

DATE: September 21, 2020

RE: Priority Potential CPSL Changes

Purpose

The purpose of this memorandum is to provide a list of potential CPSL amendments based on Commonwealth Court case law and other noted issues. The Office of Children, Youth and Families (“OCYF”) has identified these amendments as being a priority to better protect children or as an operational need. None of these changes would affect federal funding.

Issues which may be addressed by legislative change to the CPSL

1. **Remove CPS and GPS expungement timeframes-** Not expunging unfounded or unsubstantiated reports will allow for a more comprehensive understanding of a child and/or family’s prior child welfare involvement, and will improve and inform the quality and consistency of protective services, particularly for the most vulnerable group of those aged 0-5, as well as families who are transient between counties and/or states. Expungements also negatively impact parents, caregivers, and perpetrators because when unfounded reports are expunged and there is a second referral for a previously investigated and unfounded case, there is no documentation of the prior report. Without the prior, unfounded report to compare to, there must be a second investigation of the same incident. A child abuse investigation can already be a traumatic event for all involved, especially children and parents, to put them through a second investigation only serves to re-traumatize all individuals involved. Currently, county children and youth agencies do not have to expunge information, but the state does. This amendment will allow for consistencies across agencies and become necessary when a new child welfare information system integrates county and state databases and having two expungement criteria will be an impossibility for that system. The maintaining of information in unfounded or unsubstantiated reports will not impact clearance results or who is named as a perpetrator of substantiated abuse. See 23 Pa.C.S. §6303(a), §6331(4) and (8), §6336(a)(14) and (18), §6337, §6338 and 6338.1, §6340(c), §6341(a), (b), (c), (e) and (f), §6344(d), §6345, §6349(a), §6368(f) and (l), §6370(b), and §6381(a).
2. **The definition of “child abuse”-** In relevant part, the definition of “child abuse” means “intentionally, knowingly or recklessly ... causing a child to be present at a location while a violation of 18 Pa. C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement. The Bureau of Hearings and Appeals has interpreted this language to limit only indicating the person who physically transported the child to the location of the meth lab and does not allow for the indication of the person who is cooking meth or running the lab. This can be remedied by amending the definition of “child abuse” to include “intentionally, knowingly or recklessly ... allowing a child to be present where methamphetamine is being produced in violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory)” See 23 Pa. C.S. § 6303(b).
3. **Reports that are founded after entry into ARD-** the 2014 amendments included a change in the definition of “founded report” and now includes “an acceptance into an accelerated rehabilitative disposition (“ARD”) program and the reason for the acceptance involves the same factual circumstances involved in the allegation of child abuse.” The issue arises when an

individual successfully completes ARD. Once ARD is completed, that charge should be expunged from the individual's record. A person who is listed as the perpetrator of a founded report can come off the registry if they provide "a court order indicating that the underlying adjudication that formed the basis of the founded report has been reversed or vacated." It does not look like we can keep a perpetrator on the ChildLine registry after they complete ARD but the intent of the legislature is unclear. The definition of "founded report" should be amended to make it clear that when ARD is successfully completed, the founded report can be changed to an indicated report and the perpetrator can appeal the indicated decision to BHA.

4. **The fatality/near fatality review process-** OCYF worked with stakeholders to improve the fatality/near fatality review process. See 23 Pa. C.S. § 6343. The proposed changes are:
 - a. Extend county review team convening timeframes from 30 days to 60 days from the date of the report to ChildLine to allow for more comprehensive assessments that include all pertinent law enforcement and medical information, and to allow for a more thorough review of incident and family information to better inform root cause analysis and recommendation development regarding prevention efforts in Pennsylvania. See 23 Pa.C.S. §6365(d)(1).
 - b. Decrease county review team final reporting time frames from 90 to 60 days of convening in order to keep the entire review process in the original timeframe since the time to convene is extended and not delay reporting to the department. See 23 Pa.C.S. §6365(d)(4)(v).
 - c. Create the option of regionalized child abuse fatality and near fatality review teams for those counties who have infrequent reviews to enhance the team's expertise on review team processes and requirements, as well as support the ability to have expert representation of all disciplines as suggested in the CPSL. See 23 Pa.C.S. §6365 (d).
 - d. Add the ability for on-going, bi-directional sharing of information to and from county coroners/medical examiners and county agencies related to mandatory reporting and postmortem investigation of deaths. See 23 Pa.C.S. §6367 and §6317.
 - e. Remove the identity of the deceased child in the state reports of fatality/near fatality incidents and information that may be released during the investigation where child abuse/neglect was suspected. See 23 Pa.C.S. §6343(c)(3)(i) and §6343(c)(4).
 - f. Eliminate quarterly summaries of substantiated findings with nonidentifying information as these have been found to be easily identifiable with information publicly released violating confidentiality requirements of the CPSL and private health information. Replace this requirement with aggregate data reports to include at a minimum the number of reports, type of abuse, and number substantiated. Allow for the department's data analysis report detailed below to meet this requirement. See new language on team responsible for data analysis and 23 Pa.C.S. §6347(c).
 - g. Remove the requirement for the department to respond to the county report as it is a standard letter that adds no value to review process. The thorough response and analysis of the case and county involvement is included in the statewide review report issued six months from the receipt of the report. See 23 Pa.C.S. §6365(e).
 - h. Add a section on statutorily requiring the Trend Analysis Team and allow the sharing of confidential information solely for purposes of the analysis. Any information related to that incident and family deemed necessary for the analysis will be permitted to be shared. Proposed concept:

Department analysis and reporting of child fatalities and near fatalities--

1. The department shall conduct a child fatality and near fatality analysis of statewide incidents and data and provide a report with aggregated data on child fatality and near fatality incidents when child abuse is suspected and offer recommendations for systemic improvement.
2. The department is permitted to convene a team of multidisciplinary stakeholders to contribute to the analysis and recommendation development who will be permitted to receive information deemed confidential as per 23 Pa.C.S. §6340 to include only relevant information related to that incident and family deemed necessary for the analysis.
3. The department's child fatality or near fatality analysis shall be on-going and include incidents immediately upon finalization of the department's review team report. An annual report will be issued with the analysis and findings to include aggregate data and recommendations for statewide, systemic improvements to inform policy changes at both the state and county levels, while also promoting and supporting the implementation of effective prevention efforts in Pennsylvania.
4. Upon completion of the analysis and report, the report shall be made available to the public with all identifying information removed from the contents of the report.
5. **Notification Protocol update-** In August 2019, OCYF issued Bulletin # 00-19-02 entitled "Notification Protocol for Formal Licensing Actions and Incidents." The purpose of the bulletin was to update procedures of OCYF for sending notification of critical events that have occurred in a child residential or day treatment facility, an approved foster and pre-adoptive home, a Youth Development Center or Youth Forestry Camp that may represent a risk of harm to the children placed in those settings. For notifications where it was stated that a staff member was removed due to allegations, there was a lack of detail and no notification as to any outcome at the close of the investigation. This has created issues with providers of services, those making placement decisions, and youth in need of placement. OCYF wants to be able to provide dependency and delinquency judges as well as county agencies with more information about substantiated and unsubstantiated reports. To do so requires an amendment to the CPSL. The proposed changes are:
 - a. Language related to sharing info on substantiated reports: 6340.2(a)- Dependency and delinquency judges with placement decision making authority are permitted to receive notification from the Department providing the basis for the substantiated outcome of indicated or founded child abuse reports when an incident occurs in a child residential or day treatment facility, an approved foster or pre-adoptive home, or a youth development center or youth forestry camp.
 - b. Language related to quarterly reports: 6430.2(b)- The Department shall prepare and transmit to county agencies and dependency and delinquency judges with placement decision making authority a quarterly data report that includes the total number of child abuse reports and substantiations limited to category of abuse for child residential or day treatment facilities, approved foster or pre-adoptive homes, and youth development centers and youth forestry camps.
6. **Drug testing-** The Pennsylvania Supreme Court in D.R., 45 WAL 2019 held, in part, that the CPSL does not provide authority to compel an involuntary urine sample during the course of a child abuse investigation. Requesting such tests is routine for some counties and amending the CPSL would provide the authority to do so that the court found to be lacking. If individuals consent to the test (without coercion) there is no need for court involvement. Where there is no consent,



it would be necessary to obtain a court order for the test and we would need to add authority for such to the CPSL. The proposed language to be added as 23 Pa. C.S. § 6368(d)(5) would provide that: If there is evidence substance may be a contributing factor causing the alleged abuse or neglect in an investigation, the county agency may seek a court order to compel appropriate drug/alcohol testing.