

Definition of Child Abuse and Related Legislation

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Good morning, Chairman Mensch, Chairwoman Washington and committee members and staff. I am Cathy Utz, Acting Deputy Secretary for the Department of Public Welfare's (Department) Office of Children, Youth and Families (OCYF). On behalf of the Department of Public Welfare, I am pleased to provide this testimony regarding the definition of child abuse in our Commonwealth.

Protecting Pennsylvania's children from abuse and neglect is a shared responsibility that does not solely rest with the formal child protective services system. Moreover, it requires the collective collaboration of community partners and Pennsylvania citizens to provide local safety nets for children and families that are facing challenges within our communities and neighborhoods. As such, we must ensure that our statutes seek to clearly articulate the role that government should play in families' lives along with ensuring that professionals, stakeholders and families understand their specific roles in our fight to end child abuse. The Department would like to recognize the work of the Task Force on Child Protection and its esteemed members. Their thoughtful and deliberate approach led to the development of a set of recommendations which includes suggested amendments to the Child Protective Services Law in order to strengthen our ability to protect vulnerable children.

As the General Assembly considers these recommendations and other amendments, we suggest that a coordinated effort be undertaken to ensure that any system changes enacted will support increased safety for our children and focus on ways we can all prevent child abuse. Many bills have been, and will be, introduced which contain nuances that are impacted by other bills. Through this process we must ensure that any amendments that are enacted complement one another and lead to long term system improvements. This is especially true as we consider the definition of child abuse within our Commonwealth. These comments are offered after reviewing Senate Bill 20, Printer's Number 679.

As we look at those situations that will be deemed child abuse, we must ensure that we clearly identify the parameters of what must be reported as child abuse, who must investigate each case, who will be considered a perpetrator of child abuse, where reports will be made, and the criteria for including persons on criminal and child abuse registries. Therefore, we should ensure that we look at the definition proposed in Senate Bill 20, in conjunction with Senate Bills 23 and 31 as well as the various Senate Bills that have been and will be introduced. This clarity will assist in our efforts to protect children from abuse by ensuring that timely reports are made to the appropriate investigating entities, that a multi-disciplinary response to appropriate cases is undertaken, and that our mandated reporters are clear on their duty to report. More importantly, clarity in the definition of child abuse will assist the child welfare workforce in appropriately substantiating reports of suspected abuse so that we have statewide consistency in decision making. The Department remains committed to working with members of the General Assembly and various stakeholders as we continue to ensure that any future amendments will enhance our ability to maintain the safety of our children and will not result in unintended consequences.

When reviewing national data regarding the number of children who have been victims of child abuse and neglect in other states, Pennsylvania is a statistical outlier for several reasons. First, we currently do not include the number of general protective services cases that are assessed by county children and youth agencies in our data set, which results in our cases of neglect looking much lower than other states. Recognizing that Pennsylvania's threshold for substantiation of physical abuse is higher than in other states, we commend the legislation's sponsors for lowering the standard for physical abuse from "severe pain" to "substantial pain" through the inclusion of the term "bodily injury." We have heard from numerous physicians regarding the subjective nature of the term "severe pain" and the challenges that they face in determining whether a child

endured “severe pain.” Use of the term “bodily injury” decreases this subjectivity, as physicians’ document substantial pain for criminal proceedings on a regular basis.

While we support the general amendment of the definition of child abuse, the definition of the specific types of child abuse have not been amended within Senate Bill 20. For example, we suggest defining “serious physical neglect” in order to enhance a county children and youth agency’s ability to further protect children from harm. Currently, the term “serious physical neglect” is contained within the definition of child abuse. This bill alters that descriptor, resulting in no specific definition of “serious physical neglect.” Delineating that a series of acts repeatedly occurring over time or that one single egregious act that impacts a child’s health, development or functioning can lead to a substantiated report ensures that children who are seriously neglected are documented as victims of abuse. While Pennsylvania may remain a statistical outlier in its substantiation of neglect cases, allowing inclusion of statistics regarding neglect under general protective services cases will assist in bridging this gap.

The Department commends the bill’s sponsors for including the list of certain acts that when committed regardless of injury may endanger the child and therefore could result in a substantiated report of child abuse. However, we recommend that this section be revised to separate kicking, biting and throwing from burning, stabbing and cutting. Additionally, as currently written, a child’s presence at the location of certain criminal offenses has been included as potential child abuse. We agree that these crimes are extremely serious and that a child’s safety is jeopardized in these situations; however, as written, an undefined “violation” triggers mandatory reporting, without regard to whether the alleged violation is ultimately proven. As a result, a referral regarding the alleged violation of one of these crimes could be made to the Department when no criminal investigation has been undertaken. For example, if a parent is attending a social gathering and consumes alcohol and then drives with their child in the

car, a report could be made to the Department by another person who is present at the gathering. While we do not condone the parent's actions in this scenario, who determines if there has been a violation of criminal law? County children and youth agencies are not trained to ascertain such violations and often the report would come after the fact with little ability to verify the blood alcohol level of the parent to determine if a criminal violation occurred. While we believe there may be a need to assess these cases, absent the involvement of a law enforcement investigation it is unlikely that a report could be substantiated. We recommend that at a minimum, law enforcement officials should be investigating the case in order for it to be considered a report of suspected child abuse. Absent the law enforcement investigation, a general protective services assessment can be conducted to determine the need for services. We further applaud the sponsors for seeking to protect children from sexual abuse by designating leaving a child alone with an individual subject to Megan's Law registration as child abuse. We suggest that the term "knowingly" be added to this phrase because absent actual knowledge, parents could be deemed perpetrators of abuse even if they were not aware that the individual with whom they left their child was subject to registration. We further recommend that additional analysis be conducted to determine the impact this may have when a parent is required to register as a sexual offender. As written, a parent subject to registration could not be alone with his or her own child regardless of the time or circumstances requiring registration. While we support the intent of the clause, we believe that it would benefit from further review and consideration.

This bill also provides exemptions from the definition of child abuse such as when the injuries occur as a result of environmental factors or based upon a person's religious beliefs. These exclusions have been contained within the Child Protective Services Law for many years. Currently, the statute extends these exclusions to persons responsible for a child's welfare. The term "persons responsible for a child's

welfare” is currently defined to include foster parents and staff persons within certain congregate care settings. We would suggest that the term “person responsible for a child’s welfare” be removed from these exclusions since those persons are entrusted to protect children who have been determined to be in need of protection or services. Additionally, exclusion has been added related to peer-on-peer contact. We suggest alteration to child-on-child contact. We further suggest amendment of the language to state that no child shall be deemed to have committed child abuse unless the child meets the definition of perpetrator under the statute.

The Department and numerous stakeholders and systems partners have been engaged in discussions regarding the inclusion of minors on the child abuse registry. These discussions have brought to light the complexities of this issue and have shown that careful analysis and decision-making is necessary to ensure that child victims are protected while considering the implications when a juvenile perpetrator’s name is placed on the child abuse registry. Many pros and cons have been identified on both sides of this issue and various recommendations made to address it. The options include: only listing youth over the age of 14 as perpetrators of child abuse; listing only persons 18 years of age or older as perpetrators of child abuse; listing only youth 14 years of age or older if the report is determined to be founded; and ensuring the automatic removal of the juvenile from the registry when certain criteria are met upon reaching the age of majority. We would be willing to discuss with members of the general assembly the concept of including youth on the statewide central registry to ensure that we maintain the ability to protect children while addressing concerns regarding the inclusion of juveniles on the child abuse registry. If the decision is to include juveniles on the statewide central registry, then we recommend, at a minimum, that the definition of a person responsible for a child’s welfare include a caveat that the alleged perpetrator must be 14 years of age or older. This would provide consistency in

the age requirement as it relates to household members and the proposed definition of a relative. Currently, a person responsible for child welfare could be under the age of 14. Our data shows that the youngest perpetrator on the child abuse registry is 11 years old.

One of the resolutions discussed regarding inclusion of youth on the child abuse registry was the ability for a youth's name to be removed from the registry upon reaching the age of majority, either 18 or 21. The proposed amendment includes parameters for the removal of a juvenile perpetrator's name from the registry upon reaching age 21, provided that the individual was not named as the perpetrator in any subsequent founded or indicated reports. The stakeholder group discussed the inclusion of additional criteria related to delinquency adjudications, criminal convictions, and successful completion of treatment as considerations to be explored at the time of removal. This assists in ensuring that juvenile perpetrators are afforded another layer of due process.

As previously noted, we recommend a coordinated approach related to the multiple bills that have, and will be, introduced so that we are able to achieve our intended purpose of further protecting children. As edits continue to be made to the definition of abuse and perpetrator, we believe that the definitions of indicated and founded reports should also be reviewed. Ensuring that reports are substantiated consistently across the Commonwealth is critical to protecting our children. We also must recognize the employment implications of these decisions for individuals placed on the child abuse registry and ensure that incidents are properly substantiated and that appropriate due process is afforded to individuals in a timely manner.

Thank you for the opportunity to submit this testimony and for continuing to partner with the Department as we tackle the very serious issue of child abuse in the Commonwealth.