

**TESTIMONY OF DEPARTMENT OF HUMAN SERVICES
COMMISSIONER ANNE MARIE AMBROSE**

Task Force on Child Protection Hearing
University of Pennsylvania
April 18, 2012

Good morning, members of the Task Force on Child Protection. My name is Anne Marie Ambrose and I am the Commissioner of the City of Philadelphia Department of Human Services, known as DHS. DHS, as of April 17, 2012, provides services to 21767 children; of these, 4129 are in dependent foster care, 948 families are receiving services (IHPS and FSS) in their own homes. For fiscal year 2011, 18,936 families received community based prevention services. Each year, DHS completes approximately 3700 child abuse investigations and assessments. We are the largest county child welfare agency in the Commonwealth of Pennsylvania.

DHS's mission is to provide and promote safety, permanency, and well-being for children and youth at risk of abuse, neglect and delinquency.

Thank you for this opportunity to address the Task Force on Child Protection. My testimony today concerns potential areas of reform to the Child Protective Services Law, including its definitions as well as some other areas of concern. The charge of both the House and Senate resolutions creating the Task

Force are to ascertain any inadequacies relating to the mandatory reporting of child abuse and to restore public confidence in the ability of the Commonwealth to protect potential victims of child abuse. DHS embraces both of these extremely important goals. As for inadequacies, we are eager to make suggestions concerning changes in the law that would better capture all forms of child abuse than the Commonwealth's existing statute does. In terms of public confidence, since my appointment as DHS Commissioner, it has been one of my primary goals to restore public confidence in DHS's ability to protect children, and I am eager to recommend any changes in law and or regulation that would enable our agency to continue its work in this regard.

Additionally, the Senate and House resolutions require the Task Force to make recommendations to improve the reporting of child abuse and to implement any necessary changes in state statutes and practices, policies and procedures relating to child abuse, and the training of appropriate individuals in this regard.

The single most important goal of reforms to child welfare law should be to achieve clarity! Our staff struggle on a daily basis with understanding obscure and confusing definitions in the Child Protective Services Law, including the very definition of child abuse and who can be considered a perpetrator. Furthermore, the words of the law and jurisprudence interpreting those words have arguably created loopholes allowing for abuse to occur yet not enabling child

welfare agencies to investigate and make findings regarding that abuse. Pennsylvania has a child abuse registry to maintain the names of those who have been determined to have committed acts of child abuse. This registry is critical in preventing abusers from obtaining jobs that would give them access to other children, and even in becoming foster parents to children in our custody. However, because of the way in which the Commonwealth's child abuse laws have been written and the evolution of the jurisprudence interpreting those laws, many of the individuals who are initially placed on the registry successfully appeal the findings of child abuse against them. Their names are subsequently removed from the registry. The recommendations that I will now make will seek to achieve clarity, close loopholes, and help to create a more robust registry to protect children.

My comments concern the definitions of what constitutes a “nonaccidental serious physical injury”, how “perpetrators” and “near fatality” are defined as well as some general concerns about the student abuse and the confidentiality sections of the Child Protective Services law.

I will not address the CPS/GPS “differential response” distinction in Pennsylvania Law at length. I know that Dr. David Sanders addressed it in his testimony for the Task Force and my colleague Frank Cervone will touch on it

today. What I will say is that it is very difficult to determine whether all the reforms in Philadelphia over the past four years have made a difference. Are children really safer? The lack of data on GPS cases and inability to compare us to other jurisdictions makes this most important question difficult to answer.

Definition of Serious Physical Injury

The current definition of child abuse includes “any recent act or failure to act by a perpetrator which causes non-accidental serious physical injury to a child under 18 years of age.” The current definition of a serious physical injury, as well as the definition of non-accidental, are major areas of concern for DHS.

Let me first address the issue concerning a serious physical injury. The current definition of a serious physical injury has two components: an injury that causes a child severe pain or an injury that significantly impairs a child’s physical function, either temporarily or permanently.

The term “severe pain” is a vague concept. The statute should be clarified so that it is clear that severe pain can be determined from a subjective or objective source. A subjective source, for instance, would be the child’s account of the degree of pain he or she suffered. An objective source might, on the other hand, include a medical professional’s opinion regarding the pain the child endured. I am not suggesting that either of these sources are ignored during DHS

investigations or in the appeal process before the Department of Welfare's Bureau of Hearings and Appeals. However, the law should explicitly acknowledge both types of evidence. As you are surely aware, there are many cases where a child is non-verbal or recants their testimony out of fear. The law should be clear that in these instances another source of evidence may be sufficient for a finding of abuse.

As a side note, DHS also supports the removal of the concept of "serious bodily injury" in the CPSL as it only creates confusion given that it is redundant of the definition of serious physical injury. In other words, any injury that significantly impairs a child's physical functioning either temporarily or permanently would fit into a definition of serious bodily injury which references death, serious permanent disfigurement or protracted loss or impairment of any bodily function or organ.

The words "serious bodily injury" only appear in the definition of student abuse by a school employee and this leads to confusion. Later in my testimony, I will address the separate issue of whether a separate approach for school employees should continue in the Commonwealth.

Definition of Non-Accidental

I earlier spoke of the need for better clarity in our child abuse statute. There is, perhaps, no better example than the definition of "non-accidental". It reads: "An injury that is the result of an intentional act that is committed with disregard of

a substantial and unjustifiable risk." I am an attorney by training and find this puzzling. I can only imagine the confusion such a definition may cause a social worker trying to determine whether a report should be indicated.

In 2002, the Supreme Court of Pennsylvania in the P.R. decision addressed the issue of what is considered to be an "accident." Many of us in the child welfare community question whether the decision in this case and the resulting change in the statute went too far and perhaps do not capture what our common sense would tell us is accidental vs. non-accidental. Of course, an accident is an accident and we do not wish to overcharge in our mandate to investigate reports of abuse or neglect.

However, we urge the legislature to reevaluate the effect of this jurisprudence and to formulate a definition that (1) achieves clarity and (2) casts an appropriate net. The same is true regarding how the law defines a perpetrator and who can be considered a person responsible for the welfare of a child.

Definition of Perpetrator/ Person Responsible

DHS strongly believes that reform is needed concerning who may be considered to be a perpetrator of child abuse. Currently, 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."

A person responsible for a child's welfare is limited in scope as it only applies to "a person 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." This definition should be expanded to include more individuals. Delaware, for example, for the purposes of sexual abuse includes all persons without qualification and for physical abuse all persons responsible for the care of a child or who have care, custody and control and *are in a position of trust, authority, supervision and control*, including any person having regular direct contact with children through affiliation with a school, church, or religious institution, health care facility, athletic or charitable organization or any other organization.

There is a potential benefit to the expansion of the perpetrator definition in that it would enable these adults to be "indicated" even where the criminal justice system, for whatever reason, does not, in effect, make a record of their abuse. Often these adults who may have caused serious harm avoid convictions by pleading down or even having cases thrown out. This expansion of the definition of perpetrator would put these persons on the Child Abuse Registry and could then prevent their hiring in child and youth related jobs. Finally, and perhaps most importantly, it would enable the county agency the ability to offer or make a referral for services to the victims and their families who may otherwise not

receive them, particularly for sex abuse cases. In short, Pennsylvania should take a similar approach to Delaware in this regard.

DHS is also concerned about cases where there is difficulty identifying and naming the perpetrator because there is more than one individual who had custody and control of the child when the incident occurred. Frank Cervone of the Support Center for Child Advocates will address this point in greater detail. We also share the Support Center's concern that there would not be a record of abuse in the perpetrator undetermined scenario. In other words, if the child were subsequently the victim of abuse, a record of the previous abuse may be helpful in the subsequent investigation. If the perpetrator is undetermined, the report is unfounded and the record expunged. I do wish to remind everyone that in these circumstances, DHS does have the ability to accept the case for services even where the report is unfounded. Put differently, the accept for service decision is separate from the decision concerning the abuse investigation (though an unfounded report would certainly be one factor for consideration in the accept for service query). Therefore, DHS in these difficult cases may very well provide services to the family and maintain a record of the child in that regard.

There is one area where the definition a perpetrator should be clarified so that children under the age of 14 are not classified as perpetrators.

A perpetrator can be an individual residing in the same home as the child. The definition of such an individual is defined as an individual who is 14 years of age or older and resides in the same home as the child. However, a perpetrator can also be a person responsible for a child's welfare. The definition of a person responsible for a child's welfare should be explicitly limited to individuals who are 14 years of age and older consistent with the definition of a person who resides in the same household.

While DHS strongly believes that those who commit child abuse should be held responsible for its actions, it also understands that there are lifelong consequences to being placed on a child abuse registry. Children under the age of 14 who are responsible for a child's welfare should not be treated differently than household members. A "household member" under 14 cannot, per the law, be considered a perpetrator. Therefore "a person responsible" should also have to be 14 and up in order to be considered a "perpetrator". This would make the law consistent and fair. A 10 year old who is left alone with a younger sibling and sexually acts out because of their own recent experience of sexual abuse should receive vital services and treatment, and not be prohibited for life from seeking certain kinds of employment because of placement on the Childline Registry. This is not the consequence that our Legislature intended, and is inconsistent with

evidence related to child development, and their understanding of the consequences of their actions.

Definition of Near Fatality

Another area of concern involves Act 33 and its requirement for review of all fatalities and near fatalities caused as a result of child abuse. DHS has embraced the new requirement regarding fatalities and near fatalities and I am proud to report that the DHS Act 33 Child Fatality/Near Fatality Review Team has served as a state model for effective interdisciplinary and interagency coordination in examining child fatalities and near fatalities and for identifying and monitoring the implementation of recommendations to improve child safety. Since its inception, 76 (30 Fatality and 46 near fatality) Act 33 review meetings have been held.

The current definition defines near fatality as “An Act that, as certified by a physician, places a child in serious or critical condition.” This definition sometimes has the unintended consequence of making physicians reluctant to designate a case as a near fatality given that their medical findings may be in a preliminary phase that gives pause regarding the causal aspect implied by the definition. We suggest the following language be substituted: a near fatality is “a child’s serious or critical condition, as certified by a physician, where that child is the subject of a child abuse report.” This would clarify that the physician’s role is

to ascertain and report on the medical condition of the child. DHS ultimately is responsible for determining if abuse occurred.

However, our Act 33 team is concerned that some cases are not subject to review because of the current definition of near fatality which triggers the review. Sometimes physicians are reluctant to designate cases as near fatality. The law should be clarified to address this concern.

Integrate Student Abuse Provisions Into General Child Abuse Provisions

Another area where reform is needed is the dual system for reporting and handling reports of child abuse and student abuse. Having two separate systems is confusing to county child welfare systems, as well as mandated reporters. This dual system should be streamlined into one system. This would also clarify mandatory reporters' obligations and ensure that abuse is reported in all circumstances, regardless of whether a school administrator deems it appropriate to report the abuse or whether it reached the higher standard of "serious physical injury" (an issue that I discussed earlier). To that end, the Child Protective Services Law should be amended to require that those mandated to report must do so themselves. The current student abuse schema in effect allows schools to set up a "quasi" review before a report is made and imparts unintentionally some degree of discretion on reporting that is not the intent of the law or the prerogative of the school.

Confidentiality

The Child Protective Services Law limits the disclosure of confidential information to specific individuals, and this is for good reason: it encourages the reporting of information and protects the privacy of families receiving services. At the same time, these concerns must be balanced with the need for transparency which is essential to instilling public confidence in county child welfare agencies, which as we discussed earlier, is one of the charges of the Task Force. DHS would support the expansion of our CPSL to allow county children and youth commissioners to release limited information, under limited circumstances, where the city/county commissioner determines that disclosure of the information may not be contrary to the best interests of the children, child's siblings, or other children in the house.

The limited scenarios where confidential information could be disclosed could include cases involving fatalities or near fatalities, where a child victim was in the custody of the county children and youth agency or had an open case with the agency, or where has been a prior public disclosure of an investigation into a case of fatal or near fatal child maltreatment.

The information that could be disclosed could include: contact history with child welfare agency, a statement summarizing the status of the child's case at the time of the fatal/near fatal incident and whether case was closed prior to the

incident, outcomes and results of any action taken or services provided, and confirmation of any investigations or assessments completed and description of recent assessments.

Allowing county agencies to have the discretion to share some limited information, particularly in cases where there is much public interest may go a long way to increasing public confidence in our agencies.

Conclusion

Thank you for the opportunity to share my perspective. I greatly appreciate the difficult and challenging work of the Task Force, and am confident that your work will lead to important changes that will positively affect the lives of all children in the Commonwealth.