DAVID OH
COUNCILMEMBER AT-LARGE

City Council
PHILADELPHIA
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SPECIAL COMMITTEE ON
CHILD SEPARATIONS IN PHILADELPHIA

Report and Recommendations
April 2022

City Council of Philadelphia

Office of David Oh Councilmember At-Large | City Hall Room 319 | (215) 686-3452

@DavidOhPhilly @DavidOhPhilly @DavidOhPhilly PHLCouncil.com

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BACKGROUND

In 2017, Philadelphia removed more children for alleged abuse or neglect than any major city in the United States. According to public records, the city's Department of Human Services (DHS) removed 8.5 children per thousand, a rate three times higher than New York City and four times higher than Chicago.[1]

But there is no evidence that Philadelphia children are safer than their counterparts in other big cities. On the contrary, cases of children "known to the system" dying or suffering other horrible abuse – though they are as rare as they are horrific – are a constant reminder that tearing apart families at such a high rate does not improve child safety. Rather, it overloads DHS, making it less likely caseworkers will find those few children in real danger. We've been reminded of that again, with revelations about children returned to a sexually abusive father who raped them repeatedly.[2]

It's important to note that most DHS caseworkers are dedicated, caring professionals who devote countless hours to trying to help vulnerable children. But they are caught in a system that is arbitrary, capricious, and cruel. It errs in all directions. But wrongful removal drives all the other problems.

The jarring statistics caught the attention of many residents and public officials, including Philadelphia City Councilmembers David Oh and Cindy Bass.

Oh and Bass introduced a resolution authorizing a public hearing in City Council to further explore the issue of child removals and reporting guidelines. The hearing, held on February 12, 2019, collected testimony from then Commissioner of DHS, Cynthia Figueroa, legal experts specializing in child welfare and family rights, and impacted family members.

Following the public hearing, Councilmembers Oh and Bass introduced legislation to authorize a special committee in Council dedicated to exploring the root causes of the City's disproportionately high rate of family separations in Philadelphia, and craft recommendations to ensure the child welfare system properly considers and protects the rights of families. In addition to the aforenoted statistics, the resolution noted the racial disparities of family separation in a majority-minority City like Philadelphia: "Poor families, and poor families of color in particular, are entitled to the same protections against government intervention as wealthy parents and children."

Council unanimously adopted the resolution forming the Special Committee on Child Separations on October 10, 2019. Due to COVID-19, the Special Committee did not officially form until October 15, 2020, when Council President Darrell Clarke appointed nine members to the Committee, led by co-chairs Councilmembers David Oh and Cindy Bass. In a letter to the newly appointed members, Council President Clarke wrote, "The resolution calls upon this Special Committee to review child separation procedures in Philadelphia's child welfare system, and to

1 TESTIMONY ON PHILADELPHIA DHS AND IMPROVING OUTCOMES FOR CHILDREN (IOC)" (Community Legal Services of Philadelphia, June 14, 2019), https://clsphila.org/family/dhs-ioc-testimony/.

2 William Bender and Max Marin, "Child Welfare Agency Hired by City Pays $6M for Putting 3 Girls Back with Abusive Dad," The Philadelphia Inquirer, October 14, 2021, https://www.inquirer.com/news/turning-points-sexual-abuse-philadelphia-human-services-20211014.html.

develop recommendations intended to prevent the unnecessary break-up of families. Nothing is more important than the well-being and safety of our children. Your Committee is about to undertake crucial work and I thank you for your commitment." The Special Committee began meeting in fall of 2020 and concluded its work in the spring of 2022.



Philadelphia City Council Chambers, October 2019. (Council Flickr)

> **"Once families are separated, the system makes it very difficult to reunite them. In many cases, children have been harmed while in protective services."**
>
> **Councilmember David Oh**

EXECUTIVE SUMMARY

This report is the result of one year of work by the Special Committee on Child Separations in Philadelphia (The Committee) who took an in-depth look at all aspects of the child removal crisis in Philadelphia. The Committee's findings confirmed the testimony of many mothers at the February 2019 hearing before the Philadelphia City Council. Mothers who testified gave personal accounts of the following experiences with DHS:

- Children removed from the home based on false court orders, or anonymous allegations;
- Taking of children from family custody for foreign adoption
- Lack of transparency by DHS in providing documentation for the basis for removal
- Loss of custody due to an abusive father or boyfriend
- Lack of adequate representation of families in Family Court

The Committee's first priority is child safety. If enacted, the Committee's recommendations will spare children the enormous emotional trauma of needless investigation and removal. It will spare them the risk of being abused in foster care itself. And it will give DHS workers more time to find children in real danger. In short, these recommendations are a blueprint for making all of Philadelphia's vulnerable children safer.

The February 2019 hearing in City Council raised awareness of the general public concerning the issues related to the child removal crisis in Philadelphia. In particular, families with similar problems to those identified at the hearing were alerted that their local government was taking these concerns seriously, and exploring ways to root out systemic problems. Therefore, in the over two years following the hearing, many constituents continued to contact Councilmember Oh's office and present personal accounts that were related to the child removal crisis. In general, these anecdotes and interviews continued to inform the Committee that problems continue to persist within the system. Several of these personal accounts are included in a compilation of **case studies** located at the end of this report.

Simply put, there are just too many ways for children to be placed into the system for investigation. And, in most instances, DHS does not have the ability to exercise discretion to determine if an on-ongoing investigation is warranted. No procedures currently exist to protect the rights of the families who are under investigation by DHS. Little transparency exists in the interactions between DHS and the Family Court.

To tackle these issues, the Committee divided its work into two Subcommittees: **the Subcommittee on Policies and Procedures** and **Subcommittee on DHS and Family Court.** Major themes emerged from their work, leading to eleven broad categories where findings were grouped into related recommendations.

SUMMARY OF FINDINGS

THE SUBCOMMITTEE ON POLICY AND PROCEDURES

Faulty reporting often leads to unwarranted removal – In almost all cases, the removal process of a child begins with the identification of an alleged problem that is entered into a reporting system by the general public, or people who are required by law to make such reports (Mandated Reporters). The systems are designed with that purpose – to open identified situations for investigation. Currently two such reporting systems exist in Pennsylvania: the General Protective Services (GPS) and Child Protective Services (CPS). The way GPS and CPS are currently configured leads to the opening of cases for investigation that should never be placed in the system. This is because there is little or no discretion that can be exercised to determine if there are extenuation circumstances that might cause the situation to go unreported.

Children who witness spousal abuse are at risk of emotional harm – When children are removed because a parent, usually the mother, "allowed" children to witness a husband or boyfriend attacking her, the emotional trauma for the child is far worse. This leads to a situation where mothers are reluctant to report abuse. The situation is exacerbated because abusers are aware of this and take advantage of it.

Mandated reporting undermines entire poor communities – The "mandated reporter" cannot take into consideration "common sense" when deciding whether or not to report for fear of running afoul of the law. This is a double edged sword. The mandated reporter fears getting into trouble unless every possible issue is reported, even if it is a stretch to get the situation reported and into the "system." Therefore, it has become a black or white issue; instilling fear in parents that they might "say the wrong thing." That makes them reluctant to seek help.

School District employees can be reporters or offenders related to child abuse – Jerry Sandusky was an employee of the Pennsylvania State University (PSU) he was eventually convicted, many PSU employees were peripherally aware of the ongoing situation during his employment and did nothing about it. This resulted in a series of laws being passed in Pennsylvania (often referred to as "the Sandusky Laws") to remedy the situation and avoid such future occurrences of failure to report in educational institutions. This is clearly a form of "mandated reporting" with the pitfalls as explained in the previous section. The effect of the "Sandusky Laws" on the school district can be seen it two ways. First, an explosion of false reports against school personnel. Second, DHS response to the Sandusky Laws appears to have made it harder for teachers and staff to exercise their own professional judgement as mandatory reporters.

Preserving the rights of families during interactions with DHS – If one considers the reasons for a Miranda Warning in law enforcement – it is understandable that a similar provision should be applied to interaction of families with DHS. A Miranda Warning is required by law to be given to alleged offenders that they do not have to say anything to law enforcement, and that anything they do say can be used against them. No such warning is required by DHS to be given to families when being interviewed or questioned by DHS. A pattern has emerged of a wide discrepancy of later facts relayed by the affected families and those reported by DHS workers or those making reports or allegations. Families must be informed of their fundamental rights

when interacting with DHS. Currently DHS is not required to, and generally does not, offer a similar warning to Miranda. That right is meaningless if families do not know it exists.

Determining a parent's capacity and fitness to care for a child – In some instances, a parent may be at risk of having a child taken by DHS regardless of the parent's present capacity to care for the child. There have been several reported instances of children being confiscated at birth if a mother has a prior record with DHS for neglect or abuse of a previous child, regardless of the duration of time passed, or the mother's present fitness. Decisions on a parent's capacity should be based on sound evidence concerning the parent's present capacity, and if that capacity is inadequate, on what can be done to make it adequate without confiscating the newborn on the spot. The current conditions that allow confiscation at birth need to be carefully evaluated.

Dangers of central registries and retention of unfounded reports – Under the current system, an individual can be listed on the central state registry for child abuse before having any opportunity to contest the allegation. Placement on the registry can have devasting economic consequences, particularly for low-income individuals. The practice by DHS of retaining unfounded reports that could be later used against a parent should be abolished.

Combatting bias: Impacted communities must be at the table – In order to combat the negative outcomes and various inequities detailed throughout this report – whether it be social, racial, or otherwise – the perspectives of those most impacted should be brought forward and carefully considered. While DHS does currently have a Child Welfare Oversight Board to review the agency and its initiatives, it is dominated by people wedded to the "medical model" – the idea that all parents who come to the attention of DHS may not be evil, but they have some form of sickness. It is skewed toward representatives of intuitions like the Children's Hospital of Philadelphia (CHOP) even though the overwhelming majority of cases involve no physical injury. This encourages making problems worse by emphasizing public health "solutions' instead of social justice solutions. This body should be diversified to include more voices – like those who have had children taken away, and youth representatives that have lived experiences with the child welfare system. The membership of the Child Welfare Oversight Board should be expanded to emphasize not just racial diversity but also viewpoint diversity.

SUMMARY OF FINDINGS

THE SUBCOMMITTEE ON DHS AND FAMILY COURT

The need for high quality representation for families – Better representation of families before Family Court is needed to level the playing field. Typical tactics are to withhold information and perpetuate the secrecy of Family Court proceedings. Proper representation of families would alleviate this situation.

Children need effective advocacy – Children who have reached the age of reason need to have adequate representation before Family Court so that their desires with respect to placement are accurately presented to the court.

The need for open courts – Currently, Family Court hearings are closed unless the conditions of a specific procedure are followed to allow the general public and the press to attend. These closed proceedings hide a number of issues not known to the general public. At times, legal representation for families is inadequate and often family representation is not adequately prepared. An overall air of secrecy surrounds family court, that at times, has protected judges who have acted improperly and eventually had to be removed from the bench. There is a strong case for Family Court hearings to be consistently open to the public and the press. This would shed a strong light on the consistent lack of proper representation of families, and the efforts of DHS to provide as little information as possible on its cases, even to affected families. In a related issue, in almost all instances, DHS and the law department initially deny any right-to-know (RTK) requests by affected families for records pertinent to the removal of their children.

This report is a call to action. We call on the City of Philadelphia to take these steps to make all children safer by reducing needless removals of children to the point where Philadelphia is more in line with – indeed becomes superior to – similar large cities in the United States. The findings presented in this final report are comprehensive. This is not unexpected. Complicated problems are rarely solved by implementing one or two corrective actions. This report identifies and focuses the need for corrective action where changes can be best brought about: at the State level, City Council and/or Philadelphia DHS.

This report is organized to make it easy to understand the existing problems. The issues are individually identified in each of the subcommittee reports that form the bulk of this report. Areas of concern are presented with background information, and specific examples are provided where applicable. Following each major issue, the report provides recommendations for action to be taken by the State, City, or DHS itself.

As appropriate, the recommendations were directed toward the entities that have the ability effect change: suggestions for changes in State regulations or procedures, potential actions by City Council, and/or changes needed to be taken by DHS to remedy ongoing problems. Very often the recommendations are interrelated and are presented as such. In many cases, action by only one entity could bring about the needed change. However, relevant actions could also be taken by either, or both, of the other entities.

MEMBERS OF THE SPECIAL COMMITTEE

David Oh (Co-Chair)
Philadelphia City Councilmember At-Large

Cindy Bass (Co-Chair)
Philadelphia City Councilmember, 8th District

Richard Wexler
Executive Director, National Coalition for Child Protection Reform

Paul Panepinto
Former Administrative Judge, Philadelphia County Court of Common Pleas Family Court Division

Rochelle Bilal
Sheriff, City and County of Philadelphia

Nadeem Bezar
Attorney, Partner, Kline & Specter PC

Vickie Suarez
Board member and Pennsylvania state coordinator for ParentalRights.org

Robin Cooper
President, Teamsters Local 502 of the Commonwealth Association of School Administrators (CASA)

Yolanda Bryant
CEO of nonprofit organization, Families Are Important To Heal (FAITH) Advocacy Movement

Brianna Donahue
Student, Formerly separated from her family

Ryshee Shaw
Student, Community activist

APPROACH

The Special Committee began its work in the fall of 2020 and concluded in the Spring of 2022. Due to the challenges presented by COVID-19, meetings of the Special Committee wereconducted virtually. In compliance with the Sunshine Act (Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701-716), all meetings in which a quorum of the committee were present and an official action was taken have been documented and recorded using Microsoft Teams and Zoom.



Councilmember David Oh speaks at a DHS Reform Rally outside Philadelphia City Hall (June 3, 2019) (Taken by Councilmember Oh staff)

FINDINGS AND RECOMMENDATIONS

OVERVIEW

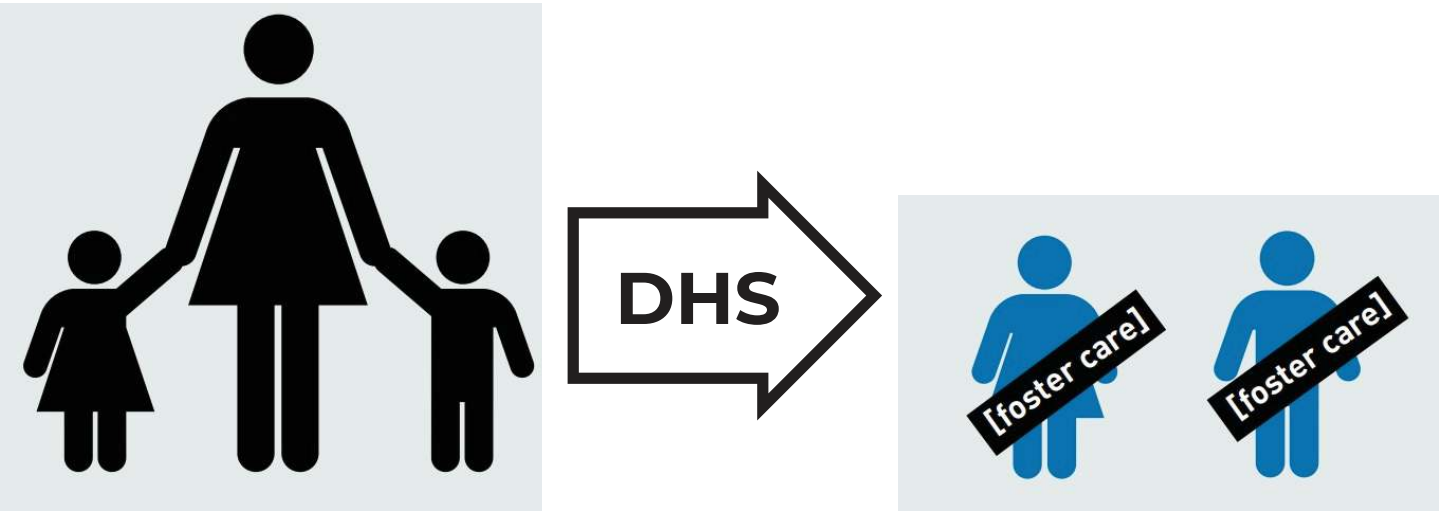
There is a dangerous myth that permeates the debate over the "child welfare" system in America. Indeed, it is the "Big Lie" of American child welfare: The false claim that child safety and family preservation are opposites that need to be "balanced." This myth equates child removal with child safety, and suggests that any move to keep families together is "risky" while tearing children from their families at least means the children will be safe.

In fact, family preservation is not just the most humane option. The research is clear: For the overwhelming majority of children, family preservation is safer than foster care. And for children in typical child welfare cases, the outcomes are better when they are allowed to remain in their own homes.

The tragedies that make headlines are as rare as they are horrific. They are needles in a haystack. You can't find the needles by constantly making the haystack bigger. But if you get the false reports, the trivial cases and the cases in which poverty is confused with "neglect" out of the system, caseworkers will have more time to find those few children in real danger.

Family preservation and child safety are not opposites. A system that embraces safe, proven alternatives to oppressive surveillance and foster care makes all children safer.

This report is a blueprint for such a system. It is a blueprint for child safety.



SUBCOMMITTEE ON POLICIES AND PROCEDURES

PART ONE
Faulty reporting can lead to unwarranted removals.

The overall process that ends with removing a child often starts with the reporting of a problem referred to one of two reporting systems: General Protective Services (GPS) or Child Protective Services (CPS). The rules for reporting vary slightly; however, it is important to understand how the two systems work and , how they can be abused, and how misuse can result in the unwarranted removal of a child. Changes in the reporting process and use of each system are essential if we are to limit how certain situations, if reported, could erroneously result in the opening of a case that could lead to the unwarranted removal of a child.

The committee examined GPS and CPS to determine what changes are needed to prevent unwarranted removals. Interviews with affected families and review of cases that resulted in unwarranted removals highlighted that if these recommended changes had been in effect, the removals could have been avoided. Accordingly, we examined the systems and how they interact and developed a number of recommendations for change. The way the systems are currently configured leads to DHS workers opening cases for investigation that should have never been placed in either system in the first place.

GPS and CPS: A distinction with very little difference:

Discussion of family policing in Pennsylvania can sometimes becomes distorted by the methodology in which data is collected. Pennsylvania has two forms of family police reports – Child Protective Services (CPS) and General Protective Services (GPS).

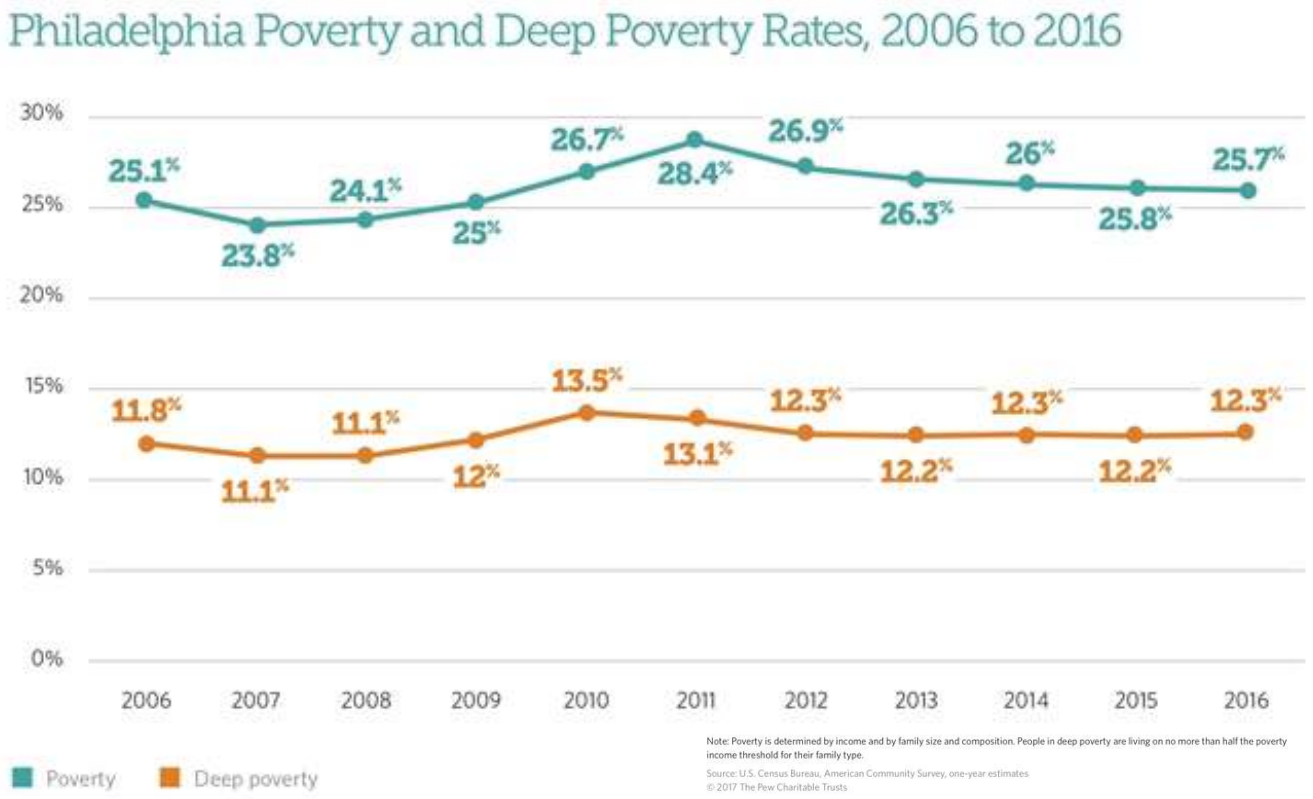
GPS cases referred from ChildLine can be screened at the county level before deciding whether to investigate. In contrast, anything referred from ChildLine as a CPS case, no matter how absurd, must be investigated. But once the investigation begins there is no difference. GPS cases are investigated by the same caseworkers wielding the same power to surveil families – and the same power to remove children from their homes. Indeed, it is likely that GPS investigations lead to more removals of children than CPS – because there are so many more cases entered into GPS.

Poverty, Neglect, and Abuse – GPS cases typically involve neglect, which is by far the most common allegation and which is often confused with poverty. CPS cases involve abuse but also can involve neglect. Although counties can screen GPS reports, new guidance from the state listing cases that must be screened-in runs to five single-spaced pages of subcategories that at some point probably include something that every impoverished parent in Pennsylvania, and possibly any parent, has done or failed to do at some point In short, the laws, regulations and guidance together guarantee that in the real world of Pennsylvania child welfare, neglect is whatever DHS and its counterparts across the state want it to be.

Pennsylvania law defining "child abuse" prefaces its long, long list of what constitutes abuse with the statement that the "abuse" must be the result of a parent or caretaker behaving "intentionally, knowingly or recklessly." But a parent who must leave a child home alone in order to keep a job may be "intentionally" depriving a child of "care or control necessary for his physical, mental, or emotional health, or morals" but the problem remains poverty rather than aparental failing.

Child abuse in Pennsylvania includes, "creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act." Janet Ginzberg, then with Community Legal Services of Philadelphia, told the Subcommittee about a client DHS listed as a substantiated child abuser – citing that ground – because she did not have a gate at the top of a flight of stairs. This mother would have been listed on the state's central registry of "child abusers" for life, and deprived of the opportunity to work in many fields, if Ginzberg had not won an appeal overturning the substantiation. But as this case illustrates, in the absence of universal, high-quality legal representation for families, agencies such as DHS are free to ignore any supposed limits and caveats in the definition of abuse.

There is no such qualifier involving intent in the definition of general protective services or in the exhaustive guidance from the state for screening in GPS cases for investigation which equates one condition of poverty after another with neglect. Remember, workers dealing with GPS reports conduct the same sorts of investigations as they do when investigating CPS reports. They can – and do - remove children just as they do when they are conducting CPS investigations.



"About 400,000 residents - including roughly 37 percent of the city's children under the age of 18 - live below the federal poverty line."

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RECOMMENDATION TO THE STATE LEGISLATURE

Amend legal definitions of child abuse pertaining to neglect.

Neglect should be removed from the state law defining child abuse and should no longer be subject to CPS investigations. Rather, any allegation of neglect should automatically be considered for further investigation only as a GPS case. In both the definitions of abuse and neglect for CPS and GPS the following clause should be added: Any family condition that can be remedied through the provision of concrete help, including but not limited to, direct cash assistance, food, clothing, housing assistance and/or childcare, shall not constitute neglect and shall not be cause for a CPS or GPS investigation. "Education as required by law" should be deleted from the neglect definition.

RECOMMENDATION TO THE PHILADELPHIA CITY COUNCIL

In the absence of state action, the Council should pass legislation with the same language. The language would apply when DHS caseworkers "substantiate" CPS and GPS allegations and the criteria used to "screen-in" GPS allegations for investigation.

This will not in any way reduce the power of agencies such as DHS to investigate families and take away children. It will allow county-level screeners more discretion to screen out poverty cases and, instead, suggest to those making reports alternative ways to help the family. "Educational neglect" is essentially a truancy issue and should be handled by school authorities, without invoking the ultimate police power – the family police power of DHS. In one notorious case, a Pennsylvania school district threatened to call ChildLine on parents who couldn't afford their children's lunch money.

Children who witness spousal abuse

Under so-called "failure to protect" laws and regulations, one can be labeled a bad mother – and children can be removed – if the mother "allowed" children to witness a husband or boyfriend attacking her. Taking away a child under these circumstances actually compounds the trauma of removal for that child. One expert said that doing this to a child is "tantamount to pouring salt into an open wound."

Requiring people to report this only drives battered women away from seeking help and makes it harder for them to escape their abusers. That is why, thanks to a class-action lawsuit, the practice is illegal in New York. Battered women know the danger their children face if they seek help. Building on previous research, a study published in December, 2019 found that mandatory reporting laws drove many women away from seeking help for fear that their children would be taken away. [3] Worse, the fears were justified. According to the study:

3 Lippy, C., Jumarali, S.N., Nnawulezi, N.A. et al. The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change. J Fam Viol 35, 255–267 (2020). https://doi.org/10.1007/s10896-019-00103-w

Most survivors described severe consequences of [Child Protective Services] involvement, primarily the removal of their children from their care and home. One survivor explained how "CPS was brought in, and my kids were taken away and that was almost life ending." Another survivor illustrates the challenge of CPS involvement in cases of domestic violence, explaining that, "They removed my children from my home and charged me with allowing domestic violence to happen to me."

Abusers know it. If a battered mother threatens to call the police, her abuser can say: Go ahead, call the cops. They'll call DHS and DHS will take the kids. In short, mandatory reporting is a spouse abuser's best friend. But not only are such reports encouraged in Pennsylvania, recent state guidance requires counties to investigate if they are received as GPS reports.

RECOMMENDATION TO THE STATE LEGISLATURE

Amend state law to prohibit ChildLine from accepting reports alleging child abuse, and prohibit counties from accepting GPS reports based on a child "witnessing domestic violence." The definitions of abuse and neglect should specifically exclude witnessing domestic violence.

RECOMMENDATION TO THE CITY COUNCIL

In the absence of state action, the Council should prohibit DHS from screening in GPS reports based on allegations that a child witnessed domestic violence. When CPS reports making that allegation must be investigated, DHS workers should be prohibited from substantiating the allegation on those grounds and prohibited from removing children on those grounds. DHS should challenge state guidance requiring investigation of such reports when they are forwarded to DHS as GPS reports.

Mandated reporting undermines poor communities

In essence, if anyone with a mandate to report becomes aware of something that could possibly meet the definition of child abuse, it is mandated that the individual report the incident, or they themselves could be considered in violation of child protection laws. This has resulted in an increased number of cases being opened because "reporters" are afraid of running afoul of the law. The "reporter" cannot take into consideration "common sense" when deciding whether or not to report – it has become a black or white issue, resulting in an increased level of reporting, and instilling fear in parents that they might "say the wrong thing."

Perhaps most damning is the scholarship of Prof. Kelley Fong, now at Georgia Tech, while she was a Ph.D. candidate in sociology and social policy at Harvard. Fong interviewed scores of impoverished mothers in Providence, R.I. They described how mandated reporters are "omnipresent," and how that spreads fear throughout their neighborhoods - again, for good reason.[4] Though the mothers had not been selected because of involvement with CPS, nearly two-thirds had been subjected to a child abuse investigation.

4 Kelley Fong, Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement, Social Forces, Volume 97, Issue 4, June 2019, Pages 1785–1810, https://doi.org/10.1093/sf/soy093

Here's one example from the study:

Leslie, a Hispanic mother, asked hospital staff when her newborn twins would be discharged so she could arrange housing for them, sharing that she had been sleeping at her workplace and her mother's garage apartment. "I was trying to be honest just so I can prepare myself... [but] that backfired on me," as the hospital notified CPS. "After that moment I learned how to play the game."

Playing the game means watching every word spoken in front of a mandated reporter, – even if that means losing out on help. Another mother decided not to seek public assistance when she found out she'd have to reveal the fact that the family was living in her car. Some mothers refused voluntary home visiting services for new mothers – an intervention which, when following the Nurse-Family Partnership model, has a solid evidence base. But the visitors are mandated reporters and the mothers were too afraid the visits could lead to loss of the children. And you don't dare reveal to a mandated reporter that you sometimes lose your temper or get depressed. As one mother explained: "I feel like I can't tell anybody anything because oops, I might've said too much. I might have a knock on my door, and somebody might be here to take my kids. That's one of my biggest fears."

RECOMMENDATION TO THE STATE LEGISLATURE

Mandatory reporting should be abolished.

Abolishing mandatory reporting does not mean abolishing reporting. It only means that professionals would be free to exercise their professional judgment in determining the balance of harms – that is, when harm done to a child by failing to report is likely to be greater than the harm done to a child by reporting.

Some might object on grounds that mandatory reporting is required to receive funds under one portion of the federal Child Abuse Prevention and Treatment Act. But the amount of money involved is so negligible that it would be more than offset by the savings when workers don't have to investigate so many false reports, and place fewer children needlessly in foster care.

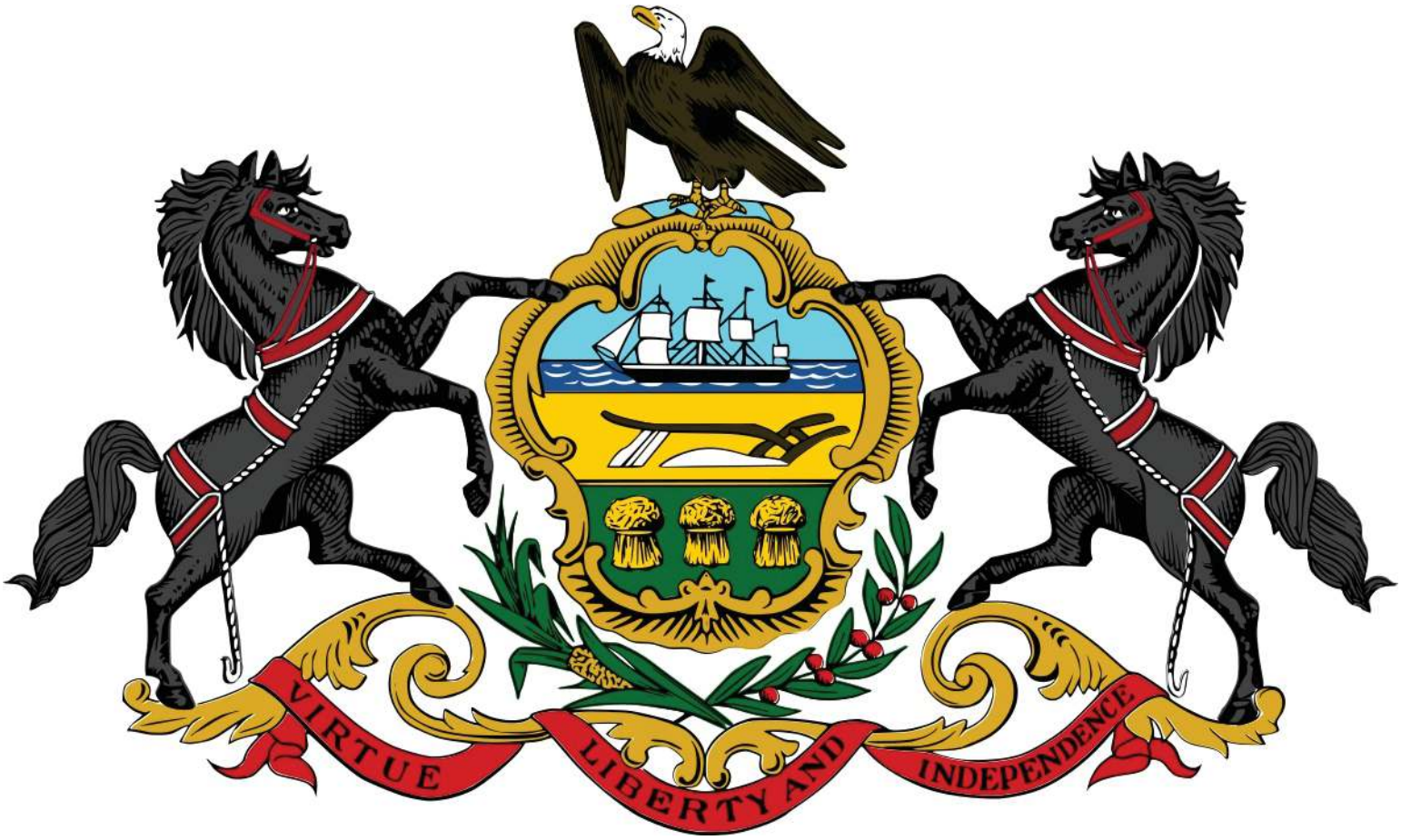


RECOMMENDATION TO THE STATE LEGISLATURE

The Legislature should order a wholesale revision of training on reporting child abuse, built around the principle of balance of harms.

A good training curriculum would:

- Acknowledge that, while sometimes these decisions should be easy, in many more cases they are hard, and a wrong decision either way can be tragic.
- Be as specific as possible about what to report, and what not to report.
- Offer a concrete definition of “reasonable cause to suspect” with examples of what does — and does not — meet that criterion.
- Warn against reporting based on “intuition” or “gut instinct” or “feelings”.



PART TWO

School District employees can be reporters or offenders related to child abuse.

During the school year, teachers and school administrators have more interaction with children than their parents during the normal school day. With that level of interaction comes all manner of opportunities for child abuse allegations. The Jerry Sandusky scandal exacerbated the situation here in Philadelphia. The "Sandusky laws" that resulted can impact teachers, administrators and support staff. This impact can be seen in two ways. At first, these may seem contradictory, but both reflect the harm done by the knee-jerk response to high-profile cases, such as the situation with Jerry Sandusky, both by the Legislature and by DHS.

The first impact resulting from the Sandusky case was an explosion of false reports against school personnel. At a Subcommittee meeting, Jerry Jordan, president of the Philadelphia Federation of Teachers gave some examples:

One year, in June, A highly respected teacher leader hears a commotion in a first grade classroom. She escorts a very upset special needs student out of the room to calm down. The following September she returns for the new school year only to find out she is under investigation for child abuse because the child's guardian claimed she hit the child. She was reassigned to district headquarters where she was forced to sit and wait. Month after month. Friends and family held a fundraiser to help her hire a lawyer. The principal - an eyewitness - had been interviewed at the start of the investigation, but it didn't matter. Then the school system cut off her pay and prepared to fire her – not because the allegation had been substantiated but because DHS had made no decision. Finally, after six months, she was cleared. "Needless to say, she has not been the same," Jordan told the Subcommittee. "That isn't anything that she is going to forget; it was something that affected her entire family."

In another case, an allegation against a teacher was indicated even though the DHS worker never interviewed the teacher or witnesses. "The decision was based solely on the accuser's statements," Jordan said. The teacher was suspended without pay for more than nine months – until DHS reversed itself and said she hadn't abused the child after all. The prolonged delays in resolving cases are even harder to understand given that school buildings often have video cameras in areas where altercations occur. An issue that could be resolved with a quick examination of a videotape should not drag on for months.

The consequences of stalling, and arbitrary substantiation can be even more devastating. Because teachers then will be listed on the state's Central Registry of alleged child abusers, it becomes difficult if not impossible for them to get another job in any field working with children.

But the consequences go beyond the effect on teachers. Prolonged, needless suspensions deprive students of beloved teachers. When a panic following a high-profile tragedy gets bad enough, it can disrupt a district's entire educational program, as happened in Prince George's County, Maryland and Providence, Rhode Island.

Children's safety also may be compromised. Many allegations arise from school staff breaking up fights. DHS' panicked response to the "Sandusky laws" risks making school staff hesitant to break up such fights by touching a child, placing children in even more danger.

Even as school personnel are on the receiving end of a surge of needless reports, the DHS response to the Sandusky laws also appears to have made it harder for teachers and staff to exercise their own professional judgment as mandatory reporters. Recommendations with regard to mandated reporting improvements were previously discussed in this report and have a profound effect in School District-related cases. The need for increased common sense is clearly indicated.

Statewide, school personnel file more reports than any other category of mandated reporter. But their reports are among the most likely to be mistaken – nearly 95% are ruled unfounded. In some cases, such reports grow out of no more than a student's failure to attend school.

RECOMMENDATION TO THE STATE DEPARTMENT OF HUMAN SERVICES

The state should rigorously enforce timelines requiring investigations by Philadelphia DHS and its counterparts to be completed within 30 days. No one, educator or otherwise, should be kept in limbo for six months or more.

RECOMMENDATION TO THE PHILADELPHIA SCHOOL BOARD

The Board should reinforce existing practice and insist that no school personnel be deprived of pay while a DHS investigation is pending.

RECOMMENDATION TO THE PHILADELPHIA SCHOOL BOARD

School personnel who are suspended pending the outcome of an investigation should not be required to report to district headquarters while a DHS investigation is pending. In other words, no more confinement of educators to the so-called "rubber room." If the district refuses to allow educators to educate, they should be free to pursue other activities while suspended.

To those who might say this is giving teachers a "paid vacation" the committee has the following observation: 1. No one should ever consider spending months with an allegation over her or his head a vacation and 2. This will create an incentive for the school system to press DHS for a prompt completion of investigations.

PART THREE

The rights of families need to be preserved amidst interactions with DHS.

During interviews with mothers that had their children removed by DHS, there were numerous instances where the stories related by the mothers differed widely from the facts as documented by DHS workers. These erroneous reports then formed the basis for representation to the courts of individual cases and eventual removal of the child. In one instance, a grandmother's version of the events surrounding the removal of her 2-year-old granddaughter differed substantially from those documented by DHS. Interviews with other family members substantiated the grandmother's version and also revealed that DHS had also misrepresented statements made to them by the other family members. The grandmother had cared for the two-year-old since birth with the permission of her daughter, and during that time there were no clearly identified issues of abuse other than the statements of the DHS workers, and unsubstantiated allegations.

There were similar stories by other mothers who lost their children, which while not as egregious, clearly established a pattern of a wide discrepancy of facts relayed by the affected mothers and those reported by DHS workers or those making reports and allegations. In almost every instance, the DHS version of the facts of the case was accepted by the court as a true representation with little or no probing by the judge when rulings were handed down. In almost all cases, the mother had no chance to rebut the facts as represented by DHS. The problem of adequate representation of the families is addressed elsewhere in this report; however, there are ways to avoid this lack of due process in the future. Just as more and more police officers are being required to wear body cameras, Miranda-type warnings and recording of interactions between families and DHS would go a long way to help preserve the rights of families during their interactions with DHS workers.

RECOMMENDATION TO THE STATE LEGISLATURE

All families should receive, orally and in writing, the equivalent of "Miranda rights" the moment the DHS worker shows up at the door.

RECOMMENDATION TO THE CITY COUNCIL

In the absence of state action, the Council should require that DHS caseworkers provide this information.

These rights include the right to deny access to the worker unless that worker has a court order, the right to consult with a lawyer and have the lawyer present for any questioning, and notice of how to obtain such legal assistance and, yes, the right to remain silent and the right to know that anything they say may be used against them. Legislation to require that families know their rights was introduced in New York State. The New York bill is an excellent model. We recommend adding notification of another existing right, discussed in detail below, the right to record any and all interactions with caseworkers.

It is important to understand that this proposal does not give families any new rights – it only informs them of fundamental rights they already have. But a right is meaningless if you do not know it exists.

Any claim that if families know the rights they already have DHS could not do its job speaks volumes about the failure of the entire DHS approach. If a government agency cannot do its job if people know their rights, the problem isn't the rights, it's the way the government agency is doing its job.

RECOMMENDATION TO THE STATE LEGISLATURE

All interviews conducted by personnel from DHS and its counterparts in the course of investigations – not just interviews with children – should be recorded. Interviewees must be informed that their statements are being recorded. Information from any interview that is not recorded should be inadmissible in all court proceedings and notes summarizing such alleged interviews should not be allowed in any DHS file.

RECOMMENDATION TO THE STATE LEGISLATURE

The legislature should write into law the existing right of a family to make its own recording of any interaction with workers from DHS and its counterparts.

RECOMMENDATION TO PHILADELPHIA DHS

In the absence of state action, DHS should implement these recommendations through regulation.

In an age of smartphones anything less than requiring that all interviews be taped is extremely dangerous to children. The most obvious danger is reflected in the mass molestation hysteria of the 1980s, in which hundreds of children in cases such as the McMartin Preschool were pressured into saying what interrogators wanted to hear. Only the existence of tape recordings prevented even worse miscarriages of justice.

But it is just as important to record interviews with everyone else. Over and over again, all over the country, one hears the same refrain from victimized families: The worker was selective. The worker wrote down only what supported her or his position and ignored the rest. And it's not just aggrieved parents expressing these concerns. In the numerous interviews conducted by the Committee, we were told about similar instances of "selective reporting."

In a scathing decision, a juvenile court judge in Connecticut blasted that state's child welfare agency for "an appalling combination of arrogance and ineptitude." She ruled that CPS deliberately left out exculpatory information in order to obtain emergency removal of a child. The judge wrote:

There is no other purpose for this affidavit other than to mislead the court into believing that

[the child] was in immediate physical danger from her surroundings and only her immediate physical removal ... would ensure her safety. The court finds that [the Connecticut child welfare agency] intended to manipulate the facts to obtain an order that it knew the facts could not justify.

Unfortunately, in the cases reviewed by the Committee, there were hardly any instances of strong questioning and intervention by the courts on the behalf of families facing removal. Needed transparency in Philadelphia's Family Court is discussed elsewhere in this report.

Clarifying the right of DHS to enter and the associated rights of families

From the numerous interviews conducted by the Committee, it was obvious that families did not have a clear understanding of their rights with respect to refusing entry by DHS, absent a court order. It should be obvious. If you have a right to deny access to a caseworker, but the mere act of exercising that right is grounds to get a court order so they can force their way in, then the right does not really exist. DHS should be required to have objective evidence of danger to a child so serious and immediate that it requires entry into the home before a court order granting such entry is issued.

RECOMMENDATION TO THE STATE LEGISLATURE

State law should be amended to specify that the mere refusal to allow a caseworker to enter and/or the refusal to speak to a caseworker is not, in itself, grounds to issue a court order requiring such cooperation.

RECOMMENDATION TO PHILADELPHIA DHS

In the absence of state action, DHS should, as a matter of policy, not seek court orders based solely on the above.

The more informed families are of their rights, absent immediately present legal representation, the better is the chance that families will prevail in disputed areas and that DHS will be limited from overstepping their authority.



PART FOUR

Determining a parent's capacity and fitness to care for a child: What should be considered?

Sibling confiscation at birth

In some instances, a parent may be at risk of having her child taken by DHS at birth regardless of her present capacity to care for the child. There have been several reported instances of children being confiscated at birth if a parent has a prior record with DHS for neglect or abuse of a previous child, regardless of the duration of time passed or the parent's present fitness. While some egregious crimes against children justify such action this policy harms children in situations where there may have been a problem many years ago, but now the parent is capable of caring for the child, or situations where the siblings never should have been taken in the first place. In either case, a newborn may be consigned to the chaos of foster care, losing the chance to bond with her or his parents during the most crucial days of the child's life – the first.

In some cases, mothers may know about the threat of confiscation-at-birth and therefore may avoid prenatal care or giving birth in a hospital. Conversely, when parents find out it can lead to another tragedy.

In her testimony to the Special Committee, Arielle Narva, doula support program manager in the Division of Maternal, Child and Family Health at the Philadelphia Department of Public Health, revealed a shocking, albeit unwritten policy in some cases investigated by DHS which can lead to devastating consequences.

Said Narva, "It is probably not policy for DHS workers to inform pregnant people who are involved in the system with previous children that if they give birth to a baby, that their baby will be taken from them. But that is most definitely practice." And, rather than have to face the trauma of having still another child taken, this time at birth, Narva said, "We have had several abortions in our program. Parents who are pregnant when they are referred to us, who have in their previous children involved in the system, [having been told the child they are carrying will be taken at birth] they choose to terminate the pregnancy."

Decisions on a parent's capacity should be based on sound evidence concerning her present capacity and, if that capacity is inadequate, on what can be done to make it adequate without confiscating the newborn on the spot.

RECOMMENDATION TO PHILADELPHIA DHS

Any policy calling for sibling confiscation at birth, whether written or unwritten, should be abolished. DHS caseworkers should be explicitly instructed not to take newborns solely because they have previously taken another child.

Drug use - while often times detrimental - is not in itself child abuse

The use of drugs, whether legal or illegal, can indeed reach a point where it endangers children to a degree in which intervention is required. But drug use per se is not child abuse or neglect. As with child abuse itself, our view of drug abuse is distorted by horror stories. Middle-class parents sometimes brag about their pot smoking in Facebook groups, secure in the knowledge that agencies like DHS won't knock on their doors.

Immediately moving to investigate families and take away children because of drug use, without evidence that the drug use is harming the child, is one more way in which children are needlessly traumatized by family policing.

And where intervention genuinely is needed, drug treatment for the parent almost always is a better option than foster care for the child.

Even in cases where a pregnant mother is struggling with substance abuse, the science indicates it is more harmful to separate the child than to have the child remain with the mother. University of Florida researchers studied two groups of children prenatally exposed to cocaine; one group was placed in foster care, another left with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Typically, the children who remained with their birth mothers did better. For the foster children, the separation from their mothers was more toxic than the cocaine. [5]

Similarly, consider what The New York Times found when it looked at the best way to treat infants born with opioids in their systems. According to the Times: "A growing body of evidence suggests that what these babies need is what has been taken away: a mother. Separating newborns in withdrawal can slow the infants' recovery, studies show, and undermine an already fragile parenting relationship. When mothers are close at hand, infants in withdrawal require less medication and fewer costly days in intensive care." [6]

And, pregnant mothers, particularly if they are poor or nonwhite, are often times drug tested without their consent. Any act of drug testing for any purpose other than treating the patient is an act of policing and should be illegal in the absence of truly informed consent. Anything less only serves to drive pregnant women underground and endanger their children by driving them away from prenatal care and hospital delivery. The hospital should be in the business of treating their patients, not investigating them.

In those cases where drug abuse does impair parenting to the point of endangering a child, our child welfare system should follow the science and keep families together through treatment and rehabilitation options whenever possible.

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5 Melanie Fridl Ross, "To Have And To Hold: UF Shows Cocaine-Exposed Infants Fare Better With Their Biological Mothers" (University of Florida, May 3, 1998), https://news.ufl.edu/archive/1998/05/to-have-and-to-hold-uf-shows-cocaine-exposed-infants-fare-better-with-their-biological-mothers.html

6 Catherine Saint-Louis, "A Tide of Opioid-Dependent Newborns Forces Doctors to Rethink Treatment," The New York Times, July 13, 2017, https://www.nytimes.com/2017/07/13/health/opioid-addiction-babies.html.

RECOMMENDATION TO THE STATE LEGISLATURE

The legislature should amend state law to make explicit that drug use, whether the drug is legal or illegal, is not, in itself child abuse. The Legislature should make clear that it is not cause to report (or make a so-called "referral") to ChildLine or an agency like Philadelphia DHS, it is not cause to investigate, it is not cause to substantiate and it is not cause to remove a child.

RECOMMENDATION TO THE STATE LEGISLATURE

Except in medical emergencies, medical personnel should be prohibited from testing pregnant women for use of drugs without their written and verbal informed consent. Even then, such testing should be permitted only when necessary to provide medical care to the patient. Similarly, testing of newborns should be prohibited unless a parent gives such consent and, again, only when necessary to treat the newborn.

RECOMMENDATION TO THE CITY COUNCIL

Absent action by the state, the City Council should enact such a law for the City of Philadelphia.



PART FIVE

Problem of central registries and the retention of unfounded reports.

The child abuse registry system contributes to the cycle of poverty

Community Legal Services of Philadelphia (CLS) is a legal advocacy group providing free legal education, advice, and representation to low-income individuals in Philadelphia. In November of 2020, CLS published a report, "Reforming the Child Abuse Registry System in Pennsylvania," which details the unintended consequences of the state's central registry of child abusers and provides recommendations for reform. [7]

Under the current system, an individual can be listed on the central state registry for child abuse before having any opportunity to contest the allegation. The registry is often times used for employment screening within fields of education and healthcare, such as bus drivers, cafeteria workers, janitors, and home healthcare aides, among others. The number of such jobs using the registry as a screening tool has dramatically increased in the fallout of the Jerry Sandusky child sex abuse scandal. In turn, placement on the registry can have devastating economic consequences, particularly for low-income individuals.

As the report notes, restricting economic opportunities for low-income residents only perpetuates the cycle of poverty and leads to more cases of child endangerment. And often times, listings on the registry are made based upon incomplete or false information. In North Carolina and Missouri, state Supreme Courts found that putting someone on a registry first and then holding a hearing is unconstitutional. Several judges in Pennsylvania have expressed similar qualms, quoting the Missouri decision with approval.

The CLS report recommends four reforms to the system:

- Strengthen due process protections before someone can be placed on the registry and provide for a right to counsel.
- Restructure the registry to distinguish between serious incidents of abuse (e.g. sexual assault) from more minor incidents (e.g. missed doctor appointments) and limit how long people must stay on the registry.
- Limit the use of the registry as an employment screening tool by narrowing the category of jobs that must have child abuse clearances and only reporting individuals whose conduct is tied to ability to perform the job safely.
- Conduct a racial impact analysis of the registry and address structural racial bias at every step of the process.

These reforms are vital to ensure a system which seeks to protect children is not perpetuating a cycle of poverty which, in turn, only harms children and families.

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7 Janet Ginzberg, Jamie Gullen, and Saadiqa Kumanyika, "Report: Reforming the Child Abuse Registry System in Pennsylvania," Community Legal Services, November 12, 2020, https://clsphila.org/family/pa-child-abuse-registry/#:~:text=We%20propose%20reforms%20in%20four,more%20minor%20incidents%20(e.g.%20missed.

RECOMMENDATION TO THE STATE LEGISLATURE

Enact the series of proposed reforms to the central child abuse registry published in the November 2020 report, "Reforming the Child Abuse Registry System in Pennsylvania," released by Community Legal Services of Philadelphia (CLS). These recommendations include impartial hearings before the accused is listed, the right to free legal representation for indigent accused, a tiered system concerning how long one is on the registry based on the seriousness of the offense and a narrowing of the professions for which background checks of the registry are conducted.

Local counties amass databases and retain unfounded reports

The State of Pennsylvania isn't alone in maintaining a "blacklist". Each county has a blacklist of its own for GPS cases. These blacklists are not consulted by employers. But they can do other damage. As noted, the mere presence of a parent on such a list ratchets up suspicion if another report is received. Yet, once blacklisted by DHS or its counterparts in their own databases, there is no appeal at all.

RECOMMENDATION TO THE STATE LEGISLATURE

The same requirement for a hearing before blacklisting and the same right to counsel should apply to any records of substantiated GPS allegations maintained by counties. Though the consequences of such a listing are not as severe as a listing in the state Central Registry, the potential harm to children of a false listing is serious enough to demand basic due process.

RECOMMENDATION TO THE CITY COUNCIL

In the absence of state action, the City Council should enact such due process protections for Philadelphia families.

Additionally, counties are permitted to retain records of unfounded reports. The common rationale for this is the mistaken belief that there is no such thing as a false report – if there are enough of them. Or as one former child welfare leader in Pennsylvania put it, "A lot of times , where there's smoke there's fire." In fact, multiple false reports typically mean that people got it wrong over and over. Keeping false reports is an open invitation for anyone who wants to harass a family – an ex-spouse, an angry neighbor, or, as noted previously, a school district that wants to collect lunch money.

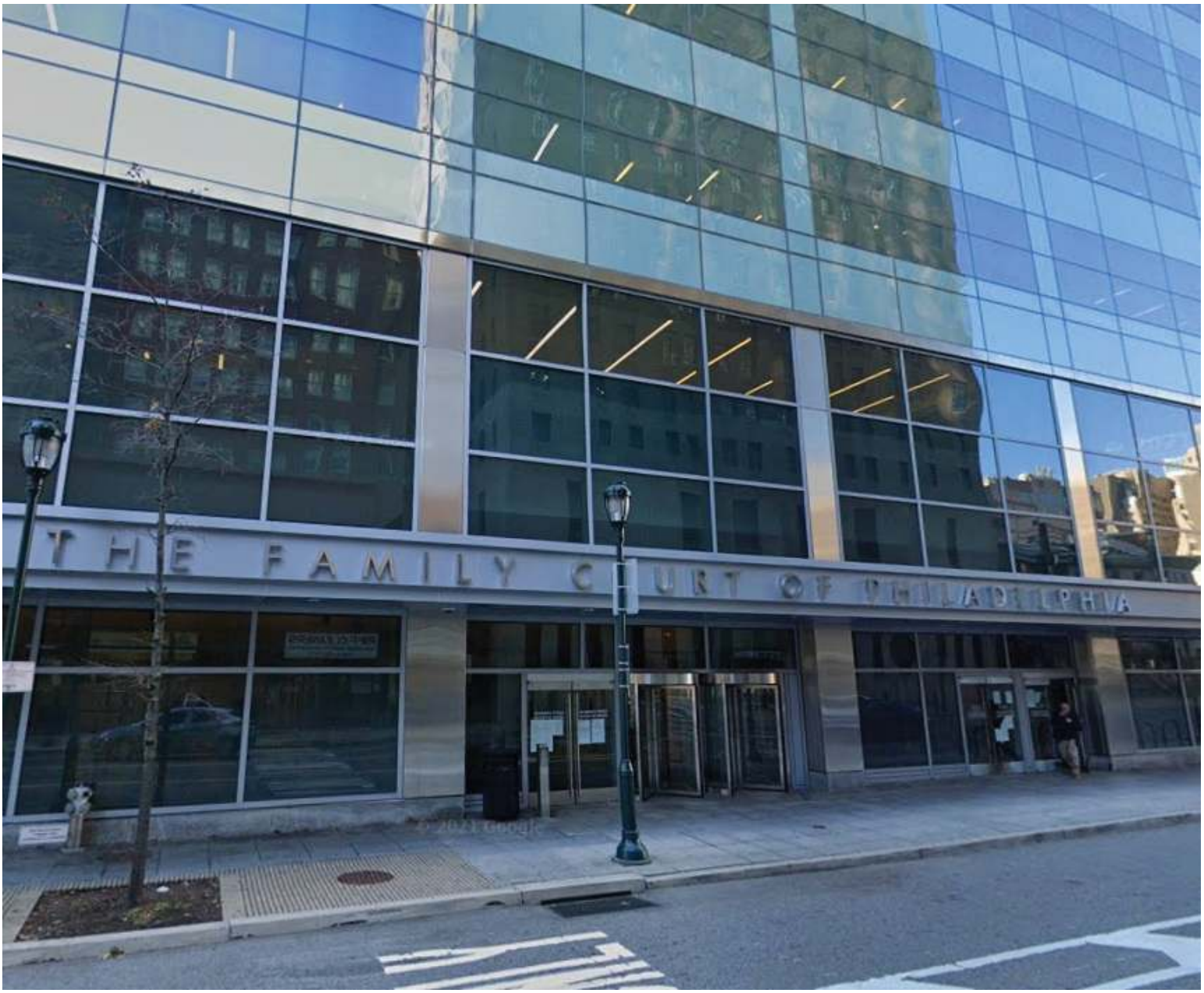
RECOMMENDATION TO THE STATE LEGISLATURE

Pennsylvania law should be amended to prohibit the retention of unfounded reports.

RECOMMENDATION TO THE CITY COUNCIL

In the absence of state action, the Council should prohibit DHS from retaining unfounded reports.

The guilty-until-proven-innocent mentality that pervades Pennsylvania child welfare prompts agencies such as DHS to jump to conclusions based on reports so spurious they couldn't meet the incredibly low standard for declaring a report substantiated. What DHS and its counterparts really are maintaining are databases of rumor and innuendo. That should be prohibited.



PART SIX

Combatting Bias: Impacted communities must be at the table.

In order to combat the negative outcomes and various inequities detailed throughout this report – whether it be social, racial or otherwise – the perspectives of those most impacted should be bought forward and carefully considered.

While Philadelphia DHS does currently have a Child Welfare Oversight Board to review the agency and its initiatives, it is dominated by people wedded to the "medical model" – the idea that all parents who come to the attention of DHS may not be evil, but they sure are sick. It is skewed toward representatives of institutions like the Children's Hospital of Philadelphia (CHOP) even though the overwhelming majority of cases involve no physical injury. That encourages making problems worse by emphasizing public health "solutions" instead of social justice solutions. This body should be diversified to include more voices – like those that have had children taken away, and youth representatives that have lived experiences with the child welfare system.

RECOMMENDATION TO PHILADELPHIA DHS

Broaden the membership of the Child Welfare Oversight Board to emphasize not just racial diversity but also viewpoint diversity. Membership on the board should be enlarged to include: two parents who have had children taken by DHS (there currently is a foster parent on the board, but no birth parent), two youth representatives (there was one when the board was created, there are none now) and two Philadelphia-based attorneys representing families in child welfare cases.

Additionally, Philadelphia DHS should create an additional oversight committee made up entirely of families that have lost their children, former DHS caseworkers, and others to assist with new anti-bias training curricula.

RECOMMENDATION TO PHILADELPHIA DHS

A committee made up of families who have lost children to DHS, family defenders, current and/or former foster youth, frontline DHS caseworkers and leaders of communities of color should be convened to study anti-bias training curricula and recommend such training for all DHS personnel, DHS contractors and mandated reporters – as well as making any other recommendations they believe will reduce bias.

SUMMARY AND CONCLUSIONS

There are just too many easy ways a child can be needlessly removed and too few checks and balances along the way to correct the process if it goes awry. The categories that allow entry of a child into the "system" need to be critically evaluated and limited. The role of events that may occur related to school districts deserve a good hard look to see what changes are warranted. In order to truly protect children, the rights of families when interacting with DHS need to be bolstered. Changes are needed in how DHS determines the capacity and fitness of a parent to care for her or his child. The dangers of central registries and the retention of unfounded reports are issues that have existed too long without a critical evaluation of function and need. And finally, inherent bias in the overall process must be examined to stop the disproportionate harm to communities of color.



Philadelphia Sheriff Rochelle Bilal speaks at DHS Reform Rally outside Philadelphia City Hall, November 2020. (Via Sheriff's Office)

FINDINGS AND RECOMMENDATIONS SUBCOMMITTEE ON DHS AND FAMILY COURT

PART ONE
The need for high quality representation.

When children are taken from their families in Philadelphia, families are almost always without adequate legal representation. This problem exists from the point a child is removed from the home, to when the parents attend numerous mandated court appearances, and even up to the time a child may be permanently removed and put in foster care. In Philadelphia, parents who cannot afford attorneys are offered court-appointed lawyers. Generally, these lawyers handle oppressive caseloads and work for little pay. In other instances, parents enter the courtroom totally unrepresented and ignorant of their rights.

In its comprehensive study of Philadelphia child welfare, a study commissioned by DHS itself, the Child Welfare Policy and Practice Group wrote:

"Concerns were also raised in this evaluation about the quality and consistency of legal representation for parents in dependency proceedings. In parent focus groups, only a few parents said that they had contact with their attorneys outside of court hearings. Several also indicated that they did not understand how the court made its decisions about what they were required to do and others expressed frustration that they had hearings rescheduled, and that the next hearing dates were set three months away. This was particularly upsetting for some who had thought, prior to a scheduled hearing, that their children were going to be returned to them, only to have the hearing, and thus the decision, postponed for another three months."

"Advocates and court personnel interviewed acknowledged that parent representation has not been well-resourced in Philadelphia. This issue appears to be particularly acute with private attorneys representing parents who lack critical supports as well as a clear structure of accountability for the quality of their representation. This situation may improve somewhat given that a new, and reportedly more adequate, fee scale has just been established for court appointed attorneys representing parents. However, given that parent representation can be an important driver of permanency for children; this is an area that merits ongoing attention. This does enormous damage to children who are needlessly placed in foster care and whose foster care is needlessly prolonged."

A solution that is providing excellent results in other cities is high-quality interdisciplinary family representation. The family gets a defense team: a lawyer with a limited caseload and the support of an institutional provider, a social worker who can craft alternatives to the cookie-cutter "service plans" imposed by DHS, and, often, a parent advocate who has been through the system herself. The purpose of this approach is not to absolve "bad parents." Rather, it is to find better solutions than those offered by DHS.

This model is now used for 90 percent of cases in New York City. A large-scale study found that it significantly reduced the time children languished in foster care with no compromise of safety. The study also suggests this approach is cost-neutral and may save money because of the savings achieved by reducing needless foster care. [7]

Federal aid is available for such representation in many cases. The federal government will reimburse half the cost of lawyers for children and families, and their support staff, in any case that is eligible for reimbursement under Title IV-E. Statewide, as of 2014, the most recent year for which data could be found 44 percent of Pennsylvania cases were eligible for IV-E funds. Because the formula is linked to deep poverty, the percentage in Philadelphia may be higher.

RECOMMENDATION TO THE CITY COUNCIL

Provide sufficient funding to make this model of family representation available in 100 percent of dependency cases.

New York City guarantees this model of representation in 90 percent of cases, but it is done as-of-right only after a petition to remove a child has been filed – and often that means after the child already has been removed from the home. In the most serious cases examined in this review, effective representation would have been necessary much earlier in the removal process.

In contrast, Legal Services of New Jersey (LSNJ) provides pre-petition representation. Before a petition is ever filed, some cases are referred to LSNJ by the state child protective services agency itself.

Philadelphia should follow New Jersey's lead. Philadelphia has the potential to leap ahead of New York and other big cities that currently are doing a better job in child welfare. Philadelphia has the potential to become the national model to which other cities aspire.

RECOMMENDATION TO THE CITY COUNCIL

Provide access to high-quality legal representation from the moment a caseworker is dispatched to investigate an allegation.

That should be done by the following means:

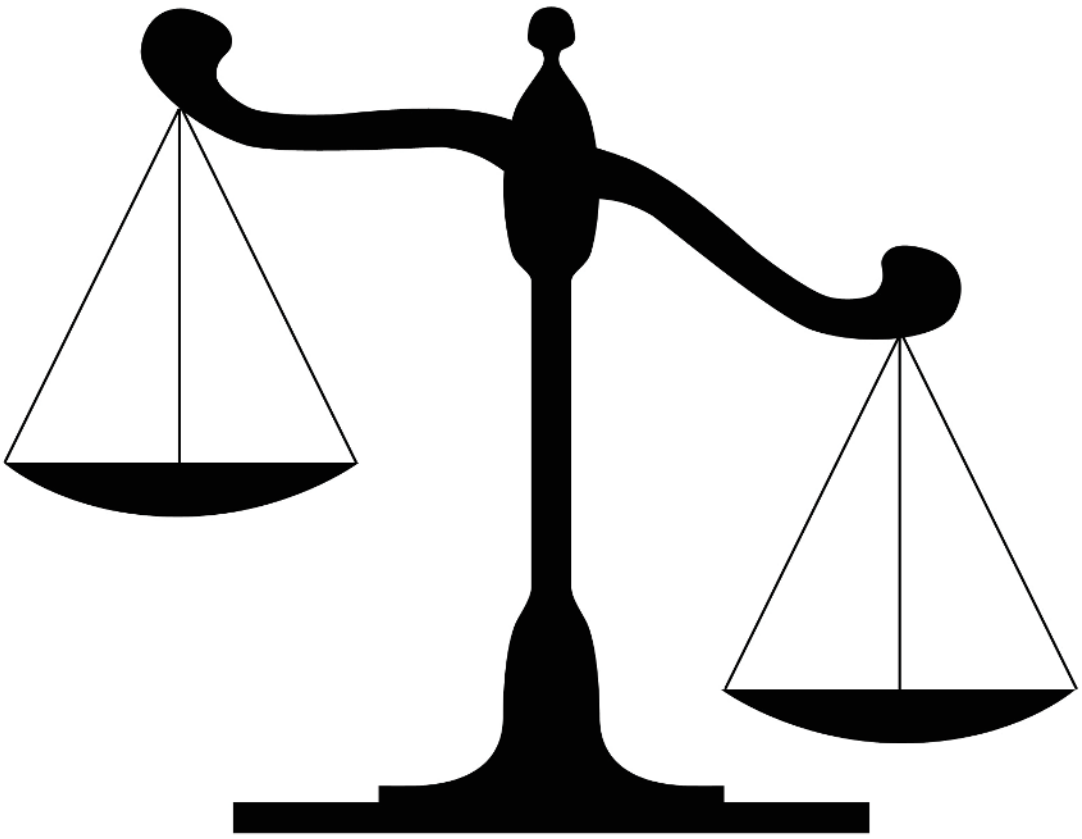
- DHS should refer cases to family representation providers in the manner used in New Jersey.

7 Giordano , Gianna, and Jey Rajaraman. "Increasing Pre-Petition Legal Advocacy to Keep Families Together." Americanbar.org. American Bar Association , December 15, 2020. https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-increasing-pre-petition-legal-advocacy-to-keep-families-together/

- The existing requirement that the caseworker notify someone under investigation that s/he has a right to speak to an attorney should be strengthened. In many of the cases examined, the right to an attorney was rarely made known to the affected families. Information about the right to an attorney should be placed prominently at the top of any written material provided to the person under investigation. The written material should provide a toll-free number for a provider of interdisciplinary family representation, and should strongly encourage those under investigation to call that number.

- DHS should engage in a publicity campaign through free and paid media, traditional and social, encouraging parents and others to call a provider of interdisciplinary family representation when they are under investigation.

- DHS should provide materials to community organizations so they can urge families to contact family representation providers when DHS arrives at the door.



PART TWO

Children need effective advocacy.

Nationwide, there is enormous variation among the states concerning who represents children in dependency cases – and what they are mandated to do. In some cases, only a layperson is required, in other states, including Pennsylvania, it's a lawyer. Even when the advocates are lawyers, in some states they are mandated to fight for what a child wants to have happen, called "expressed wishes" representation. In others, they argue for what they think is in the child's "best interests" even if the child wants the opposite.

The current situation in Philadelphia, as in Pennsylvania, is confusing at best, at least to a non-lawyer. However, it does appear that in regulations the balance is tilted strongly toward "best interests" as opposed to "expressed wishes" representation. All children are supposed to receive a lawyer who functions as guardian ad litem (GAL), mandated to advocate for what the GAL perceives to be the child's best interests. Only if the GAL declares that there is a conflict between what that GAL thinks is best and what the child wants is the judge to consider naming a second lawyer to argue for what the child wants.

It is unclear:

- How often such a conflict is declared
- When such a conflict is declared, how often a second lawyer is named.
- When a second lawyer is named, how vigorously that lawyer argues for the child's wishes.

The whole premise of our system is that justice is most likely to be done when all parties have vigorous advocates seeking the outcome preferred by that party. But in dependency cases often only one party, the CPS agency, has that kind of advocacy. The parents might have the power of advocacy; often they do not. Therefore, the most important party in the entire proceeding, the child, may be effectively silenced – with no one making a vigorous argument for the child's desired outcome. Of course in court, as anywhere else, children sometimes want things that are not good for them. Suggesting that children should have someone vigorously making their case does not mean they always should win.

But determining what is "best" (within the limits of the law) is what judges are for. And they are less likely to get that decision right if one party, in this case, the child, effectively is silenced. There is no need for, and no justice in, having another party usurp the judge's role. This view is substantiated by the American Bar Association. In 2011, the Association adopted a pertinent resolution, drafted by, among others, the Philadelphia Bar Association. This resolution would effectively reverse what appear to be the priorities in Pennsylvania. The resolution calls for naming a lawyer who must advocate for the child's expressed wishes. It says courts should have the option of also naming someone to be a "best interests" advocate.

From the resolution:

... (c) When the child is capable of directing the representation by expressing his or her objectives, the child's lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct. In a developmentally appropriate manner, the lawyer shall elicit the child's wishes and advise the child as to 12 ABA Standards, Part I, Section D-12.

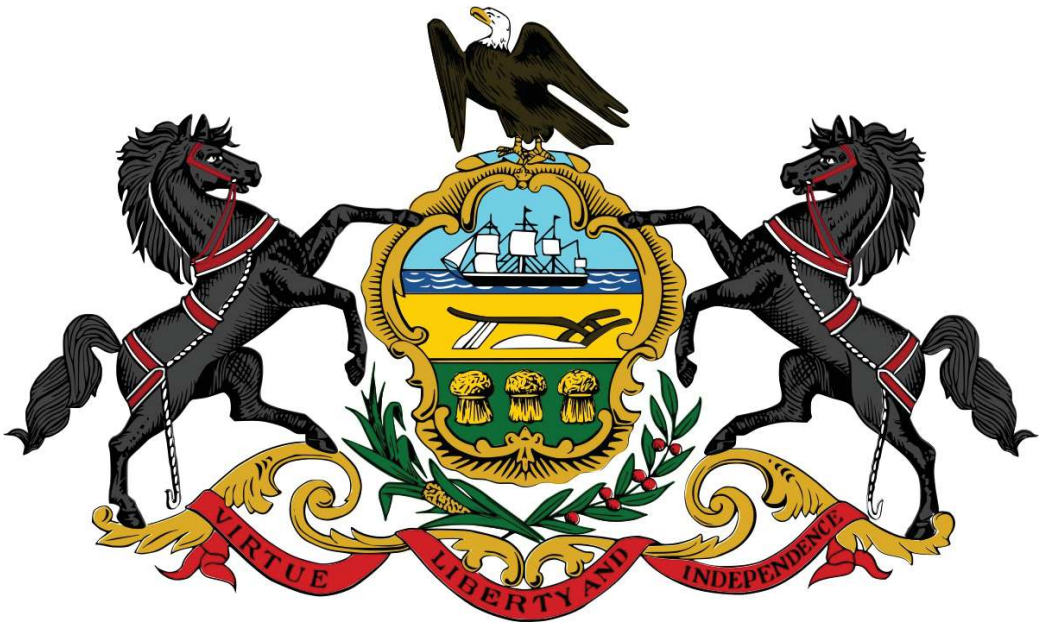
From the commentary related to the resolution:

"The lawyer-client relationship for the child's lawyer is fundamentally indistinguishable from the lawyer-client relationship in any other situation and includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to provide independent advice. Client direction requires the lawyer to abide by the client's decision about the objectives of the representation. In order for the child to have an independent voice in abuse and neglect proceedings, the lawyer shall advocate for the child's counseled and expressed wishes. Moreover, providing the child with an independent and client-directed lawyer ensures that the child's legal rights and interests are adequately protected."

RECOMMENDATION TO THE STATE LEGISLATURE

Children in dependency hearings should be provided exclusively with "expressed wishes" representation from an age where they are old enough to express a rational preference. Nonverbal and preverbal children should be provided with "legal interests" representation.

This should be accomplished through changes in state law and/or regulation, or by order of the court system. To the extent that individual counties may have discretion, the Committee recommends that Philadelphia adopt this approach to representation, even if it is not adopted statewide.



PART THREE

The benefits of opening family court to the press and public.

The Committee drew from many sources to explain why and how opening Family Court will create a more transparent process when families are confronted with the potential removal of their children. Print articles were evaluated and referenced, judges and the academic community interviewed. Also, the experiences of other State jurisdictions were explored. Families who fell under the jurisdiction of Family Court confirmed the findings expressed in this report. What follows is a summary of all of the sources consulted.

"Sunshine is good for children." That is what the late **Judith Kaye, chief judge of New York State's highest court, the Court of Appeals**, said when she ordered hearings in New York's family courts open to the press and the public in 1997. In the 25 years since, here's what has not happened: The names of children were not splashed across front pages or broadcast on the evening news, along with the most embarrassing, most intimate details of their lives. This is what was most feared by those who opposed opening family court.

Here's what HAS happened: The physical facilities of the Family Court – once the worst in the judiciary – were significantly improved. So was the lawyering. There are many reasons for New York's high-quality family representation model (and its excellent results for children). But one of the most important is that the press and the public saw how badly the old model was working.

Four years after the New York courts were open, one-time opponents had become converts. As former Pittsburgh Post-Gazette reporter Barbara White Stack reported in her 2001 series "Open Justice," "the public got access, and that has prompted improvements in the court. At the same time, Kaye says, she hasn't received one allegation that a child has been hurt by open hearings. 'Everyone complains about everything in New York. Is there anything they are not all up in arms about? But we've had no complaints about this,' Kaye says." [10]

Shortly before Stack's story was published, she reports, a family court judge actually pleaded with reporters and others in an op-ed column for The New York Times, to come to court to see the crisis – worsened by a strike by grossly underpaid lawyers.

That judge wrote:

" ...the lack of lawyers for poor children and parents is no abstraction; it is a daily disaster in the lives of many of New York City's children. I invite members of the Legislature, leaders of the bar, academics, advocates for children and striking attorneys to spend a day in the courtroom, to see the human consequences of this impasse." [11]

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10 Barbara White Stack , "Open Justice: Little Girl's Murder Brought New York's Juvenile Court Proceedings into the Light," Pittsburgh Post-Gazette, September 24, 2001.

11 Jody Adams, "A Daily Disaster for Children," The New York Times, February 19, 2001, https://www.nytimes.com/2001/02/19/opinion/a-daily-disaster-for-children.html.

Those who attended the 2019 Philadelphia City Council hearing that ultimately led to the creation of this committee will recall that one Councilmember praised Nicholas Scoppetta, the first head of the New York City Administration for Children's Services, an agency created in response to a high-profile child abuse fatality. Scoppetta was running ACS when the courts were opened and, as Stack points out, had he wanted to, he almost certainly could have closed the courts by ordering his lawyers to object in each individual case. Instead, he supported openness.

Said Scoppetta:

"Ultimately, in trying to reform a system like the child welfare system, which has been terribly dysfunctional for so many years, openness and attention focused on the system are extremely important." [12] In the years since, six men and women have run ACS. None has sought to reverse Judge Kaye's order.

Not only New York has benefited from opening family courts. Since 1980 at least 15 states opened their juvenile/family court hearings in child welfare cases to the press and the public. (In Illinois, the media has had access to these hearings since their juvenile court was created – in 1899.)

Because these states include some of the largest, such as New York, Texas, Florida and Illinois, today, about 43 percent of America's foster children live in states where all or most court hearings are open. Millions of children have been the subject of court hearings in cases of alleged abuse or neglect that were open to the public. Yet in none of these states has there been a demand to close the hearings again. Not by child welfare agencies, not by lawyers for parents, and not by lawyers for children.

What Pennsylvania residents don't know is what else goes on behind closed doors. As an example, a representative from Councilmember Oh's office attended a recent custody hearing at Family Court on September 6, 2021. Ongoing problems were obvious: the same lawyer represented DHS and the mother; the judge did nothing to question the equity of this situation. At the conclusion of the hearing, the DHS representative attempted to withhold relevant documentation related to the case and hearing from the mother. This is but one example of the lack of transparency.

Advocates of open court believe the public should know, arguing that admitting the public to hearings is the only way to expose improper practices and reveal the consequences of inadequate funding for both the court and the child welfare system.

In 2019, former Juvenile Court Judge Baer, now a Justice of the Pennsylvania Supreme Court, told the Legal Intelligencer that in some cases, when the system in Allegheny County was closed, delays and shoddy work in courtrooms led to disastrous results for children, including being left in foster care for up to 18 years as their cases worked through the system.
As in New York, opening courts in Allegheny County has the strong support of the head of that county's DHS, Marc Cherna. He told The Legal Intelligencer, "When it's open like that, when

12 Barbara White Stack , "Freedom to Speak Can Lead to Reform," Pittsburgh Post-Gazette, September 24, 2001.

my workers were unprepared, you'd read about it. So you'd better come prepared. If a judge acted inappropriately, they'd be in the paper."

Perhaps the most egregious situation is one instance where secrecy in Philadelphia Family Court allowed one judge to run amok. There was widespread knowledge that the situation existed, and that the many violations should have been brought to light and corrected. Although the situation was well known, it languished on for months. During her time in the Family Court, Judge Lyris F. Younge amassed a record of rights violations for which she has been consistently chastised by appeals court panels.

Younge, by the accounts of many of those who have appeared before her, treated her courtroom as her personal fiefdom. On several occasions she denied parents the opportunity to speak in cases where their children were being taken from them. Additionally, the state Superior Court has come down on Younge for wrongly jailing a grandmother, holding a child in foster care to force a confession of alleged abuse from her parents, and refusing a sick mother re-entry into the courtroom after she left to vomit. Judge Younge was removed from the family court shortly after the publication of an April 2018 Legal Intelligencer article exposing her history of due process violations. She has since been reassigned to civil court and is currently the subject of an ongoing Judicial Conduct Board investigation. Had Family Court been open, as we advocate, the press would have brought this situation to light immediately and the problem would never have persisted.

However, there is evidence that problem judges are most often not the root cause of the problems that plague Family Court. According to a longtime family lawyer who spoke to the Committee on condition of anonymity, delays caused by incompetence, tardiness and lack of preparation on behalf of some lawyers and social workers are more common—and a bigger problem—in Philadelphia family court than intemperate judges. The experience of many families supports this notion. These identified problems lead to continuances being filed in cases, effectively extending the amount of time a child spends separated from family in foster care. Is that longtime family lawyer right – or is everything just fine in Philadelphia Family Court? We don't know. That's the point. In a democracy, the assurances of people with vast power, such as judges, are often not good enough to ensure that people with no power, such as poor families of color, are getting justice behind closed doors.

Indeed, some of the most persuasive, albeit inadvertent, evidence against secrecy in Philadelphia may come from those who sought to defend it. In a letter to the Legal Intelligencer two judges defending closed courts:

- Claim that family preservation and child safety are opposites that need to be balanced – a false and prejudicial premise that can lead to needless removal of children to foster care. In fact, family preservation almost always is the safer option.

- Refer to the flesh-and-blood human beings who come before them, children and parents alike, as "caseload inventory."

There is no evidence that the fears of opponents have merit, there is strong evidence that secrecy breeds poor work. Therefore, it is urgent that Philadelphia Family Court hearings be open to the press and public. As Justice Baer noted, there already is a presumption that these hearings are open. But whoever wants to open them must petition the court, case by case, well in advance. There is no record of how often this happens in Philadelphia, so it is not known the extent to which the existing presumption is respected. But the existing presumption is inadequate. Advance notice means that people who may usually do a mediocre job have time to, in effect, put on a show.

Justice Baer told the Legal Intelligencer:

"Assume that the press appears and the courtroom is open; nothing precludes one of the other parties—the parent, the child advocate, the county solicitor—from asking to close the courtroom if that's in the children's best interest."

RECOMMENDATION TO THE CITY

The rebuttable presumption of openness of Philadelphia' Family Court should be strengthened by allowing immediate access by the media and the public to all family court hearings, subject to the following conditions:

- Observers shall be required to identify themselves on the record at the start of the hearing and state on the record that they understand the rules and agree that they are not to disclose the names of children who are parties to the proceeding.

- If any party objects to the presence of the media or the public for all or part of the hearing, the judge shall consider whether the objection to opening the hearing rebuts the presumption by clear and convincing evidence, and rule accordingly.

This recommendation does not include how the desired changes can be implemented at Philadelphia's Family Court. Additional research is needed to determine how to achieve the needed openness. There are many facets that are possibly in play: the power of individual judges, county administrative judges, and the procedural rules of the Pennsylvania judicial system.



PHOTO: 6ABC

SUMMARY AND CONCLUSIONS

If unbiased attendees were allowed to observe the routine proceedings in Family Court, a number of things would be readily apparent. There is a critical need for high- quality representation for families who are about to lose custody of their children. Additionally, the children themselves need effective representation, especially with respect to ensuring that the desires of children who have reached the age of reason are adequately presented. Finally, the Court itself needs to be open to the general public and the press. For too long both DHS and the Court have operated in relative secrecy where it is often not apparent what information is being presented, and what is the basis for decisions rendered. An open environment would quickly reveal the various inequities of how the Court and DHS interact.

The facts and analysis presented by both subcommittee reports substantiate the many conclusions offered. The recommendations presented provide DHS, Philadelphia City Council and the Commonwealth of Pennsylvania with realistic remedies that deserve critical evaluation at all levels.



DHS Deputy Commissioner Kimberly Ali, front left, and DHS Commissioner Cynthia Figueroa, front right, testify before City Council hearing on February 12, 2019. (Via the Philadelphia Inquirer)

CASE STUDIES

April McBride

This case involves a single incident of a child being disciplined by her mother. The mother involved had been a mother for 26 years with no prior incidents of abuse or any alleged improper parenting behavior. The mother had no history of being investigated. She had 4 children, one adult who lived away, and three children who lived in the home (ages approximate): a girl, 8; and two boys, 11 and 16.

The incident in question occurred on October 5, 2018 when the mother issued mild physical discipline to her daughter for being disobedient at school on the day in question, and because the child had been verbally abusive to a teacher in school and a general discipline problem before. The mother admitted to giving the child a mild spanking on her legs and hands. As will be described later, as a result of the child complaining to her gym teacher of a painful bottom, and as requested by DHS, the child was sent to CHOP for evaluation the same day. The mother was informed of the overall situation at approximately 12:30. As a result of the incident, DHS told the mother they would come by the residence between 3:00 and 6:30 to conduct a further investigation. DHS did not show up as indicated, and for the next several days there was a series of miscommunications. DHS did call the mother Sunday night the 7th and that she was due in court the next day, Monday October 8. At the hearing, the mother was told that the daughter would be taken into foster care.

Subsequent to the DHS investigation the case ended in Family Court for a disposition hearing, and the daughter was confirmed to be placed in foster care on October 5, 2018. Certain aspects of the proceedings at Family Court will also be described later. During the daughter's time in foster care, the mother alleged improper action on the part of the foster family and complained to DHS. Apparently, DHS objected to the mother's complaints about improper care, and later the mother felt that she was the subject of retaliation by DHS.

The consequences of DHS and Family Court's actions go beyond just the removal of the child from the mother's care and being placed in foster care. As a result of the false and incomplete testimony provided by DHS in Family Court, and the decisions handed down by the court, the mother was placed on the "Registry" and tagged as an abuser. The impact of this was to potentially limit employment opportunities for the mother subsequent to her being placed on the Registry.

Let's examine the facts surrounding a single incident that got the mother listed on the "Registry" of abusers because she administered warranted discipline to a recalcitrant child one morning before school. The mother admits issuing a mild spanking to the child's hands and legs because she was disobedient and verbally abusive to the child's teachers. Once the child got to school, things spiraled downward. The child complained to the gym teacher she could not sit down because of pain that resulted from a bottom spanking the night before. The gym teacher reported the child's complaint and the allegation of child abuse to DHS. As is normal, DHS had the child sent to the Children's Hospital of Philadelphia (CHOP) for evaluation.

The results of the evaluation indicated no broken bones and no obvious indications of abuse. There is no indication that the child had indicated any pain or being unable to sit while in earlier classes that same day – otherwise those teachers would have reported to DHS are required. Since this did not happen, it appears to be a case of inappropriate interrogation of a minor in an attempt to build a case.

Subsequently, DHS questioned the girl's two brothers about the use of physical discipline in the home. DHS's version of the interview was that the older boy stated the mother was guilty of abuse in the home and that the younger boy refused to be questioned. The mother questioned the boys about this assertation, and the boys stated they never corroborated the DHS view of improper parental actions regarding discipline in the home. Yet, it can be assumed that DHS used these interviews as part of the justification given to family court for a ruling of abuse against the mother. It is interesting to note that neither the mother, nor any witnesses were permitted to testify in Family Court on behalf of the mother as to parenting style or character. The mother's mother had traveled from Florida, but was not permitted to make a statement. The secrecy and limited investigative actions by actions by DHS surrounding this case are difficult to understand. However, the secrecy of both DHS and Family Court is consistent with what other mothers who presented their cases before Council in February 2019. Repeatedly, those who testified gave repeated and consistent stories of never being able to tell their side of the story.

In summary, it appears that the actions by DHS were improper because of the flimsy, incomplete and conflicting evidence presented. There was no recourse for the mother to ask for an expanded investigation or to appeal the case. The entire action by the court and DHS may have been illegal because of the lack of due process, and because DHS did not dismiss this case as one of a lying, recalcitrant child once CHOP ruled that there was no indication of physical abuse. It is not clear if an extensive interview of the child was performed by CHOP to find out the true nature of the incident, or how discipline was routinely administered in the household. It is not clear the basis of CHOP's determination of no abuse. Apparently, these matters were never explored in Family Court.

The consequences of this case for the mother are extreme, since her being placed on the Registry was based on one single incident. Being labeled an abuser should be based on much more than the event described in this case. The entire system failed a well-intentioned mother who had her livelihood threatened as a result of improper actions by DHS and Family Court.

Miltreda Kress

This case study involves a mother, her three teen aged daughters, and the mother's paramour that lived with the family. In 2017, the ages of the girls were 11, 13 and 15. These ages will be continued to be used to identify the children, since this case stretches over three calendar years. Previously, based on an anonymous allegation of abuse and neglect in 2015, DHS conducted a home inspection and evaluated the home conditions. No irregularities were noted, in fact, upon leaving the DHS worker complimented the mother positively on the home conditions. However, again in 2017 DHS received additional anonymous allegations of neglect and abuse.

Accordingly, DHS sent a worker to evaluate the situation.

The mother stated in her appearance before City Council in February of 2019, that the DHS worker who came to her door on Sept the 18, 2017 displayed aggressive and unprofessional behavior. However, with nothing to hide, the mother admitted he DHS worker to her home. After entering, the worker spoke in a raised and unprofessional manner to both the mother her paramour, and two of her daughters. The DHS worker directly addressed the mother's paramour unprofessionally, and said things that indicated the worker disapproved of him and his presence in the home.

Continuing in a raised voice the DHS worker stated that she disapproved of the household's "militant style of parenting," meaning she didn't approve the girls being grounded when they got into trouble; or taking away their cell phones, social media and other personal electronics. The DHS worker also stated said she didn't approve of assigning the girls specific chores to be done around the house. Then, the exact words of the DHS worker to the mother, in front of her two daughters, were, "What you need to do mom, is you need to beat them, but don't leave marks." As the DHS worker left the home on the 18th, she told both the mother and the family that she saw no signs of abuse or neglect. This opinion was to change.

On September 19, 2017, the mother received a call while she was at work during which the DHS worker informed the mother that she was removing her children from the home. The stated basis was that the DHS worker claimed that the 14-year-old daughter had made certain allegations regarding the mother's fiancée. Also, the DHS worker stated that she went to 11-year-old daughter's school that morning, spoke to the daughter, and the daughter was alleged to have stated she was "petrified" of the mother's fiancée. This was despite the fact that DHS worker had spoken to the eleven-year-old alone at the home the night before. The mother seriously doubted the truth of statement. However, the mother felt threatened by the DHS worker and if she didn't sign the proposed safety plan the police would be called and she would be arrested for non-compliance with DHS's orders. In a conversation with DHS, the mother was told that the decisions made were based on the agency views of the case, and what was best for the children. Frustrated, the mother reached out to the DHS worker's supervisor about her unprofessional manner and the unfairness of the entire case. The supervisor's response was, "it's your word against hers."

At the hearing that followed, DHS testified to the allegations made by the children based on the interviews that DHS conducted. Although willing to do so, the children were not permitted to testify to the veracity of the allegations, supposedly based on statements made by them to DHS. The Public Defender's association had also interviewed the children and supported the DHS view, and indicated that the paramour could be a pedophile. Additionally, the judge asked it would be good for the children to meet with someone from the Philadelphia Special Victim's Unit (SVU). The DHS worker stated that she didn't think it would be necessary.

In summary, the mother was not allowed to testify, the children were denied their right to testify, and the mother had received ineffective counsel. The mother did not meet the assigned council until immediately before the hearing began. The only testimony allowed at the hearing was that which supported DHS's position. It should be noted here that the judge that presided was eventually removed from Family Court. At the conclusion of the hearing, the mother lost

custody of all three children and the mother and paramour were assigned a number of objectives and classes to be completed prior to a future August 14, 2018 hearing. If these would be completed, the children would be returned to the mother.

This case languished on with nonconsequential hearings for 16 months. During this time there were questions of standing regarding the paramour and additional, ever-changing requirements being assigned to both the mother and her paramour. Courses were completed, some not accepted by the DHS and additional requirements were assigned. The plan, and requirements for re-unification, were constantly re-adjusted. Nothing ever satisfied DHS or the assigned CUA worker that the requirements for reunification were met. During the entire time, the children were never in the custody of the mother, yet DHS and the CUA worker continued to find fault with the performance of the mother. The entire basis for this case continued to be the opinion of the initial DHS worker, and the questionable statements made by the children in September 2017 that were never fully vetted. The apparent DHS focus shifted from actual conditions in the home to the acceptability of the mother to have custody.

On Jan. 23, 2019, the mother again appeared in Family Court regarding whether her children would be returned to her. Offering testimony on behalf of DHS was the CUA worker currently assigned to her case. The CUA worker was less than forthright in her testimony before the court. Truthfully, the CUA worker did state on several occasions that the mother was 100% compliant and that safety risks no longer exist. When asked what safety risks had been evaluated, the CUA worker testified that there were no doors on the home bedrooms. However, during a home visit, the CUA worked saw that the doors were in place. The CUA worker also testified that the children were not being allowed cell phones (a safety risk) and that the general house rules were a safety risk. When cross examined by the child advocate and the mother's attorney as to what "house rules" were considered to be a safety risk, the CUA worker testified that there was to be no further discussion concerning house rules and any associated safety risk. At the conclusion of the hearing, the children were not returned to the custody of the mother.

At this point it is worth explaining where the children were during the 16 months that the case dragged on. One could assume they were each assigned to loving foster homes, or kinship care, but this was not the case. It is also worthy to note that during this entire time, the children repeatedly repeated their request to be returned to the custody of their mother. DHS and CUA could not determine a way to make this happen. Physical abuse and neglect were never substantiated, yet the children remained away from the mother. The summaries provided below were as of February, 2019.

Since the 15-year-old was removed, she was placed in several different homes where she suffered physical, mental and emotional abuse and neglect which she reported. At one point, she was placed in a group home at Carson Valley Children's Aid. She is currently out of Carson Valley, temporarily staying with the mother's aunt, attending a charter school and doing very well academically. However, reportedly, the daughter is in the school's social worker's office very often, crying saying that she wants to be returned to the mother's household and be with her mother.

The 13-year-old daughter was placed with the mother's brother and his girlfriend who actively used drugs. According to the mother, both of these individuals have been in and out of jail, and drug rehabilitation programs. In addition, both lost custody of their own children in the past. At the time this daughter was placed with the mother's brother he had an active warrant. The brother's girlfriend was found to be defrauding the Housing Authority and the Welfare system for many years, including the time the daughter was in the brother's care. At the hearing on January 23rd, 2019, she offered testimony and was laughed at by the City Solicitor. She told the court that after the hearing she was running away, and would refuse to tell anyone where she was until she could be returned to her mother's care. As of the mother's testimony before City Council in February 2019, the whereabouts of the daughter was unknown.

The 11 -year-old daughter was placed with her paternal grandmother and boyfriend, who drinks constantly. She has a criminal record because of an incident a few years ago when she walked into a pizza store where 2 police officers were sitting having lunch and she attacked a young girl that was working behind the counter. She was arrested and charged with aggravated assault, and pled to a lesser charge of simple assault. She was assigned 2 years' probation that has been completed. According to the mother, the paternal grandmother physically attacked the mother at the Turning Points for Children visitation office on Griscom St. after a supervised visit back in Jan. 2018. Apparently, the security guard witnessed the attack and was confused as to why the mother was attacked. As a result of the attack, nothing was done.

The facts of this case are not in dispute and can be verified. There may be a difference of opinion between DHS, the CUA workers and the mother, but the facts are the facts. This case stretched over 16 months with no clear resolution. Requirements for re-unification were constantly changing – hard proof of abuse or neglect were never presented to the court, nor verified by the children in court. During the 16-month period, the children were bounced around and placed in environments that were clearly less desirable than the mother's home. The action by DHS in this case was improper if only looking at the situation of "what was best for the children." The children wanted to remain with the mother, they had insufficient counsel representing them and their desires were never presented properly to Family Court.

The mother alleges lying on the part of DHS and the CUA workers in that they mis-represented certain facts presented to the court over the 16-month period. Lying to the court is illegal. One simple question is revealing. If one would take a giant step back from the events of the 16 months and ask, "What was the bottom-line basis for removal of the three children?" answer -- an anonymous allegation, and the initial opinion of a DHA worker that the parenting style of the household was not to her liking. It may be true the children themselves may not have been model citizens, but it is clear the mother was doing her best to manage a difficult situation. The actions of DHS made matters worse. DHS did not agree with the mother's style, and built a case where they "knew better" and pursued their vision in presentations before the court. The insufficiency of the mother and her paramour to "complete the necessary requirements" became the real issue that prolonged resolution. Clearly, the children were not better off living in the situations where they were placed by DHS. This is a case of an improper solution to a problem that probably never existed in the first place.

Lisa Mofey

This case study involves a mother who tested positive for opioids while in the hospital giving birth. The newborn also tested positive. This is a situation where mandated reporting is required and that DHS be notified. The premise being that the mother could be an addict and if verified, the newborn could be taken from the birth mother. In this case, the mother had a verifiable condition and was under the care of a pain management doctor in addition to her OB/GYN physician. Proper records to substantiate this were available to the hospital and if a proper review had been conducted, reporting this case to DHS might have been avoided. Almost always when patients are admitted to the hospital their medical history is made available which would also include all prescription medication being taken.

A DHS case worker visited the mother in the hospital as a result of being notified. During the visit, the mother explained the situation and made available to the DHS worker her pertinent medical records. Apparently, the worker said the case would be reviewed with a view to closing the case if the information were substantiated and that taking opioids was part of the mothers proper medical care. Several days later, the DHS worker contacted the mother and told her that her supervisor said the case could not be closed since the hospital stated that the mother did not receive a medical briefing upon discharge and, in addition, the hospital stated the mother had not been under proper pre-natal care.

The mother tried to explain the situation to no avail, and felt harassed by the DHS worker. There were several additional visits by DHS to the house, and apparently no discrepancies were found. Finally, the mother told DHS she would not entertain any additional DHS visits unless the mother's lawyer was present. At one point, DHS then petitioned the court that the newborn be removed from the mother's custody for medical neglect. DHS lied to the court about what there were told by the hospital, and/or failed to properly research, or accept the medical records that were provided by the mother. As a result, the judge ruled that the newborn be removed from the mother's custody. In addition, DHS contended that the other four children had not been vaccinated or received proper medical care, which was not true, but strengthened DHS's case for medical neglect of all the children.

At one point, the mother and fiancée were arrested, strip searched, handcuffed and spent 8 hours in jail before being released. With the possibility of losing the other four children, the couple retained proper legal representation. At the custody hearing, the judge would not allow any testimony or submission of records that could have rectified the situation and ruled that the other four children be removed from the mother's custody. The couple's lawyer repeatedly petitioned the court for reconsideration, but the petitions were denied. It is important to note at this point, the Judge's decision was totally based on the DHS testimony that was either flawed, false, or a combination of both. The situation of all children being removed from custody of the mother persisted for a period of about 8 months. During this time, the mother was allowed supervised visits only 2 times a week and was denied the ability to breast feed her children. These conditions imposed by the court did not appear to be warranted based on the facts of the case.

Judge Younge had been assigned this case from the outset and consistently ruled against the parents. However, Judge Younge was eventually removed from the bench and when this occurred a new judge was assigned to the case. The couple's legal representation successfully filed for a rehearing of this case before the new judge. At the first hearing for reconsideration, the judge immediately returned custody of the children to the mother the very same day.

The lessons learned from this case are many. If the hospital had exercised some discretion, this situation would never been a case worth investigating. More importantly, the mother is convinced that DHS lied to the court about what the hospital had told DHS. DHS's entire case of medical neglect rested on facts in error supposedly provided by the hospital that were misrepresented by DHS in testimony before the court. Since DHS had been given the mother's medical records at the outset, it is not clear why DHS would then fabricate a case of medical neglect when clearly better evidence was available.

One possible explanation is that when the opioid issue didn't fly, the DHS worker and supervisor created a new and different story to support removal of the children that was supposedly supported by information from the hospital. This is clearly illegal. One would have to assume the judge never asked if proper medical records existed to corroborate the claim of medical neglect. The joint actions of DHS and the Judge were an issue of significant regulatory and judicial overreach. The failure of the judge to hear from the mother was improper, and a violation of due process. This entire case takes on an air of illegality from start to finish as the DHS workers knowing lied and misrepresented the facts of the case. This conclusion is supported by the swift action by the second judge to immediately dismiss the entire case when the true facts were known.

Yolanda Bryant

This is a complicated case study that involves a maternal grandmother (MGM) and her three grandchildren. Daughter #1 had a daughter (GD #1) aged approximately 2. Daughter #2 had two children, a son (GS) aged approximately 10 and a daughter (GD #2) aged approximately 8. The above ages are as they existed at the time of the events described here.

Daughter #1 had willingly surrendered care and custody of GD #1 at the time of the child's birth to the MGM. During the two years that MGM cared for GD #1, there were no contentious issues between MGM and Daughter #1. Additionally, there were no documented issues of concern by DHS related to any aspects of care rendered by MGM for the two years she cared for GD#1.

At the start of the events described here, Daughter #2 – who lived with a boyfriend – also had custody of GS and GD #2. Unknown to MGM, for a period of approximately five months these children were not in school and had been left at an adult mental health facility by Daughter #2 who did not reside at the facility, but did visit the children periodically. At one point in approximately October 2018, the GS got hold of a cell phone and took a picture of where he was located and texted MGM to come and get him and his sister and take them away from where they were on Ogden Avenue.

With the assistance of another family member, MGM went to the Ogden Avenue location, removed both children and took them to MGM's residence. During the approximate three days the two children were with MGM, they told her about the conditions at Ogden where they slept on the floor, used a bucket for toileting, and were improperly fed during the entire time they were there. Also, both children relayed stories of alleged sexual abused by Daughter #2's boyfriend. In addition, due to the traumatic situation, GD #2 had lost control of her bowels, a situation that persisted for approximately the three days the children were with MGM.

MGM was concerned about the physical condition of both children since the problem with GD #'2 bowel control persisted. Therefore, MGM took both children to St. Christopher's hospital for evaluation one evening. The hospital staff, including a physician and a health care worker examined both children. Written reports were prepared that substantiated the stories told by both children to MGM. Since the stories involved alleged sexual abuse and neglect, the social worker contacted DHS and recommended that children be released to MGM. Since the MGM had exhibited proper custodial care for GD#1 for two years, it was logical to assume that the other two children would receive proper loving care in a familiar family environment. The DHS worker who took the intake call, told St. Christopher's staff not to release the children to MGM as they needed to evaluate the situation. At approximately 2AM, DHS told St. Christopher's that MGM was determined to be unfit for temporary custody and that the children were to be given over to DHS. Therefore, the children were removed from custody of MGM and given over to DHS.

Common sense would dictate that the children should have been given back to MGM, until a proper determination of MGM's fitness could have been made that would certainly have involved a home visit and interview of MGM to determine her fitness. Instead, DHS further increased the trauma experienced by the children by placing them in an unfamiliar environment in the middle of the night, after what they had just endured for the past several months. The proper action for a caring, empathetic agency would have been to temporarily release the children to the MGM. This is based on the fact that St. Christopher's recommended release to MGM, and staff had documented the situation that Daughter #2's boyfriend was the alleged sexual abuser, not MGM, and that MGM had a history of providing a caring environment for GD #1. It is curious to note the urgency of DHS's decision in the middle of the night to find the MGM unfit, and that it is implicit that in just two hours, in the middle of the night, DHS determined that a better situation for the children was to be in DHS care until ostensibly the sexual abuse allegations were investigated. Not absolutely illegal, but certainly highly questionable.

Procedures cannot be written to cover every situation, and in all probability a procedure does not cover the specific situation described here. So it is unlikely the initial decision by DHS to remove the children in the middle of the night would be determined to be illegal, and a violation of procedures, if investigated. However, it certainly would be considered improper when taking a hard look at the facts surrounding this situation since "what is best for the child" would certainly apply here. MGM filed a Right to Know (RTK) for documents to determine: 1) On what basis was she determined to be unfit for temporary care at the time the decision was made; and 2) What was the ultimate disposition of the alleged sexual abuse against Daughter #2's boyfriend. Initially, the RTK was denied, and it is not clear if DHS ever responded to these aspects of the several RTK requests submitted related to MGM's case.

It is interesting to note that several months later GD #2 was removed from MGM's care with a false court order, presented at the time the child was taken from her residence. To this day, the status of GD #1 remains unresolved. Additionally, for DHS to make the decision it did when it assumed custody at 2AM, and as quickly it did, would tend to indicate some form of prior knowledge by DHS of Daughter #2, the boyfriend and the two children involved. On its face, an improper internal decision may have been made, as it was known that the boyfriend had relatives who worked for DHS. This situation could have created a conflict of interest on the part of DHS that would be worth investigating. The overall matters described by this case study are not different form other forms of alleged retaliation practices and failure to act in the best interest of the child, as was testified to by other mothers at the February 2019 hearing.

Kyeesha Lamb

This case study involved a mother who took her son, aged 4 months, to the hospital on January 4, 2021. The boy had fallen out of bed and injured his arm that was not moving properly. At the hospital, an x-ray confirmed that that arm was broken. As a precaution, the hospital suspected abuse and ordered a full body x-ray that revealed the boy apparently had a broken femur (leg bone). Hospital staff said that the broken leg was inconsistent the story that he fell and out bed and that they suspected abuse and that DHS would have to be notified.

A DHS case worker met with the mother an abruptly told her "In your case, you are guilty until proved innocent," or words to that effect. The DHS worker told the mother to bring her other son, aged 16 months, to the hospital to be x-rayed. When the mother resisted complying, the DHS worker said they would have the police contact the child's father to bring the boy in. The mother complied, and the older son was brought in and x-rayed. No broken bones were found. Hospital personnel told the mother to bring the younger son back in 3 weeks to have a follow-up x-ray done on his leg.

At this point DHS wanted to remove the children from the mother's care and the mother set about finding a family member who could temporarily care for the two boys. Apparently, a satisfactory solution could not be worked out with the boy's grandmother, or the mother's brother. The case worker told the mother that she was out of time and had been working on the placement too long and that her hands were tied. At 10pm on January 7th, the children were removed from the home and placed in foster care. Time elapsed from CHOP visit to foster care for the children was 3 days. The mother tried to give some instructions to the DHS worker for care of her children, but the DHS worker said, "I don't have to listen to you, because you are under investigation for abuse or neglect."

DHS told the mother to appear in court the next morning, January 8. At the hearing, the court ruled that both parents were under a protective order, based on DHS's written report. The mother was not allowed to speak at the hearing, nor was she given a copy of the report. Very little information was provided to the mother about the disposition of her case, so she began to make calls to find out as much information as she could. She was able to find out her next court date, her CUA worker's contact information, and on her own initiative signed up for parenting classes to expedite the return of her children. She visited her children when allowed and brought things for them.

Twice the mother was told that she was about to get her children back, because the allegation of abuse or neglect was unfounded. Apparently, the problem with the femur x-ray was an irregular growth pattern, not abuse. At this point, DHS shifted focus and said that the problem was really domestic violence between the mother and the father. This was based on false information that the parents of the children's father had provided. The mother never determined who lied, DHS or the father's parents, but the allegations were again found to be unwarranted. It was very difficult for the mother to gain information from either the DHS worker or her supervisor regarding return of her children.

The decision to place the children in foster care in just three days was clearly premature. Experienced medical personnel should have prevailed on DHS to delay the removal of the children to foster care since further evaluation was needed to determine what was really going on with the child's leg. What appears to have happened is that DHS wrote the report for the court that two broken bones clearly indicated child abuse – case closed. No extensive examination of the case could have possibly been conducted in just three short days.

There appears to be no explanation as to why the judge would not allow the mother to tell her side of the story. The attitude of the DHS case worker, and the difficulty for the mother to gain any information on her case is hard to understand. "What is best for the children," took a back seat in that they ended up in foster care in just 3 short days. The way this case was handled was clearly improper – the proof being the placing of the children in foster care was never warranted, as the children have now been returned to the mother. What is even more curious was the attempt by DHS to substantiate continued placement in foster care based on false statements of domestic violence. Somebody was lying, and this is clearly illegal behavior since the impact of the lies would have been to sustain improper removal of the children to foster care.



Yolanda Bryant, member of the Special Committee on Child Separations, sifts through letters compiled from DHS, Family Court and others in her years long battle to resume custody of her five children. (Image via Yolanda Bryant)


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