6352(a)(2); 55 Pa. Code § 3490.152(b).

<sup>207</sup> 23 Pa. C.S.A. § 6352(a)(3); 55 Pa. Code § 3490.154.

<sup>208</sup> 23 Pa. C.S.A. § 6352(b).

<sup>209</sup> The first violation is considered a summary offense. A second offense is a misdemeanor of the third degree. 23 Pa. C.S.A. § 6352(c).

<sup>210</sup> 23 Pa. C.S.A. § 6353(a); 55 Pa. Code § 3490.152(a).

<sup>211</sup> 23 Pa. C.S.A. § 6353(b); 55 Pa. Code § 3490.153.

<sup>212</sup> 23 Pa. C.S.A. § 6353(c).

<sup>213</sup> 23 Pa. C.S.A. § 6353(d).

### ***What Do Law Enforcement Officials Do With a Report Against a School Employee?***

Reports of abuse against children by school employees are treated differently from other reports of “child abuse”, under the CPSL. The law aims to coordinate efforts of the county agency and law enforcement officials wherever possible.

Law enforcement officials must follow the following procedures:

1. Upon receipt of a report, law enforcement officials must conduct an investigation, in cooperation with the district attorney, and determine if criminal charges will be filed.<sup>214</sup>
2. If local law enforcement officials have reasonable cause to suspect that a school employee committed serious bodily injury, sexual abuse or sexual exploitation against a student, the law enforcement officials must notify the county agency in the county where the alleged abuse occurred so that the agency may conduct an investigation.<sup>215</sup>
3. To the fullest extent possible, law enforcement officials and the county agency shall coordinate their respective investigations.<sup>216</sup>
4. The county agency and law enforcement officials can arrange for photographs, medical tests or X-rays of a student alleged to have been abused by a school employee.<sup>217</sup>

### ***What Does the County Agency Do After Receiving a Report Against a School Employee?***

1. Immediately after receiving a report of suspected abuse by a school employee against a student, the county agency must notify the Department of Public Welfare. The report is filed in a pending complaint file.<sup>218</sup> The oral report must include the following information:
  - A. The name and address of the student and the student’s parent or guardian.
  - B. Where the suspected abuse or injury occurred.
  - C. The age and sex of the student.
  - D. The nature and extent of the suspected abuse or injury.
  - E. The name and home address of the school employee alleged to have committed the abuse or injury.
  - F. The relationship of the student to the school employee alleged to have committed the abuse or injury.
  - G. The source of the report to the county agency.
  - H. The actions taken by the county agency, law enforcement officials, parents, guardians, school officials or other persons, including the taking of photographs, medical tests and X-rays.
2. Upon receipt of a report of abuse, the county agency must:

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<sup>214</sup> 23 Pa. C.S.A. § 6353.1(a); 55 Pa. Code § 3490.161(a).

<sup>215</sup> 23 Pa. C.S.A. § 6353.1(b)(1); 55 Pa. Code § 3490.161(b).

<sup>216</sup> 23 Pa. C.S.A. § 6353.1(b)(2); 55 Pa. Code § 3490.172(a).

<sup>217</sup> 23 Pa. C.S.A. § 6353.1(b)(3); 55 Pa. Code § 3490.172(d).

<sup>218</sup> 23 Pa. C.S.A. § 6353.2(a); 55 Pa. Code § 3490.171(b).

- A. Begin, within the time period to be established in department regulations, an investigation of the alleged abuse or injury, coordinating its investigation wherever possible with law enforcement officials.<sup>219</sup> At a minimum, the county agency shall have a face to face interview with the child, any witnesses and the school employee.<sup>220</sup>
  - B. Orally notify the subject of the report of the report's existence. The county agency shall inform the school employee of his/her rights regarding amendment or expungement prior to interviewing him or her. The agency must notify the subject in writing within 72 hours of the oral notification. However, the agency may delay notifying the subject if it will likely threaten the safety of the student or the county agency worker, cause the school employee to flee, or significantly interfere with the conduct of a criminal investigation.<sup>221</sup>
  - C. Complete its investigation to determine whether the report is indicated or unfounded within 60 days.<sup>222</sup>
  - D. Advise the Department of Public Welfare and law enforcement officials, as soon as the county agency has completed its investigation, of whether the report is indicated or unfounded.<sup>223</sup>
3. The county agency may rely on an investigation of substantially the same allegations by law enforcement officials to support the agency's findings, but the county still must conduct its own investigation. The county is required to coordinate its investigation with law enforcement officials to the fullest extent possible.<sup>224</sup>

***What Information is Retained in the Statewide Central Register?***

The Statewide Central Register, established under § 6331 to retain reports of child abuse, shall also retain information regarding reports of school employees which were determined to be founded or indicated. The retained information is limited to the following:<sup>225</sup>

- A. The name, Social Security number, age and sex of the subject of the report.
- B. The home address of the subject of the report.
- C. The date and the nature and extent of the alleged abuse or injury.
- D. The county and state where the abuse or injury occurred.
- E. Factors contributing to the abuse or injury.
- F. The source of the report.
- G. Whether the report is founded or indicated.

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<sup>219</sup> 23 Pa. C.S.A. § 6353.2(b).

<sup>220</sup> 55 Pa. Code § 3490.171(c).

<sup>221</sup> 23 Pa. C.S.A. § 6353.2(d); 55 Pa. Code § 3490.173 (a) and (c).

<sup>222</sup> 23 Pa. C.S.A. § 6353.2(c); 55 Pa. Code § 3490.171(d) and (e).

<sup>223</sup> 23 Pa. C.S.A. § 6353.2(f); 55 Pa. Code § 3490.173(e).

<sup>224</sup> 23 Pa. C.S.A. § 6353.2(e) and (b), § 6353.1(b); 55 Pa. Code § 3490.172(e) and (a).

<sup>225</sup> 23 Pa. C.S.A. § 6353.3; 55 Pa. Code § 3490.182.

- H. Information obtained by the Department of Public Welfare relating to the school employee's request to release, amend or expunge information retained by the Department of Public Welfare or the county agency.
- I. The progress of any legal proceedings brought on the basis of the report.
- J. Whether a criminal investigation has been undertaken and the result of the investigation and of any criminal prosecution.

The law regarding release and retention of information contained in reports of abuse or injury committed by a school employee is the same as the law governing release and retention of information in child abuse reports.<sup>226</sup>

***Does the Law Require Background Checks for Prospective School Employees?***

Yes. Every applicant for a position as a school employee must submit an official clearance statement stating whether the applicant is named as the responsible individual in an indicated or founded report of child abuse, or as an individual responsible for injury or abuse in an indicated or founded report for school employees.<sup>227</sup> The official clearance statement is NOT required for an applicant who:

- 1) transfers from one position as a school employee to another position as a school employee of the same school district or organization; and
- 2) prior to the transfer obtained the official clearance statement.

A school administrator is not permitted to hire an applicant who is named as the responsible individual of a founded report of child abuse, or the individual responsible for injury or abuse in a founded report for school employees. School employees hired prior to July 1, 1996 are not required to obtain a clearance statement after that date to retain their positions.<sup>228</sup>

An administrator who willfully fails to perform a background check or hires an applicant in violation of this law will be subject to an administrative penalty of \$2,500.<sup>229</sup>

The requirement to file an official clearance statement does not apply to any school employee who is:<sup>230</sup>

- 1) under 21 years of age;
- 2) participating in a job development or job training program; and
- 3) employed for not more than 90 days.

The requirement also does not apply to a school employee hired on a provisional basis pending the background check if all of the following apply:<sup>231</sup>

- 1) The applicant shows he or she has applied for the official clearance statement;

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<sup>226</sup> 23 Pa. C.S.A. § 6353.4; 55 Pa. Code § 3490.193.

<sup>227</sup> 23 Pa. C.S.A. § 6355(a); 55 Pa. Code § 3490.132(a).

<sup>228</sup> 23 Pa. C.S.A. § 6355(b); 55 Pa. Code § 3490.132(c).

<sup>229</sup> 23 Pa. C.S.A. § 6355(c); 55 Pa. Code § 3490.136.

<sup>230</sup> 23 Pa. C.S.A. § 6356; 55 Pa. Code § 3490.134.

<sup>231</sup> 23 Pa. C.S.A. § 6356; 55 Pa. Code § 3490.134.

- 2) The applicant attests in writing by oath or affirmation that he or she is not disqualified due to previous reports of abuse;
- 3) The administrator has no knowledge of information which would disqualify the applicant under this section;
- 4) The provisional period does not exceed 90 days for an applicant from another state, and 30 days for all other applicants; and
- 5) The hiring does not take place during a strike under the Public Employee Relations Act.

The Department of Public Welfare must comply with the request for an official clearance statement within 14 days of receipt of the request.<sup>232</sup>

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<sup>232</sup> 23 Pa. C.S.A. § 6358; 55 Pa. Code § 3490.135(c).

## **IV. STATE REGULATIONS GOVERNING COUNTY CHILDREN AND YOUTH AGENCIES**

In Pennsylvania the State Department of Public Welfare (DPW) regulates social services for children and their families. In each county, the county children and youth agency provides the actual services to children.

In order to receive federal reimbursement, DPW binds the state to follow certain federal mandates in its provision of services. (See Part I.) Similarly, state laws and regulations bind each county agency in its administration and provision of services.

Under 55 Pa. Code Chapter 3130, DPW has issued extensive regulations implementing the federal requirements. Chapter 3130, "Administration of County Children and Youth Social Service Programs", includes the regulations concerning the responsibilities of county agencies, the requirements for county foster care programs, the placement of children and placement services and planning, as well as family service plans and court and administrative review and amendment of these plans. In addition to the Chapter 3130 regulations, DPW regulations include: "Planning and Financial Reimbursement Requirements for County Children and Youth Social Service Programs" (Ch. 3140); "Grants to Counties for New Social Services for Children and Youth" (Ch. 3150); "Allowable Costs and Procedures for County Children and Youth" (Ch. 3170); "Adoption Services" (Ch. 3350); "Child Protective Services - General" (Ch. 3480); "Child Protective Services - Child Abuse" (Ch. 3490); and "Foster Family Care Agency" (Ch. 3700).

*It is important to note that the Chapter 3130 regulations have not yet been amended to incorporate the changes made to the Juvenile Act or the Child Protective Services Law. Readers can contact DPW directly, or check the Juvenile Law Center's website (<http://www.jlc.org>) to find out when the Chapter 3130 regulations are amended. In the meantime, readers should keep in mind that the law controls in all cases where the law conflicts with the present regulations.*

Below are selected excerpts from the 3130 requirements.

### **§3130.12. Responsibility for children and youth services.**

(c) Each county is responsible for administering a program of children and youth social services that includes:

- (1) Services designed to keep children in their own homes; prevent abuse, neglect, and exploitation; and help overcome problems that result in dependency and delinquency.
- (2) Temporary, substitute placement in foster family homes and residential child care facilities for a child in need of the care.
- (3) Services designed to reunite children and their families when children are in temporary, substitute placement.
- (4) Services to provide a permanent legally assured family for a child in temporary, substitute care who cannot be returned to his own home.
- (5) Service and care ordered by the court for children who have been adjudicated dependent or delinquent.

### **§3130.24. Administrative reports and records.**

(b) The county agency shall report suspected abuse to ChildLine under the Child Protective Services Law (23 Pa. C.S.A. § 6301-6384).

(c) The county agency shall submit immediately, to the appropriate regional office of the Department of Public Welfare, an oral report of an incident involving the death of a child in a foster home or residential child care facility for which it has administrative responsibility.

(d) The county agency shall make a written report on forms provided by the Department to the appropriate regional office of the Department within ten calendar days of knowledge of the occurrence of the following:

1. The death of a child in the custody of the county agency.
2. An injury to a child in the custody of the county agency which requires inpatient hospitalization.

**§3130.32 Staffing requirements.**

(b) To investigate child abuse and child neglect reports and to carry out case management functions required in §§ 3130.31(2)(ii) and (3) (relating to responsibilities of the county agency), the caseworker-to-client family ratio may be no greater than 1 to 30. If staff have other ongoing responsibilities not directly related to families in their own caseload, the caseworker-to-client family ratio shall be reduced in proportion to the percentage of time required to perform the other ongoing responsibilities.

**§3130.34. Required services.**

The county agency shall provide or arrange for the provision of:

- (1) Placement prevention and reunification services.
- (2) Adoption services.
- (3) Emergency and planned temporary placement services.
- (4) Other required services, including services or care ordered by the court.

**§3130.35. Placement prevention and reunification services.**

Placement prevention and reunification services include all of the following:

- (1) **Counseling service.** Supportive and therapeutic activities provided to a child or a child's family and directed at preventing or alleviating conditions, including crisis conditions, which present a risk to the safety or well-being of the child by improving problem-solving and coping skills, interpersonal functioning, the stability of the family, or the capacity of the family to function independently.
- (2) **Parent education.** Practical education and training for parents in child care, child development, parent-child relationships, and the experience and responsibilities of parenthood.
- (3) **Homemaker/caretaker service.** Home help, home care skills instruction, and/or child care and supervision provided to a child and the child's family in the child's home by a trained homemaker or caretaker.
- (4) **Part day service.** Care and supervision for a child for less than 24 hours per day provided under a family service plan to enable the child to remain in or return to the child's own home.

**§3130.36. Adoption services.**

(a) The county agency shall make adoption services available to a child in the custody or under the supervision of the county agency who is in temporary, substitute care and who cannot be returned to his own home.

(b) Adoption services include the following:

- (1) **Adoption service.** Activities designed to culminate in legal adoption of a child, including adoptive home recruitment, study of adoptive parent applicants, placement and supervision of the

child in the adoptive home, preparation and presentation of material for the adoption hearing, and ensuring adoption assistance, when needed.

(2) **Adoption assistance.** The county shall actively seek ways to promote the adoption assistance program as set forth in Chapter 3140, Subchapter C (relating to adoption assistance).

**§3130.37. Emergency and planned temporary placement services.**

(a) **Emergency placement service.** Residential care and supervision in a nonsecure setting, not to exceed 30 consecutive days for a child:

(1) Whose immediate safety, protection, and well-being requires removal from his own home.

(2) Who would present a danger to himself or others or who would abscond if he were living at home.

(b) **Planned temporary placement services.**

(1) **Foster family care.** Residential care and supervision of a child in a foster family home.

(2) **Residential child care.** Twenty-four-hour out-of-home care in a nonsecure facility for children not related to the provider.

**§3130.38. Other required services.**

(a) **Court-ordered services.** The county agency shall provide or arrange for the provision of any services and care ordered by the court under 42 Pa. C.S.A. §§ 6301-6365 [relating to the Juvenile Act].

(c) **Family service plans.** Other services required by the service plan and service plan reviews in § 3130.61 (relating to family service plans), § 3130.63 (relating to review of family service plans), § 3130.67 (relating to placement planning), and § 3130.71 (relating to placement reviews).

**§3130.40. Delivery of services through other service providers.**

(a) When the county agency arranges for the provision of children and youth services through the County Mental Health/Mental Retardation Agency, the Drug and Alcohol Abuse Agency, or the County Assistance Office, it shall have a written service agreement with the provider agency which describes the responsibilities of the agency providing the service.

(c) The county agency shall make available to a service provider diagnostic, service plan and case information that is necessary to carry out the terms of a service plan as required by §§ 3130.61 and 3130.67 (relating to family service plans and placement planning, respectively).

**§3130.44. Confidentiality of family case records.**

(a) Information that may be used to identify the child or the parents by name or address, and information contained in the case record, is confidential. A staff person may not disclose or make use of information concerning the child or the parents other than in the course of the performance of his duties.

(b) Federal authorities, the Commonwealth and the Department or respective authorized agents officially charged with administrative supervision, review, evaluation or audit responsibilities may have access to and the right to use information identifying applicants for and recipients of children and youth services. The information shall be necessary to carry out the mandated functions of the agency and may not be protected by a specific law, such as 23 Pa. C.S.A. §§ 6301-6384 (relating to the Child Protective Services law).

(c) Members of the administrative review panels, volunteers, another county agency and other providers of services to children and families who are accepted for service by the county agency may have access

to and the right to use information identifying recipients of children and youth services. The amount and type of information to be released shall be determined by the county agency and shall be limited to information needed by the service provider to carry out its responsibilities. The decision to release information shall be based on the county agency's assessment of the individual case record and the responsibilities of a service provider. Information released may include part or all of the case record.

(d) Information contained in case records shall be released upon request to:

(1) Parents and legal guardians.

(2) Children's and parents' attorneys.

(3) The court and court staff.

(4) County executive officers.

(5) The child, if 14 years of age or older. The county agency may withhold information from a child which it has reason to believe will be harmful to the child. The basis for withholding information from a child shall be recorded in the child's case record.

(e) Information in case records may not be released to a person or agency other than those specified in subsections (b), (c), and (d) without prior authorization of the court.

(f) Information from a case record may be made available only if the information released does not contain material which violates the right to privacy of another individual or is protected or made confidential by law. This may not be construed to protect the right to privacy of a county agency employee.

(h) To the extent that information contained in the family case record is protected by 23 Pa. C.S.A. Part III (relating to the Adoption Act), the Child Protective Services Law (23 Pa. C.S.A. §§ 6301-6384) and Chapter 3490 (relating to child protective services - child abuse), access to and release of information shall be under the statutes and regulations.

### **§3130.61. Family service plans.**

(a) The county agency shall prepare, within 60 days of accepting a family for service, a written family service plan for each family receiving services through the county agency.

(b) The service plan shall be a discrete part of the family case record and shall include:

(1) Identifying information pertaining to both the child and other family members.

(2) A description of the specific circumstances under which the case was accepted.

(3) The service objectives for the family, identifying changes needed to protect children in the family in need of protection from abuse, neglect, and exploitation and to prevent their placement.

(4) The services to be provided to achieve the objectives of the plan.

(5) The actions to be taken by the parents, children, the county agency or other agencies, and the dates when these actions will be completed.

(6) Placement amendments as required by §3130.67 (relating to placement planning).

(7) The results of family service plan reviews and placement reviews as required by §§ 3130.63 and 3130.73 (relating to review of family service plans and recording the results of reviews and hearings, respectively).

(c) The service plan shall be signed by the county agency staff person responsible for management of the case. The parent or legal guardian and the child, if 14 years of age or older, shall be given the opportunity to sign the service plan. The county agency shall inform the parent or guardian that signing the plan constitutes agreement with the service plan.

(d) The county agency shall provide family members, including the child, their representatives, and service providers, the opportunity to participate in the development and amendment of the service plan if the opportunity does not jeopardize the child's safety. The method by which these opportunities are provided shall be recorded in the plan.

(e) The county agency shall provide family members, their legal counsel, other representatives and agencies or facilities providing services to the child and family with a copy of the service plan, including service plan amendments and results of reviews when the amendments or reviews change the previously agreed upon plan.

**§3130.62. Parent appeals and fair hearings.**

(a) The county agency shall provide to the parents, along with a copy of the family service plan and, if applicable, placement amendment, a written notice of their right to appeal the following to the Department's Office of Hearings and Appeals:

(1) A determination which results in a denial, reduction, discontinuance, suspension or termination of service.

(2) The county agency's failure to act upon a request for service with reasonable promptness.

(b) The notice shall include a statement of the parents' right to be represented by an attorney or other representative and the name and address of the local legal services agency.

(c) In addition to the written notice, the county agency shall notify the parents of children who are under the jurisdiction of the court in writing of their right to petition the court regarding an action of the county agency affecting their children.

(d) If parents wish to appeal, they shall submit a written appeal to the county agency postmarked no later than 15 calendar days from the date of the written notice from the county agency.

(f) During an appeal procedure, the most current family service plan and placement amendment as approved by the county agency remains in effect.

(g) In appeal proceedings, the county agency has the burden of proving by clear and convincing evidence that the challenged term is necessary to achieve the goals of the service plan.

(i) This chapter does not supersede the authority vested by law in the State courts. The director of the Office of Hearings and Appeals has no authority to issue a ruling modifying a term of a service plan which has been specifically approved or ordered by a court of competent jurisdiction.

**§3130.63. Review of family service plans.**

(a) Except as provided in subsection (b), the county agency shall review service plans at least every six (6) months. The service plan review shall be recorded in the plan and shall include:

(1) An assessment of the progress made toward alleviating the conditions necessitating service.

(2) An assessment of whether planned actions have occurred and services have been provided.

(3) An assessment of whether the children continue to be safe in the home.

(4) Amendment to the plan as determined by the review.

(b) If a child is in placement, the county agency shall follow the requirements of §3130.71 (relating to placement reviews).

**§3130.64. Placement of children.**

(a) If the county agency finds placement essential to protect the health and safety of a child, it may place the child if any of the following apply:

(1) Placement of the child has been authorized by a court order issued under 42 Pa. C.S.A. §§ 6301-6365 (relating to the Juvenile Act).

(2) The county agency obtains a voluntary placement agreement under 55 Pa. Code § 3130.65 (relating to voluntary placement agreement).

(3) The child has been taken into custody under 42 Pa. C.S.A. §§ 6301-6365.

(b) The county agency is responsible for seeking a court order which authorizes placement if it appears that placement of a child is necessary.

**§3130.65. Voluntary placement agreement.**

(a) Custody of a child may be temporarily transferred to the county agency for no more than 30 days if the child's parents or other person legally responsible for the child freely enter into a written agreement with the county agency. The agreement may not be renewed beyond the 30 days and shall contain:

(1) A statement of the parents' or legal guardian's right to be represented by legal counsel or other spokesperson during conferences with the county agency about voluntary placement.

(2) A statement of the parents' or legal guardian's right to refuse to place the child.

(3) A statement of the parents' or legal guardian's right to visit the child, to obtain information about the child, and to be consulted about and approve medical and educational decisions concerning the child while the child is in voluntary placement.

(4) A statement of the parents' or legal guardian's right to the immediate return of the child upon request of the parent or guardian, unless the court orders the legal custody of the child to be transferred to the county agency.

(b) Placement of a child may not extend beyond 30 days unless a court order has been entered under 42 Pa. C.S.A. §§ 6341 and 6351 (relating to adjudication and disposition of dependent child, respectively) which authorize continued placement.

**§3130.66. Case planning for children in emergency placement.**

(a) If a child has been placed in emergency placement and continued placement is necessary, the county agency shall prepare a family service plan under §§3130.61 and 3130.67(b) (relating to family service plans and placement planning, respectively) no later than 30 days from the date the child enters emergency placement.

(b) If a child is in emergency placement and continued placement is not necessary but in-home services are needed, the county agency shall prepare a family service plan under §3130.61 no later than 60 days after the date the child enters emergency placement.

**§3130.67. Placement planning.**

*The text of this provision is not reprinted here. It is anticipated that this provision will be amended to incorporate changes made by ASFA and Act 126.*

**§3130.68. Visiting and communication policies.**

(a) The county agency shall provide opportunity for visits between the child and parents as frequently as possible but no less frequently than once every 2 weeks at a time and place convenient to the parties and in a location that will permit natural interaction, unless visiting is:

- (1) Clearly not in keeping with the placement goal - for example, in adoption or independent living.
- (2) Freely refused in writing by the parents.
- (3) Not in the child's best interest and is limited or prohibited by court order.

(f) The county agency shall, within 24 hours of a child's placement, provide the child's parents with:

- (1) A telephone number that provides 24-hour access to the county agency.
- (2) A written statement regarding the opportunity for visits as outlined in subsection (a).

(g) The county agency shall, within 15 calendar days of placing a child, provide the parents with the following:

- (1) The address of the physical location of the child.
- (2) The name of the person, agency or facility responsible for the child's care, unless one of the following applies:
  - (i) The release of the information in paragraph (1) and this paragraph threatens the health and well-being of the child or of the persons providing the care if the agency documents its basis for its refusal to disclose the information.
  - (ii) The release of the information in paragraph (1) and this paragraph is limited or prohibited by court order . . .

**§3130.71. Placement reviews.**

*The text of this provision is not reprinted here. It is anticipated that this provision will be amended to incorporate changes made by ASFA and Act 126.*

**§3130.72. Dispositional review hearings.**

*The text of this provision is not reprinted here. It is anticipated that this provision will be amended to incorporate changes made by ASFA and Act 126.*

**§3130.74 Petitions, or motions for court approval filed with the court<sup>233</sup>**

- (a) The county agency shall file a petition or motion for court approval prior to a change in a court-ordered goal, placement, visitation or service.
- (b) Petitions or motions, including petitions for placement reviews and dispositional review hearings, shall clearly state the agency's recommendation about each issue before the court and the factual allegations supporting each recommendation.
- (c) A petition or motion filed with the court shall be mailed to all parties and their counsel of record at least 15 days in advance of a hearing thereon. The county agency will not be sanctioned by the Department for non-compliance with the 15-day requirement of this section in instances when the scheduling of the hearing is beyond the control of the agency, and the agency has given as much notice as possible under the circumstances.

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<sup>233</sup> This regulation was promulgated pursuant to a settlement agreement entered on February 15, 1989, in the case of *Bixler v. Children and Youth Services of Delaware County*, C.A. No. 86-5402. The motions required by this regulation are, therefore, often referred to by dependency lawyers as "Bixlers."

(d) In an emergency as defined in § 3130.68(b) and (i) (relating to visiting and communication policies), the county agency may change the child's location or visiting arrangements prior to obtaining court approval if it files a petition or motion with the court within 24 hours of the action taken. In these cases, the county agency shall immediately provide date stamped copies of the petition or request to the child's attorney, the child, if age appropriate, the child's parents or legal guardians and their legal counsel, if known.

## V. CASE LAW UNDER THE JUVENILE ACT AND CHILD PROTECTIVE SERVICES LAW

This part provides the reader with brief synopses of selected cases in pertinent areas of child abuse and dependency law. For a more complete collection of case law in these areas, please consult *Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children in Pennsylvania* (Juvenile Law Center, Fourth Edition, 2004). Cited below are cases from 1990 to the present day. For archived cases and cases decided after the publication of this guide, visit the legal developments page of the Juvenile Law Center website (<http://www.jlc.org/index.php/legaldevelopments>).

### STANDING

*In the Interest of: L.C., II*, 900 A.2d 378 (Pa. Super. 2006).

Grandmother did not have standing to participate in dependency proceedings because, although in the past she served as the primary caregiver for Child for approximately fourteen years, she did not have legal custody of Child at the time that Child engaged in the acts that led to the dependency proceedings.

*In the Interest of J.P.*, 832 A.2d 492 ( Pa. Super. 2003).

A parent cannot be deprived of his right to participate in a dependency proceeding based upon charges of abuse against the child.

*In re L.J.*, 456 Pa. Super. 685, 691 A.2d 520 (1997).

The court addressed the issue of whether the father of the half-brother of a dependent child had standing to intervene in a goal change determination from foster care to adoption. The court applied the rules of standing to the half-brother and found that his interest was not immediate.

*In re M.K.*, 431 Pa. Super. 198, 636 A.2d 198 (1994), *cert. denied*, 513 U.S. 962 (1994).

A live-in boyfriend of a child's mother has standing to appeal a finding of dependency where the court made a specific finding as to the paramour's conduct and noted that he had been living with the mother and children for more than six years.

### DEPENDENCY STANDARD

*In the Interest of Hall*, 703 A.2d 717 (Pa. Super. 1997).

In a dependency adjudication, the inquiry is not what is in the child's best interest, but whether the child is dependent as defined in 42 Pa. C.S.A. §6301 *et seq.*

*In the Interest of R.T.*, 405 Pa. Super. 156, 592 A.2d 55 (1991).

A finding of abuse is not conclusive evidence in a dependency adjudication. The court must determine by clear and convincing evidence that the child is without proper care and control necessary for physical, mental, or emotional health or morals.

*In re Swope*, 391 Pa. Super. 484, 571 A.2d 470 (1990).

Even when a child's allegations of abusive parental conduct are true, the child may not be adjudicated dependent unless the juvenile court also finds that proper care is not immediately available.

### DISPOSITIONAL STANDARD

*In the Matter of T.R.*, 731 A.2d 1276 (Pa. 1999).

The juvenile court may not compel psychological examination of a mother to effect proper placement of children because less intrusive methods of assessing her fitness are available, such as the in-home investigation of social workers.

*In the Interest of S.S.*, 438 Pa. Super. 62, 651 A.2d 174 (1994).

The Superior Court held that the standard for determining whether to return a child to foster care was "clear necessity" rather than "best interests."

*In the Interest of Feidler*, 392 Pa. Super. 524, 573 A.2d 587 (1990).

When a juvenile court sets forth conditions that must be met for children to remain at home, violations of those conditions must still provide clear and convincing evidence that removal of the children is necessary before they may be separated from their parents.

## **DEPENDENCY FOUND**

*In the Matter of: E.B.*, 898 A.2d 1108 (Pa. Super. 2006).

Dependency adjudication upheld where evidence established that mother could not be relied upon to enforce a stay-away order entered against her paramour who had made sexual advances toward her other daughter.

*In the Interest of C.B. and A.L.*, 861 A.2d 287, 2004 Pa Super.402 (Pa. Super. 2004).

Aggravated circumstances warranted the cessation of reunification efforts. Juvenile Act definition of parent includes parent who achieves that status via the doctrine of in loco parentis. Visitation may be suspended under the grave threat standard where Father raped and sodomized the child's sister in his presence and child exhibited inappropriate sexual behavior after visitation with Father.

*In re W., M.; W., R.; W.,D.; and W.,D.*, 842 A.2d 425 (Pa. Super. 2004).

Siblings of sexually abused child adjudicated dependent because of mother's failure to protect them from unsupervised contact with father/abuser.

*In the Interest of R.W.J.*, 826 A.2d 10 (Pa. Super. 2003).

Dependency finding for new born based upon mother's prior behavior in connection with four other children. Where another child of the parent has been the victim of physical abuse resulting in serious bodily injury, an "aggravated circumstance" as defined by the Act, 42 Pa.C.S.A. §6302 (2), existed and supported the juvenile court's finding of dependency. Pennsylvania law permits a finding of dependency on the basis of prognostic evidence. *In Interest of Black*, 417 A.2d 1178 (Pa. Super. 1980). The court affirmed the dependency adjudication.

*In the Interest of S.B.*, 833 A.2d 1116 (Pa. Super. , August 6, 2003).

Sibling adjudicated dependent based upon finding of an "aggravated circumstance" namely, father's sexual abuse of sister, even where sibling was not the subject of abuse, was doing well and was not found to be unsafe in the home.

*In re G. T.*, 845 A.2d 870 (Pa. Super. 2002).

Sibling of child, found to have incurred serious brain injury due to parents' failure to seek medical attention, also at risk of harm. Dependency adjudication and disposition upheld.

*In re K.A.D.*, 779 A.2d 540 (Pa. Super. 2001).

Evidence supported finding that a teenager, who was in the primary physical custody of her mother, was dependent, even though her father was ready and willing to take custody of child

*In re R.T., C.A., K.A.*, 778 A.2d 670 (Pa. Super. 2001).

Juvenile Act provides a clear mandate by the legislature against retroactive application of the aggravated circumstance statute.

*In the Interest of A.H.*, 763 A.2d 873, 2000 Pa. Super. Ct. 357 (Pa. Super. 2000).

The parental duty extends beyond mere restraint from actively abusing a child. There exists a duty to protect the child from the harm that others may inflict.

*In re R.R.*, 455 Pa. Super. 1, 686 A.2d 1316 (1996).

A child may be adjudicated dependent if that child has special needs that the parent is unable to meet. Thus, given the evidence of mother's erratic behavior and R.R.'s delicate medical condition, the court found that evidence supported the lower court's finding of dependency.

*In the Interest of J.O.V. and J.A.V.*, 454 Pa. Super. 630, 686 A.2d 421 (1996).

Evidence of two separate serious injuries to the child was enough to support a finding of dependency where the parents could not account for the injuries.

*In the Matter of B.R.*, 408 Pa. Super. 345, 596 A.2d 1120 (1991).

The finding of dependency is appropriate where a child had been sexually abused by her father, and her mother, who refused to believe the allegations, was incapable of protecting her.

#### **CLEAR NECESSITY FOUND**

*In re E.P., J.P. and A.P.*, 841 A.2d 128 (Pa. Super. 2003).

Court holds that removal of dependent children from mother's physical custody is "necessary and appropriate" where truancy issues not completely resolved and young children continue to arrive at school late and hungry.

*In the Interest of C.S.*, 397 Pa. Super. 519, 580 A.2d 418 (1990).

The clear necessity standard for separating a child and parent is met when the evidence shows that alternatives to removal are unfeasible.

#### **DEPENDENCY NOT FOUND**

*In the Matter of S.J.-L.*, 828 A.2d 352 (Pa. Super. 2003).

In a situation where there is a non-custodial parent immediately available to provide parental care, a court may release a child from dependency without a hearing.

*In the Interest of M.L.; Appeal of K.L., Natural Mother*, 757 A.2d 849 (Pa. 2000).

A child, whose non-custodial parent is ready, willing and able to provide adequate care to the child, cannot be found dependent; judge in a dependency proceeding has authority to modify the existing custody arrangement without making a finding of dependency.

*In the Interest of A.E.*, 722 A.2d 213 (Pa. Super. 1998).

The court reversed a lower court's finding of dependency and award of custody to the non-custodial father. The mother had left the children with a babysitter and failed to return as promised. The court reversed because no express determination of dependency had been made and there was no showing that the mother did not provide proper parental care and control.

*In the Interest of T.M.*, 456 Pa. Super. 140, 689 A.2d 954 (1997).

T.M. was not a dependent child based on Children and Youth Services' failure to prove by clear and convincing evidence that the infant who was the subject of the dependency petition was without proper care and control.

*In the Interest of C.R.S.*, 696 A.2d 840 (Pa. Super. 1997).

The court reversed a finding of dependency because the lower court based its determination without the record showing "clearly and convincingly that proper parental care or control was not available to C.R.S." or that injuries to the child were in fact the result of physical abuse and not a result of accidental injuries.

*In the Interest of Hall*, 703 A.2d 717 (Pa. Super. 1997)

Even though neither parent was self-sufficient, the child could not be adjudicated dependent absent evidence that the child was not receiving proper care and that such care was not immediately available from non-custodial parent.

*In re A.S.*, 406 Pa. Super. 466, 594 A.2d 714 (1991).

A dependency adjudication cannot be based upon a stipulation that merely represents the parties' agreement as to what the court order should say, containing only a few agreed upon facts. Instead, the court must make an independent determination that the child is dependent.

*In the Interest of Palmer*, 404 Pa. Super. 314, 590 A.2d 798 (1991).

The court reversed the adjudication of dependency of an infant whose father had been arrested for the homicide of the infant's older sibling, for it was undisputed that the infant's mother could care for him. The lower court's finding that mother had failed to protect the infant from his father was unsupported by any evidence, and could not support an adjudication of dependency, especially when there was no prior indication that either child was at risk.

*In re Swope*, 391 Pa. Super. 484, 571 A.2d. 470 (1990).

Even when a child's allegations of abusive parental behavior are true, the child may not be adjudicated dependent unless the juvenile court also finds that proper parental care is not immediately available.

## **CLEAR NECESSITY NOT FOUND**

*In re Donna H.*, 412 Pa. Super. 205, 602 A.2d 1382 (1992).

The trial court must hear all relevant evidence and conduct a comprehensive and searching inquiry into the child's best interest before making a placement.

## **EVIDENCE**

*In the Interest of J.Y. and B.P.*, 754 A.2d 5 (Pa. Super. 2000).

Evidentiary rules of suppression do not apply to dependency disposition proceedings. Mother's motion to suppress the admission to the CYS caseworker was properly denied.

*In re K.D.*, 1999 Pa. Super 290, 744 A.2d 760 (1999).

The juvenile court may not require that a parent undergo a mental health evaluation in connection with a dependency hearing merely because the parent was alleged to have been taking medication for a mental condition.

*D.P. v. Department of Public Welfare*, 733 A.2d 661 (Pa. Commw. 1999).

A child's hearsay statements made to a psychiatrist regarding the father's abuse were improperly admitted in an expungement hearing. The statutory exception, 42 Pa. C.S.A. § 5986, requires that (1) such hearsay statements have

sufficient indicia of reliability, and (2) the child testify or be declared “unavailable as a witness,” and these requirements were not met.

*J.K. v. Department of Public Welfare*, 721 A.2d 1127 (Pa. Commw. 1998).

Fourteen-year-old child’s hearsay statements made to a youth services agency caseworker were not admissible in an expungement hearing because there was no finding that the statements provided sufficient indicia of reliability.

*Commonwealth v. Crossley*, 711 A.2d 1025 (Pa. Super. 1998).

New trial granted where hearsay of a child was admitted in court under the “tender years” exception to the hearsay rule without prior notice, as required by the heightened discovery provisions in the Tender Years Hearsay Act.

*Mortimore v. Department of Public Welfare*, 697 A.2d 1031 (Pa. Commw. 1997).

Hearsay testimony of a child victim may be admitted through testimony of the child’s family and professionals who investigated the abuse incident if time, content, and circumstances under which the statements were made provide “sufficient indicia of reliability.”

*In the Matter of C.R.S.*, 696 A.2d 840 (Pa. Super. 1997).

One of the expert witness physicians in this dependency determination referred to published articles that he had read in arriving at the conclusion that the injuries from which the child suffered were likely not accidental. This testimony was allowed given that the lower court gave “less weight” to the testimony.

*K.D. v. J.D.*, 696 A.2d 232 (Pa. Super. 1997).

The court held that a child/victim’s hearsay statements may not be introduced at a protection from abuse proceeding brought under the Child Victims and Witnesses Act, 42 Pa. C.S.A. § 5985.1, because the hearsay exception applies only in criminal prosecutions.

*Commonwealth v. Smith*, 545 Pa. 487, 681 A.2d 1288 (1996).

The lower court admitted the testimony of a nurse who repeated the child’s identification of her father as the alleged abuser. The court found that although the statement was made for the purpose of receiving medical treatment, it was not necessary and proper for diagnosis and treatment, thus, the testimony was inadmissible.

*In re Child M.*, 452 Pa. Super. 230, 681 A.2d 793 (1996).

A parent does not have a right to “force an abused child to testify.” Although there is a constitutional dimension to termination hearings, the parents does not have the constitutionally protected right to confront witnesses in such proceedings.

*Commonwealth v. Bean*, 450 Pa. Super. 574, 677 A.2d 842 (1996).

A child/victim was found incompetent to testify at trial because he had the tendency to tell adults what he believed they wished to hear and he could not distinguish between truth and falsehood. The court held that these same factors also should have been considered in evaluating the child’s hearsay testimony, which was improperly admitted.

*In re M.K.*, 431 Pa. Super. 198, 636 A.2d 198, *cert. denied*, 513 U.S. 962 (1994).

The court affirmed the trial court’s reliance on the hearsay exception of 42 Pa. C.S. § 5986 in allowing a psychologist to testify about statements made by a child regarding sexual abuse by the paramour of the child’s mother.

*In the Interest of C.L. and P.G.*, 436 Pa. Super. 630, 648 A.2d 799 (1994).

The court found a child competent to testify since he understood the importance of truth, even if confused about the meaning of an oath and the purpose of his testimony.

*In Interest of J.R.*, 436 Pa. Super. 416, 648 A.2d 28 (1994).

A four-year-old may be found competent to testify to alleged abuse if she exhibits the capacity to communicate, to observe and remember the subject of her testimony, and is conscious of the duty to speak the truth.

#### **ACCESS TO CHILD ABUSE REPORTS AND EXPUNGEMENT**

*D.P. v. Department of Public Welfare*, 733 A.2d 661 (Pa. Commw. 1999).

Father appeals the denial of his request for expungement of an indicated report of child sexual abuse. Because the lower court had relied only on hearsay evidence, the decision to deny the father's request for expungement was reversed.

*L.A.J. v. Department of Public Welfare*, 726 A.2d 1133 (Pa. Commw. 1999).

The court reverses the Department of Public Welfare (DPW) and grants expungement because DPW failed to prove child abuse. The mother swatted the child with a belt causing welts on her legs, but DPW failed to show the pain was severe or that the child's physical function was impaired.

*J.C. v. Department of Public Welfare*, 720 A. 2d 193 (Pa. Commw. 1998).

J.C. appeals after the Department of Public Welfare denied his untimely request to expunge an indicated report. The court found that the statute provided only for the secretary to use discretion in determining whether the request should be granted, and therefore the order was confirmed.

*V.B.T. v. Family Services of Western PA*, 705 A.2d 1325 (Pa. Super. 1998).

The parents of a child who had allegedly been physically and sexually abused by a neighbor's foster child did not qualify for the statutory exception to confidentiality and thus were not entitled to access reports made pursuant to the Juvenile Act.

*E.D. v. Department of Public Welfare*, 719 A.2d 384 (Pa. Commw. 1998).

The court granted expungement of an indicated report of child abuse based upon an isolated incident when foster parent lifted a child by his bicycle helmet. The Department of Public Welfare had not proved that the incident arose to the level of abuse because no imminent risk of serious injury was shown.

*P.E.S. v. K.L.*, 720 A.2d 487 (Pa. Super. 1998).

The court granted expungement of records stemming from a Protection from Abuse petition which was dismissed after the parties failed to appear for a hearing on the petition.

*P.E. v. Department of Public Welfare*, 692 A.2d 1155 (Pa. Commw. 1997).

A licensed social worker's due process rights were not violated since he failed to respond to the Department of Public Welfare's motion to dismiss after it was sent to his counsel. Therefore, his request to expunge an indicated report of abuse was denied.

*S.M. v. Children and Youth Services of Delaware County*, 686 A.2d 872 (Pa. Commw. 1996).

The plaintiff child, his legal guardian, and his parents were entitled to documents relating to an allegedly abusive foster care provider. The parties were entitled to the report since the regulation regarding files contains no limit on disclosure. Plaintiffs were not entitled, however, to information from criminal history and background checks, home study reports, complaints filed and received against the foster parents, and other documents involving screening, evaluation, and approval to be foster care providers unless the documents were in the family case record or foster family file.

*A.P. v. Department of Public Welfare*, 696 A.2d 912 (1997).

Uncorroborated hearsay and double hearsay statements in doctors' reports which identified a stepfather as the perpetrator of abuse were insufficient to support the denial of the stepfather's request to expunge his name from the child abuse registry.

*Commonwealth v. Persia*, 449 Pa. Super. 332, 673 A.2d 969 (1996).

The alleged abuser filed a petition seeking to expunge his record, arguing that the Commonwealth failed to produce compelling reasons for the retention of the criminal record. The court denied the request, balancing the individual's right to be free from the harm of a record against the Commonwealth's interest in preserving such records.

*Commonwealth v. Askew*, 446 Pa. Super. 301, 666 A.2d 1062 (1995).

Defendant argued that since the counselor reported abuse to the police and to a doctor, the statutory sexual assault counselor privilege was waived and the defendant should have been allowed access to the victim's records. The court disagreed, stating that the counselor was legally obligated to report the abuse.

*In Interest of J.R.W.*, 428 Pa. Super. 597, 631 A.2d 1019 (1993).

The Juvenile Court has the power to make findings of child abuse and to identify perpetrators.

*In re J.C.*, 412 Pa. Super. 369, 603 A.2d 627 (1992).

The court held that while the Child Protective Services Law does mandate a broad confidentiality requirement, there are exceptions to the mandate and CYs must release records under court order pursuant to section 6333 of the Juvenile Act.

*J.S. v. Pennsylvania*, 528 Pa. 243, 596 A.2d 1114 (1991).

The Pennsylvania Supreme Court reversed the lower court's dismissal of a request for expungement of a child abuse report record, finding that the County Children and Youth Agency should have conducted further interviews and that the alleged sexual abuse in the report was instead a healthy, playful exchange between a father and a young child.

*M.R.F. v. DPW*, 141 Pa. Commw. 146, 595 A.2d 644 (1991).

The testimony of a social worker as to whether the child had been sexually abused by her father was admissible as an exception to the hearsay rule for child abuse expungement cases. The social worker was skilled in sexual abuse investigation, used well-recognized methods, and investigated at a time close to the episodes of abuse.

## **REASONABLE EFFORTS**

*In the Interest of Carl Lilley*, 719 A.2d 327 (Pa. Super. 1998).

The court finds that a mother who has been unable to care for her son for fourteen years, despite intervention, is incapable of benefitting from "reasonable efforts" and loses her parental rights. In so holding, the court noted that the reasonable effort requirement has recently been "discredited."

*In re Diaz*, 447 Pa. Super. 327, 669 A.2d 372 (1995).

The court found that the County Children and Youth Social Service Agency had made reasonable efforts to preserve the family and affirmed a trial court *decree nisi* terminating a mother's parental rights. The mother in this case never followed through with the services established for her, and did not complete the placement plan which outlined the prerequisites for the return of her child. The court noted that the "Commonwealth is not a guarantor of the success of efforts to help parents assume their parental duties."

*In Interest of Feidler*, 392 Pa. Super. 524, 573 A.2d 587 (1990).

The “clear necessity” standard for removing children from the home is only satisfied when the record demonstrates that every reasonable effort has been made to keep the family together. Under the “reasonable efforts” requirement, the agency may even be required to provide services that generally fall outside its province.

*In re J.W.*, 396 Pa. Super. 379, 578 A.2d 952 (1990).

While Pennsylvania is required to make reasonable efforts to promote family unity, it is not required to guarantee the success of those efforts. Parents have an affirmative obligation to “make diligent efforts toward the reasonably prompt assumption of full parental responsibilities.”

## APPENDIX A

### COUNTY CHILDREN & YOUTH AGENCIES

#### ADAMS

ADAMS COUNTY CHILDREN  
& YOUTH SERVICES  
100 N. Stratton Street  
Gettysburg, PA 17325  
(717) 337-0110

*After normal working hours call: 911*

#### ALLEGHENY

ALLEGHENY COUNTY OFFICE OF CHILDREN,  
YOUTH & FAMILIES  
1 Smithfield Street, Suite 400  
Pittsburgh, PA 15222-2225  
(412) 350-5701

*After normal working hours call: Intake office at  
(412) 473-2000.*

#### ARMSTRONG

ARMSTRONG COUNTY CHILDREN,  
YOUTH & FAMILY SERVICES  
310 South Jefferson Street  
Kittanning, PA 16201  
(724) 548-3466

*After normal working hours call: (724) 543-6509*

#### BEAVER

BEAVER COUNTY CHILDREN  
& YOUTH SERVICES  
1080 Eighth Avenue  
Beaver Falls, PA 15010  
(724) 891-5800

*After normal working hours call the same number.*

#### BEDFORD

BEDFORD COUNTY CHILDREN  
& YOUTH SERVICES  
220 South Thomas Street  
Bedford, PA 15522  
(814) 623-4804

*After normal working hours calls are forwarded  
to intake*

#### BERKS

BERKS COUNTY CHILDREN  
& YOUTH SERVICES  
633 Court Street, 11<sup>th</sup> Floor  
Reading, PA 19601  
(610) 478-6700

*After normal working hours calls are transferred  
to 911*

#### BLAIR

BLAIR COUNTY CHILDREN  
& YOUTH SERVICES  
423 Allegheny Street, Suite 132  
Hollidaysburg, PA 16648  
(814) 693-3130

*After normal working hours call: (814) 949-4917*

#### BRADFORD

BRADFORD COUNTY CHILDREN  
& YOUTH SERVICES  
220 Main Street, Unit 1  
Towanda, PA 18848  
(570) 265-1760

*After normal working hours call: (570) 265-2424*

#### BUCKS

BUCKS COUNTY CHILDREN & YOUTH  
SOCIAL SERVICES AGENCY  
4259 West Swamp Road, Suite 200  
Doylestown, PA 18901  
(215) 348-6900

*After normal working hours an answering service calls  
will refer calls to an intake worker*

#### BUTLER

BUTLER COUNTY CHILDREN  
& YOUTH SERVICES  
124 W Diamond Street, 2<sup>nd</sup> Floor  
P.O. Box 1208  
Butler, PA 16003  
(724) 284-5156 (ask for Children & Youth Services)

*After normal working hours call: (724) 287-7769 or  
911.*

**CAMBRIA**

CAMBRIA COUNTY CHILDREN  
& YOUTH SERVICES  
110 Franklin Street, Suite 400  
Johnstown, PA 15901  
(814) 539-7454

*After normal working hours call: (814) 536-5311*

**CAMERON**

CHILDREN & YOUTH SERVICES  
OF CAMERON COUNTY  
20 E 5<sup>th</sup> Street  
Emporium, PA 15834  
(814) 486-3265

*After normal working hours call: (814) 772-0000*

**CARBON**

CARBON COUNTY CHILDREN  
& YOUTH SERVICES  
69 Broadway, 3<sup>rd</sup> Floor  
Jim Thorpe, PA 18229  
(570) 325-3644

*After normal working hours use the same number*

**CENTRE**

CENTRE COUNTY CHILDREN  
& YOUTH SERVICES  
Willowbank Office Building  
420 Holmes Street  
Bellefonte, PA 16823  
(814) 355-6755

*After normal working hours call: 1-800-479-0050*

**CHESTER**

CHESTER COUNTY CHILDREN  
& YOUTH SERVICES  
601 Westtown Road, Suite 310  
West Chester, PA 19382  
(610) 344-5800  
1-800-692-1100

*After normal working hours call: (610) 344-5100*

**CLARION**

CLARION COUNTY CHILDREN  
& YOUTH SERVICES  
214 S 7<sup>th</sup> Avenue, Suite B  
Clarion, PA 16214  
(814) 226-9280

*After normal working hours call: 911*

**CLEARFIELD**

CLEARFIELD COUNTY CHILDREN  
& YOUTH SERVICES  
650 Leonard Street  
Clearfield, PA 16830  
(814) 765-1541

*After normal working hours use the same number or call 911 if an emergency situation*

**CLINTON**

CLINTON COUNTY CHILDREN  
& YOUTH SERVICES  
232 East Main Street  
Lock Haven, PA 17745  
(570) 893-4100

*After normal working hours call Communications Center: (570) 748-2936*

**COLUMBIA**

COLUMBIA COUNTY CHILDREN  
& YOUTH SERVICES  
26 West 1<sup>st</sup> Street  
Bloomsburg, PA 17815  
(570) 389-5700

*After normal working hours call: (570) 784-0212*

**CRAWFORD**

CRAWFORD COUNTY CHILDREN  
& YOUTH SERVICES  
654 Arch Street, Suite B101  
Meadville, PA 16335  
(814) 724-8380

*After normal working hours call: CHILDLINE at 1-800-932-0313 or County Control: (814) 724-2545*

**CUMBERLAND**

CUMBERLAND COUNTY CHILDREN  
& YOUTH SERVICES  
16 West High Street  
Suite 200 - Human Services Building  
Carlisle, PA 17013-2931  
(717) 240-6120

*After normal working hours call:*  
(717) 243-4121 (Carlisle)  
(717) 238-9676 (West Shore)  
(717) 532-8878 (Shippensburg)

**DAUPHIN**

DAUPHIN COUNTY SOCIAL SERVICES  
FOR CHILDREN & YOUTH  
25 South Front Street, 7th Floor  
Harrisburg, PA 17101  
(717) 780-7200

*After normal working hours use the same number*

**DELAWARE**

DELAWARE COUNTY SOCIAL SERVICES  
FOR CHILDREN & YOUTH  
20 S. 69<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Upper Darby, PA 19082  
(215) 891-4806

531 Penn Street  
Chester, PA 19013  
(610) 447-1000

Sexual Abuse  
100 W. 6<sup>th</sup> Street, Ground Floor  
Media, PA 19063  
(610) 891-5258

*After normal working hours call: (610) 892-8400*

**ELK**

ELK COUNTY CHILDREN  
& YOUTH SERVICES  
P.O. Box 448  
Ridgway, PA 15853  
(814) 776-1553

*After normal working hours call: 1-888-355-8128*

**ERIE**

ERIE COUNTY OFFICE  
OF CHILDREN & YOUTH  
154 W. 9<sup>th</sup> Street  
Erie, PA 16501  
(814) 451-6600

*After normal working hours call: (814) 453-5656*

**FAYETTE**

FAYETTE COUNTY CHILDREN  
& YOUTH SERVICES  
130 Old New Salem Road  
Uniontown, PA 15401  
(724) 430-1283

*After normal working hours call: (724) 430-1287  
or CHILDLINE at 1-800-932-0313*

**FOREST**

FOREST COUNTY CHILDREN  
& YOUTH SERVICES  
613 Elm Street  
P.O. Box 523  
Tionesta, PA 16353  
(814) 755-3622

*After normal working hours call: (814) 726-1380 or  
1-800-406-1255*

**FRANKLIN**

FRANKLIN COUNTY CHILDREN  
& YOUTH SERVICES  
425 Franklin Farm Lane  
Chambersburg, PA 17201  
(717) 263-1900

*After normal working hours call Emergency  
Management Agency: (717) 263-1611*

**FULTON**

FULTON COUNTY SERVICES FOR CHILDREN  
219 North 2nd Street  
McConnellsburg, PA 17233  
(717) 485-3691

*After normal working hours use the same number*

**GREENE**

GREENE COUNTY CHILDREN  
& YOUTH SERVICES  
19 S. Washington Street, Room 201  
Waynesburg, PA 15370  
(724) 852-5217

*After normal working hours call : 911*

**HUNTINGDON**

HUNTINGDON COUNTY CHILDREN  
& YOUTH SERVICES  
430 Penn Street  
Huntingdon, PA 16652  
(814) 643-3270

*After normal working hours call: 911*

**INDIANA**

INDIANA COUNTY CHILDREN  
& YOUTH SERVICES  
350 North 4<sup>th</sup> Street  
Indiana, PA 15701  
(724) 465-3895

*After normal working hours call: 911 or  
(724) 349-4128 if not an emergency*

**JEFFERSON**

JEFFERSON COUNTY CHILDREN  
& YOUTH SERVICES  
155 Main Street  
Brookville, PA 15825  
(814) 849-3696

*After normal working hours call County Control:  
(814) 849-1617*

**JUNIATA**

JUNIATA COUNTY CHILDREN  
& YOUTH SOCIAL SERVICES AGENCY  
11 N. 3<sup>rd</sup> Street  
Fry Building  
Mifflintown, PA 17059  
(717) 436-7707

*After normal working hours call: (717) 436-7770*

**LACKAWANNA**

LACKAWANNA COUNTY CHILDREN  
& YOUTH SOCIAL SERVICES AGENCY  
200 Adams Avenue, 4<sup>th</sup> Floor  
Scranton, PA 18503  
(570) 963-6781

*After normal working hours use the same number*

**LANCASTER**

LANCASTER COUNTY CHILDREN  
& YOUTH AGENCY  
900 East King Street  
Lancaster, PA 17602  
(717) 299-7925

*After normal working hours call: (717) 396-8085*

**LAWRENCE**

LAWRENCE COUNTY CHILDREN  
& YOUTH SERVICES  
1001 E Washington Street  
New Castle, PA 16101  
(724) 658-2558

*After normal working hours call: 911*

**LEBANON**

LEBANON COUNTY CHILDREN  
& YOUTH SERVICES  
Room 401, Municipal Building  
400 S. 8th Street  
Lebanon, PA 17042  
(717) 274-2801

*After normal working hours call: (717) 272-2054*

**LEHIGH**

LEHIGH COUNTY CHILDREN  
& YOUTH SERVICES  
Government Center  
17 S. 7<sup>th</sup> Street  
Allentown, PA 18101-2400  
(610) 782-3064

*Leave a message on the tape after normal working  
hours.*

**LUZERNE**

LUZERNE COUNTY CHILDREN  
& YOUTH SERVICES  
111 North Pennsylvania Blvd.  
Wilkes-Barre, PA 18701  
(570) 826-8710

*Calls are transferred to HELPLINE [(570) 829-1341]  
after 5:00 p.m. in winter and 4:00 p.m. in summer.*

**LYCOMING**

LYCOMING COUNTY DEPARTMENT  
OF CHILDREN & YOUTH  
Sharwell Building  
200 East Street  
Williamsport, PA 17701  
(570) 326-7895

*After normal working hours use the same number*

**MCKEAN**

MCKEAN COUNTY CHILDREN  
& YOUTH SERVICES  
Courthouse  
Smethport, PA 16749  
(814) 887-3350

*After normal working hours call: (814) 887-4911*

**MERCER**

MERCER COUNTY CHILDREN  
& YOUTH SERVICES  
8425 Sharon-Mercer Road  
Mercer, PA 16137  
(724) 662-2703

*After normal working hours call: (724) 662-3221*

**MIFFLIN**

MIFFLIN COUNTY CHILDREN  
& YOUTH SERVICES  
144 East Market Street  
Lewistown, PA 17044  
(717) 248-3994

*After normal working hours use the same number*

**MONROE**

MONROE COUNTY CHILDREN  
& YOUTH SERVICES  
730 Phillips Street  
Stroudsburg, PA 18360  
(570) 420-3590

*After normal working hours use the same number*

**MONTGOMERY**

MONTGOMERY COUNTY OFFICE  
OF CHILDREN & YOUTH  
1430 DeKalb Street  
Norristown, PA 19401  
Clinical Services: (610) 278-5800

*After normal working hours calls are taken by Radio  
Room: (610) 275-1222*

**MONTOUR**

MONTOUR COUNTY CHILDREN  
& YOUTH SERVICES AGENCY  
114 Woodbine Lane, Suite 201  
Danville, PA 17821  
(570) 271-3050

*After normal working hours call: (570) 275-1911*

**NORTHAMPTON**

NORTHAMPTON COUNTY CHILDREN,  
YOUTH & FAMILIES DIVISION  
45 North Second Street  
Easton, PA 18042  
(610) 559-3290  
1-800-634-0808

*After normal working hours call: (610) 252-9060*

**NORTHUMBERLAND**

NORTHUMBERLAND COUNTY CHILDREN  
& YOUTH SERVICES  
322 North Second Street  
Sunbury, PA 17801  
(570) 988-4237

*After normal working hours call CHILDLINE at 1-800-  
932-0313*

**PERRY**

PERRY COUNTY CHILDREN  
& YOUTH SERVICES  
Courthouse  
P.O. Box 123  
New Bloomfield, PA 17068  
(717) 582-2131 Ext. 2212

*After 4:00 p.m. call: (717) 582-4311 or 1-888-454-3105*

**PHILADELPHIA**

PHILADELPHIA COUNTY DEPARTMENT OF  
HUMAN SERVICES, CHILDREN & YOUTH AGENCY  
Intake: 1515 Arch Street  
Philadelphia, PA 19102  
(215) 683-6000  
(215) 683-4347

*Child Abuse 24-hour Hotline: (215) 686-6100*

**PIKE**

PIKE COUNTY CHILDREN  
& YOUTH SERVICES  
506 Broad Street  
Milford, PA 18337  
(570) 296-3446

*After normal working hours use the same number*

**POTTER**

POTTER COUNTY CHILDREN  
& YOUTH SERVICES  
P.O. Box 241  
62 North Street  
Roulette, PA 16746  
(814) 544-7315

*After normal working hours use the same number or call 911*

**SCHUYLKILL**

SCHUYLKILL COUNTY CHILDREN  
& YOUTH SERVICES  
410 N. Centre Street  
Pottsville, PA 17901  
(570) 628-1050  
1-800-722-8341

*After normal working hours use the same numbers*

**SNYDER**

SNYDER COUNTY CHILDREN  
& YOUTH SERVICES  
713 Bridge Street, Suite 15  
Selinsgrove, PA 17870  
(570) 374-4570

*After normal working hours call: (570) 372-0826*

**SOMERSET**

SOMERSET COUNTY CHILDREN  
& YOUTH SERVICES  
300 N Center Avenue, Suite 220  
Somerset, PA 15501  
(814) 445-1600

*After normal working hours call: 1-800-452-0218*

**SULLIVAN**

SULLIVAN COUNTY SOCIAL SERVICES  
AGENCY FOR CHILDREN & YOUTH  
Sullivan County Courthouse  
P.O. Box 157  
Laporte, PA 18626  
(570) 946-4250

*After normal working hours, call State Police:  
(570) 946-4610*

**SUSQUEHANNA**

SUSQUEHANNA COUNTY SERVICES  
FOR CHILDREN & YOUTH  
31 Public Avenue  
Montrose, PA 18801  
(570) 278-4600 Ext. 300

*After normal working hours call regular number or  
County Communication Center: (570) 278-3841*

**TIOGA**

TIOGA COUNTY AGENCY  
FOR CHILDREN & YOUTH  
P.O. Box 766  
Wellsboro, PA 16901  
Children's Services (570) 724-5766 or  
1-800-242-5766

*After normal working hours call:  
GUIDELINE at 1-800-332-6718*

**UNION**

UNION COUNTY CHILDREN  
& YOUTH SERVICES  
1610 Industrial Blvd., Ste. 200  
Lewisburg, PA 17837  
(570) 522-1330

*After normal working hours call: (570) 523-1113*

**VENANGO**

VENANGO COUNTY CHILDREN  
& YOUTH SERVICES  
P.O. Box 1130  
1283 Liberty Street  
Franklin, PA 16323  
(814) 432-9743

*After normal working hours call the Integrated  
Crisis Service: (814) 677-7118*

**WARREN**

FOREST-WARREN CHILDREN  
& YOUTH SERVICES  
27 Hospital Drive  
Warren, PA 16365  
(814) 726-2100

*After normal working hours call: (814) 726-1380*

**WASHINGTON**

WASHINGTON COUNTY CHILDREN  
& YOUTH SERVICES  
100 West Beau Street, Suite 502  
502 Courthouse Square  
Washington, PA 15301  
(724) 228-6884

*After normal working hours use the same number*

**WAYNE**

WAYNE COUNTY CHILDREN  
& YOUTH SERVICES  
Wayne County Courthouse  
648 Park Street, Suite C  
Honesdale, PA 18431  
(570) 253-5972

*After normal working hours call: (570) 253-3109*

**WESTMORELAND**

WESTMORELAND COUNTY  
CHILDREN'S BUREAU  
303 Court House Square  
Greensburg, PA 15601  
(724) 830-3301

*After 8 P.M. call: (724) 836-1551*

**WYOMING**

WYOMING COUNTY CHILDREN  
& YOUTH SERVICES  
P.O. Box 29  
Tunkhannock, PA 18657  
(570) 836-3131

*After normal working hours use the same number*

**YORK**

YORK COUNTY CHILDREN  
& YOUTH SERVICES  
100 W. Market Street, 4th Floor  
York, PA 17401  
(717) 846-8496

*After normal working hours use the same number*

## **APPENDIX B**

### **DEPENDENT CHILD**

The Juvenile Act, 42 Pa.C.S. §6302 defines “dependent child” as follows:

“Dependent Child.” A child who:

- (1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent’s, guardian’s or other custodian’s use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;
- (2) has been placed for care or adoption in violation of law;
- (3) has been abandoned by his parents, guardian, or other custodian;
- (4) is without a parent, guardian, or legal custodian;
- (5) while subject to compulsory school attendance is habitually and without justification truant from school;
- (6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision;
- (7) is under the age of ten years and has committed a delinquent act;
- (8) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (6);
- (9) has been referred pursuant to §6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (6); or
- (10) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa. C.S.A. §2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

## APPENDIX C

### PROTECTION FROM ABUSE ACT

While the Juvenile Act and Child Protective Services Law involve state action to protect children, the Protection from Abuse Act, 23 Pa. C.S.A. §§ 6101-6117 permits a family or household member to obtain a court order protecting a child who is the victim of abuse. A petitioner under the Act need only show by a “preponderance of evidence” that the child was abused within the meaning of the Act. The court has wide-ranging powers of relief, including ordering the abusive member of the family or household out of the house for up to one year. Excerpts from the Act are printed below.

#### §6102. Definitions

(a) General rule. – The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicated otherwise:

“**Abuse.**” The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault, or incest with or without a deadly weapon.

(2) Placing another in reasonable fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

“**Adult.**” An individual who is 18 years of age or older.

“**Family or household members.**” Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

“**Victim.**” A person who is physically or sexually abused by a family or household member.

#### §6103. Effect of departure to avoid abuse

The court shall have jurisdiction over all proceedings under this chapter. The right of plaintiff to relief under this chapter shall not be affected by plaintiff leaving the residence or household to avoid further abuse.

#### § 6104. Registration of order

(a) **Registry.** – The prothonotary shall maintain a registry in which it shall enter certified copies of orders entered by courts from other jurisdictions in this Commonwealth pursuant to this chapter.

(b) **Registration of order in any county.** – A plaintiff who obtains a valid order under this chapter may register that order without fee or cost in any county within this Commonwealth where the plaintiff believes enforcement may be necessary. A court shall recognize and enforce a valid order under this chapter which has been issued by another court but properly registered with a county within the judicial district of the court

where enforcement is sought, or recorded in the registry of the Pennsylvania State Police. . . . A court shall recognize and enforce a valid order which has been issued by a comparable court in another state and properly registered within a county where enforcement is sought or recorded in the registry of the Pennsylvania State Police.

#### § 6106. Commencement of proceedings

**(a) General rule.** – An adult or an emancipated minor may seek relief under this chapter for that person or any parent, adult household member or guardian ad litem may seek relief under this chapter on behalf of minor children, or a guardian of the person of an adult who has been declared incompetent under 20 Pa.C.S. Ch. 51 Subch. B (relating to appointment of guardian) may seek relief on behalf of the incompetent adult, by filing a petition with the court alleging abuse by the defendant.

#### § 6107. Hearings

**(a) General rule.** – Within ten days of the filing of a petition under this chapter, a hearing shall be held before the court, at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall, at the time the defendant is given notice of the hearing, advise the defendant of the right to be represented by counsel, and of the fact that any protection order granted by a court may be considered in any subsequent proceedings under this title. This notice shall be printed and delivered in a manner which easily attracts attention to its content and shall specify that child custody is one of the proceedings where prior protection orders may be considered.

**(b) Temporary orders.** – If a plaintiff petitions for temporary order for protection from abuse and alleges immediate and present danger of abuse to the plaintiff or minor children, the court shall conduct an *ex parte* proceeding. The court may enter such a temporary order as it deems necessary to protect the plaintiff or minor children when it finds they are in immediate and present danger of abuse. The order shall remain in effect until modified or terminated by the court after notice and hearing. Any order issued under this section shall, where furnished by the plaintiff, specify the social security number and date of birth of the defendant.

**(c) Continued hearings.** – If a hearing under subsection (a) is continued and no temporary order is issued, the court may make *ex parte* temporary orders under subsection (b) as it deems necessary.

#### § 6108. Relief

**(a) General rule.** – The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order of agreement may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties, is owned or leased by the entireties or is owned or leased solely by the plaintiff.

(3) When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff or, with the consent of the plaintiff, ordering the defendant to provide suitable alternate housing.

(4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children . . . . Nothing in this paragraph shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure. In order to prevent further abuse during periods of access to the plaintiff and child during the exercise of custodial rights, the court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse.

(5) After a hearing in accordance with section 6107(a), directing the defendant to pay financial support to those persons the defendant has a duty to support. . . . The support order shall be temporary, and any beneficiary of the order must file a complaint for support under the provisions of Chapters 43 (relating to support matters generally) and 45 (relating to reciprocal enforcement of support orders) within two weeks of the date of the issuance of the protection order . . .

(6) Prohibiting the defendant from having contact with the plaintiff or minor children, including, but not limited to, restraining the defendant from entering the place of employment or business or school of the plaintiff or minor children and from harassing the plaintiff or plaintiff's relatives or minor children.

(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's weapons which have been used or have been threatened to be used in an incident of abuse against the plaintiff or the minor children and prohibiting the defendant from acquiring or possessing any other weapons for the duration of the order...

(8) Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or personal property damaged, destroyed, or taken by the defendant or at the direction of the defendant; and other out-of-pocket losses for injuries sustained. In addition to the out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees.

(9) Directing the defendant to refrain from stalking or harassing the plaintiff and other designated persons as defined in 18 Pa. C.S.A. §2709 (relating to harassment and stalking).

(10) Granting any other appropriate relief sought by the plaintiff.

#### **§ 6111. Domestic violence counselor/advocate**

A domestic violence counselor/advocate may accompany a party to any legal proceeding or hearing under this chapter.

#### **§ 6113. Arrest for violation of order**

**(a) General rule.** – An arrest for violation of an order issued pursuant to this chapter may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer. . .

**(f) Hearing.** – A hearing shall be scheduled within ten days of the filing of the charge or complaint of indirect criminal contempt. The hearing and any adjudication shall not preclude a hearing on other criminal charges underlying the contempt, nor shall a hearing on other criminal charges preclude a hearing on a charge of indirect criminal contempt.

#### **§ 6114. Contempt for violation of order or agreement**

**(a) General rule.** – Where the police or the plaintiff have filed charges of indirect criminal contempt against a defendant for violation of a protection order issued under this chapter or a court-approved consent agreement, the court may hold the defendant in indirect criminal contempt and punish the defendant in accordance with law.

**(b) Trial and punishment.** – A sentence for contempt under this chapter may include imprisonment up to six months or a fine of not less than \$100 nor more than \$1,000, or both, and may include other relief set forth in this chapter. The defendant shall not have a right to a jury trial on such a charge; however, the defendant shall be entitled to counsel.

#### **§ 6115. Reporting abuse and immunity**

**(a) Reporting.** – A person having reasonable cause to believe that a person is being abused may report the information to the local police department.

**(b) Contents of report.** – The report should contain the name and address of the abused person, information regarding the nature and extent of the abuse and information which the reporter believes may be helpful to prevent further abuse.

**(c) Immunity.** – A person who makes a report shall be immune from a civil or criminal liability on account of the report unless the person acted in bad faith or with malicious purpose.

#### **§ 6116. Confidentiality**

Unless a victim waives the privilege in a signed writing prior to testimony or disclosure, a domestic violence counselor/advocate or a co-participant who is present during domestic violence counseling/advocacy shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim. The privilege shall terminate upon the death of the victim. Neither the domestic violence counselor/advocate nor the victim shall waive the privilege of confidential communications by reporting facts of physical or sexual assault under Chapter 63 (relating to child protective services), a Federal or State mandatory reporting statute or a local mandatory reporting ordinance.

## APPENDIX D

### PUBLICATIONS ADDRESSING THE REASONABLE EFFORTS REQUIREMENTS

There has been much written about the “reasonable efforts” requirement. Refer to:

**Making Reasonable Efforts: A Permanent Home for Every Child**

Youth Law Center, 2000.

***Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children in Pennsylvania***

Alisa Field, Juvenile Law Center, Fourth Edition, 2004.

**Making Strategic Use of the Family Preservation and Support Services Program: A Guide For Planning**

Center for the Study of Social Policy and Children’s Defense Fund, 1994.

**When a Family Needs Help**

Edna McConnell Clark Foundation, 1992.

**For Children’s Sake, The Promise of Family Preservation**

J. Barthel, Edna McConnell Clark Foundation, 1992.

**Keeping Families Together: Resources For Cross-sector Training on Reasonable Efforts**

Child Welfare League of America, National Council of Juvenile and Family Court Judges and Youth Law Center, 1991

**“Courts Interpret ‘Reasonable Efforts’ Requirement”**

P. Holland, in *Children’s Rights Chronicle*  
Juvenile Law Center, 1989

**Reasonable Efforts to Prevent Foster Placement (2d ed.)**

Ratterman, Dodson, & Hardin, American Bar Association, 1987.

**Making Reasonable Efforts: Steps for Keeping Families Together**

National Council of Juvenile and Family Court Judges, Child Welfare League of America, Youth Law Center, National Center for Youth Law, 1987. (Edna McConnell Clark Foundation)

**“Enforcing P.L. 96-272 and Act 177 of 1986”**

S. Magdovitz, in *Children’s Rights Chronicle*  
Juvenile Law Center, 1987

**“The Role of the Attorney in Preventing Unnecessary Placement of Dependent Children Under the Adoption Assistance and Child Welfare Act of 1980”**

in *Children’s Rights Chronicle*  
Juvenile Law Center, 1986

**Keeping Families Together: The Case For Family Preservation**

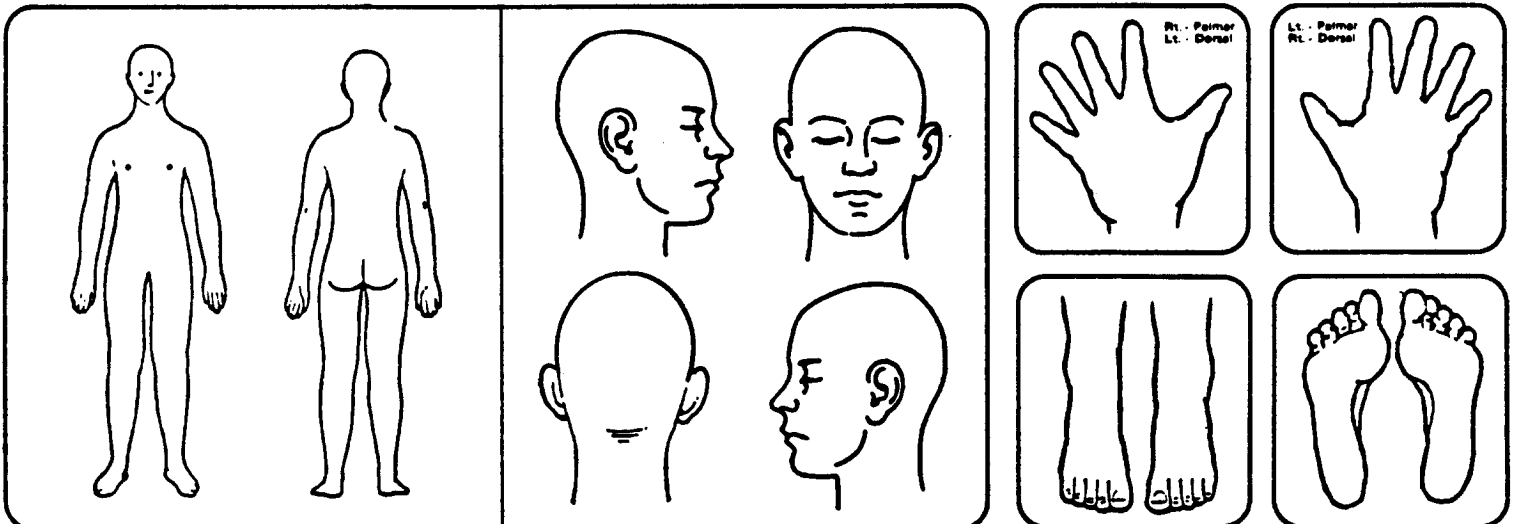
Edna McConnell Clark Foundation, 1985.

# REPORT OF SUSPECTED CHILD ABUSE

## (CHILD PROTECTIVE SERVICE LAW - TITLE 23 PA CSA CHAPTER 63)

PLEASE REFER TO INSTRUCTIONS ON REVERSE SIDE. EXCEPT FOR SIGNATURE, PLEASE PRINT OR TYPE

1. NAME OF CHILD (Last, First, Initial)		SOC. SEC. NO.	BIRTHDATE	SEX <input type="checkbox"/> M <input type="checkbox"/> F
ADDRESS (Street, City, State & Zip Code)			COUNTY	
1A. PRESENT LOCATION IF DIFFERENT THAN ABOVE			COUNTY	
2. BIOLOGICAL/ADOPTIVE MOTHER (Last, First, Initial)		SOC. SEC. NO.	BIRTHDATE	TELEPHONE NO.
ADDRESS (Street, City, State & Zip Code)			COUNTY	
3. BIOLOGICAL/ADOPTIVE FATHER (Last, First, Initial)		SOC. SEC. NO.	BIRTHDATE	TELEPHONE NO.
ADDRESS (Street, City, State & Zip Code)			COUNTY	
4. OTHER PERSON RESPONSIBLE FOR CHILD		SOC. SEC. NO.	BIRTHDATE	RELATIONSHIP TO CHILD
ADDRESS (Street, City, State & Zip Code)		COUNTY	TELEPHONE NO.	
5. ALLEGED PERPETRATOR (Last, First, Initial)		SOC. SEC. NO.	BIRTHDATE	RELATIONSHIP TO CHILD
ADDRESS (Street, City, State & Zip Code)		COUNTY	TELEPHONE NO.	
6. FAMILY HOUSEHOLD COMPOSITION (Excluding Above Names)	RELATIONSHIP TO CHILD	NAME (Last, First, Initial)		RELATIONSHIP TO CHILD
A.		D.		
B.		E.		
C.		F.		
DESCRIBE INJURIES/CONDITION AND WHY YOU SUSPECT ABUSE/NEGLECT. INCLUDE EVIDENCE OF PRIOR ABUSE TO THIS CHILD, SIBLING OR PERPETRATOR. (PLEASE REFER TO OPPOSITE SIDE FOR ADDITIONAL INFORMATION). PLEASE NOTE EXACT LOCATION OF THE INJURY(S) ON MODEL BELOW.		COUNTY WHERE ABUSE OCCURRED		DATE OF INCIDENT



<b>7. ACTIONS TAKEN OR ABOUT TO BE TAKEN BY REPORTER, COUNTY AGENCY, LAW ENFORCEMENT, SCHOOL OFFICIAL, OR OTHERS.</b>							
<input type="checkbox"/> NOTIFICATION OF CORONER	<input type="checkbox"/> X-RAYS	<input type="checkbox"/> PHOTO-GRAPHS	<input type="checkbox"/> HOSPITAL-IZATION	<input type="checkbox"/> POLICE NOTIFIED	<input type="checkbox"/> MEDICAL EXAMINATION	<input type="checkbox"/> EMERGENCY CUSTODY TAKEN	<input type="checkbox"/> OTHER (Specify) _____
<b>8. RISK FACTORS, CHILD:</b>							
A. DESCRIBE ANY PHYSICAL, MENTAL OR BEHAVIORAL FACTORS THAT MAY PLACE THE CHILD AT RISK:							<input type="checkbox"/> UNKNOWN
B. DOES THE CHILD APPEAR TO NEED IMMEDIATE MEDICAL ATTENTION?				<input type="checkbox"/> NO	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> YES	IF YES, PLEASE EXPLAIN:
C. LEVEL OF PAIN CHILD EXHIBITS		<input type="checkbox"/> MILD	<input type="checkbox"/> MODERATE	<input type="checkbox"/> SEVERE	PLEASE DESCRIBE:		
D. DOES THE CHILD APPEAR TO BE FEARFUL, SUICIDAL OR WITHDRAWN? IF YES, PLEASE EXPLAIN:							
<input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN <input type="checkbox"/> YES							
<b>9. RISK FACTORS, FAMILY:</b>							
A. DESCRIBE ANY CARETAKER/PERPETRATOR CHARACTERISTICS THAT PLACE THE CHILD AT RISK:							<input type="checkbox"/> UNKNOWN
B. DESCRIBE THE EXTENT OF PERPETRATOR(S) ACCESS TO CHILD:							<input type="checkbox"/> UNKNOWN
C. IS THERE ANY SUBSTANCE ABUSE IN THE HOUSEHOLD?				IF YES, PLEASE EXPLAIN:			
<input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN <input type="checkbox"/> YES							
D. DOES THE CARETAKER/PERPETRATOR HAVE A HISTORY OF VIOLENCE OR SEVERE EMOTIONAL PROBLEMS? IF YES, PLEASE EXPLAIN:							<input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN <input type="checkbox"/> YES
E. WHAT IS THE ENVIRONMENTAL (HEALTH AND SAFETY) CONDITION OF THE HOME?							<input type="checkbox"/> UNKNOWN
F. WILL CHILD BE AT RISK DUE TO COUNTY AGENCY INVOLVEMENT?				<input type="checkbox"/> NO	<input type="checkbox"/> UNKNOWN	<input type="checkbox"/> YES	IF YES, PLEASE EXPLAIN:
G. ARE THERE WEAPONS IN THE HOME?		IF YES, PLEASE EXPLAIN:					
<input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN <input type="checkbox"/> YES							

**INSTRUCTIONS TO MANDATED PERSONS:** Any persons who, in the course of their employment, occupation, or practice of their profession come into contact with children shall report or cause a report to be made to ChildLine (800-932-0313) when they have reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Within 48 hours after making the oral report, send one copy of this report to the county children and youth agency.

**NOTE:** If the child has been taken into custody, you must also immediately contact the county children and youth agency where the abuse occurred. Except for confidential communications made to an ordained member of the clergy, the privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report suspected abuse.

<b>REPORTING SOURCE</b>			
SIGNATURE		TITLE OR RELATIONSHIP TO CHILD	FACILITY OR ORGANIZATION
ADDRESS		TELEPHONE NUMBER	DATE OF REPORT

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