



Pennsylvania School Boards Association

**Testimony
of the
Pennsylvania School Boards Association
Regarding
Senate Bill 20
to the
Senate Aging and Youth Committee
June 5, 2013**

The Pennsylvania School Boards Association (PSBA) thanks the Senate Aging and Youth Committee for the opportunity to submit written testimony regarding Senate Bill 20. PSBA has reviewed the concerns of the Task Force on Child Protection and its recommendations, and is honored to be a partner in the continued effort to enhance student safety across this Commonwealth.

Senate Bill 20 amends the definition of child abuse in the Child Protective Services Law (CPSL) by providing additional clarity on actions and inactions of perpetrators that constitute child abuse with the intention of improving the protection of children in Pennsylvania. We commend the work of the Senate Aging and Youth Committee in addressing the need for legislative updates for child protection and believe that Senate Bill 20 is one important component of implementing the Task Force's recommended changes to the law. The new definition of child abuse will provide better protection for students and allow school employees and administrators to more clearly identify suspected child abuse.

With the exception of one concern noted below regarding paragraph (7)(ii)(A), PSBA supports Senate Bill 20 for the following reasons:

1. The proposed definition provides school administrators and school employees, as well as those investigating reports of suspected child abuse, better clarity on what constitutes reportable child abuse and what does not. It does this by specifically defining actions taken by an alleged perpetrator or the resulting impact on a child that would constitute child abuse. Likewise, Senate Bill 20 states several failures to act that cause harm to a child would constitute child abuse on the part of an alleged perpetrator.
2. Senate Bill 20 includes Section 6304, which outlines "exclusions from child abuse," that provide protections for students and employees in other limited circumstances. The particular exclusions that are important in a school setting include: a) use of force for disciplinary purposes, b) participation in events that involve physical contact with a child, and c) peer-on-peer contact.
 - a) Providing for the limited use of force for disciplinary purposes is important in the school setting because school employees are sometimes placed in situations where swift action must be taken to protect students or other school employees from harm. This exclusion specifies four situations where school employees can use such force to protect children from harming another individual or him/herself. It provides school employees with clear guidelines, that, for

example, allow a teacher to take a child's arm to keep the child from running into traffic without fear that a possible resultant bruise will be construed as child abuse. It also provides the necessary protection for school employees to ensure that actions taken for a child's own safety does not necessitate a mandatory report.

- b) The exclusion for participation in events that involve physical contact with a child recognizes that physical education teachers and other teachers, coaches, and leaders of extracurricular activities have contact with children that may be physical in nature due to the specific activity and their participation level, but that does not in and of itself, constitute child abuse under the definition of child abuse.
 - c) The exclusion for peer-on-peer contact provides protection from reports of abuse for situations where injuries result from students consensually participating in a fight or scuffle.
3. The replacement of the term "nonaccidental" with "recklessly and intentionally" throughout the proposed definition of "child abuse" to describe the intent of actions constituting child abuse provides school administrators and school employees with additional clarity on what constitutes reportable child abuse. PSBA recommends adding the following language to Senate Bill 20 to define "recklessly" and "intentionally" to further strengthen their use in the definition of "child abuse" as follows:

"Intentionally." The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

"Recklessly." The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

While adding the words "recklessly" and "intentionally" to the definition of child abuse is positive, their use is not consistent throughout Senate Bill 20. For example, paragraph (7), which specifies failure to act as one type of conduct that would constitute child abuse, does not use the clarifying terms "recklessly and intentionally" in failing to act in section (7)(ii)(A). Specifically, this provision states that a failure to act that "Causes bodily injury or creates a reasonable likelihood of bodily injury to a child" is child abuse, potentially placing school employees and others at risk to become the subject of child abuse reports for unintentional inaction. This is inconsistent with other language in Section 6303 specifying that failing to act must be reckless and intentional to constitute child abuse. This could lead to lack of clarity or confusion for mandated reporters and investigators. PSBA recommends this standard be applied consistently throughout the bill.

One final point is that it is important to examine the interconnected nature of the legislation proposed to address the Task Force on Child Protection's recommendations in amending the CPSL. Making such changes via different legislative bills may result in unintended consequences or gaps in the law that could counteract the good intentions behind strengthening the law's protection of children. For example, this bill redefines child abuse. Senate Bill 31 (referred to the Senate Education Committee) recommends repealing Subchapter C.1. Subchapter C.1 governs the standards and procedures of reporting, investigating, and establishing penalties for public and private school employees suspected

of student abuse. Currently, the two separate standards for what constitutes child abuse outlined in the CPSL include: standards for child abuse that is allegedly perpetrated by someone who is *not* a school employee, and standards for student abuse that is allegedly perpetrated by a school employee. Both standards also have different definitions of what constitutes abuse and different reporting procedures.

PSBA does not oppose the elimination of separate standards of child abuse for school employees. However, if the General Assembly adopts this part of Senate Bill 31 prior to adopting a new definition of child abuse currently under review in Senate Bill 20, there will be a period of time when the current definitions in the CPSL would apply to school employees. Because it does not include the exclusions for disciplinary force, activities requiring physical contact, and peer-on-peer contact, the unintended consequence would be to require reports for such contact until a bill with exclusions passes. This is likely to burden the child protective services system unnecessarily, and to cause confusion for school administrators and staff because the repeal of Subchapter C.1 would require extensive training, followed in short order by a new round of extensive training when the definition of child abuse is amended.

Thank you for the opportunity to provide written comments on Senate Bill 20.

