PENNSYLVANIA
PARTNERSHIPS
FOR CHILDREN

116 Pine Street, Suite 430
Harrisburg, PA 17101-1244

TO: The Honorable Members of the Senate Aging and Youth Committee

FROM: Joan L. Benso, President & CEO

DATE: June 5, 2013

SUBJECT: Senate Bill 20 (P.N. 679) – Definition of Child Abuse

---

On behalf of Pennsylvania Partnerships for Children (PPC), I would like to offer comments on Senate Bill 20 (P.N. 679). We applaud the Senate Aging and Youth Committee for taking up the critically important issue of defining child abuse, for incorporating recommended language from the Task Force on Child Protection, and for spending the time necessary to fully consider the best path forward.

We respectfully recommend the following:

- Include the definition of "bodily injury" in this bill. We recognize the Senate's package of child protection bills includes such a definition in SB 31.
- Add the "knowing" standard of culpability in all instances where the standards of "reckless" and "intentional" are used. There are differing legal opinions on whether the standard of "knowing" is embedded in both "intentional" and "reckless." Adding "knowing" provides greater clarity and avoids creation of an unintended loophole that could result in substantiating child abuse when a person may act in a "reckless" manner, but may be unaware they have done so. An example of this might be an intellectually disabled adult who may put a child at risk of injury, yet be unaware of the potential risk. Conversely, clarity is essential to avoid unnecessary appeals of child abuse substantiations. It is critical that child welfare workers have a definition that does not require legal debate on when and how it applies.
- The inclusion of the "per se" acts of child abuse (paragraph 2, beginning on page 2) are essential to help clarify what constitutes abuse, but SB 20 should incorporate the following:
    - Apply the "bodily injury" standard to the list of "per se" acts of child abuse, which would make committing child abuse dependent on both perpetrator acts and resulting effects on children.
    - Remove reference to the **Sex Offender Registration and Notification Act** (SORNA) registry from the "per se" list and replace with, "Creating a substantial and unjustifiable risk of sexual abuse or exploitation of a child through any recent act of failure to act." More generic language could capture instances where children are being put at risk by having contact with individuals who are not registered under SORNA.
    - Limit situations where certain drug and alcohol violations apply by requiring these instances to be verified by law enforcement investigation. Children and youth caseworkers should not be required to make a formal determination of child abuse based on their judgment of whether a criminal violation has occurred.

- Include the definition of "sexual abuse and exploitation" as outlined by the task force and incorporated into HB 726. This definition provides further clarity of what constitutes these forms of child abuse.
- Incorporate the lower threshold of "reasonable likelihood" in the mental injury provision and use the "negligent" standard of culpability for both mental injury and serious physical neglect.
- Remove the vague and potentially overly broad "attempt to engage in any conduct" language. An "attempt" to engage in an act of child abuse seems unclear and subjective, which could result in inconsistent and inappropriate substantiation of child abuse.
- Apply the standards of culpability to "failure to act."
- Remove references in SB 20 to the Crimes Code for individuals responsible for the care or supervision of a child. Substantiation of abuse under the Child Protective Services Law does not mean a crime has been committed, and this lower threshold for government intervention is critical to maintain in order to protect the safety of children. Relying on the higher standard of proof in the Crimes Code likely would result in affording children less protection from child abuse and neglect.
    - The reference to Section 509 of the Crimes Code in subsection (d) beginning on page 6 creates a loophole for parents to abuse their children to a greater degree than others who are responsible for the care of children.
    - To remedy this problem, PPC suggests striking subsection (d) and replacing with the following language:
        - *(d) Reasonable force by parents and guardians and other authorized persons. – Notwithstanding subsection (c), this chapter does not restrict the general recognized existing rights of parents, guardians and persons authorized by a parent or guardian to use reasonable force for supervision, control and discipline when raising children. Such force shall not be considered child abuse, provided that force is used in a reasonable and controlled manner, and considering the physical and mental maturity of the child and physical and mental condition of the child. This subsection shall not be construed to supersede any law or regulation prohibiting or regulating the use of disciplinary force or physical punishment by certain individuals who are not parents or guardians, including, but not limited to, foster parents, school employees, child care employees and employees of residential facilities.*
    - Using this language for subsection (d) also addresses PPC's concern relating to the physical and mental maturity of children, as well as their physical and mental condition. The type and intensity of any form of discipline should take into account a child or adolescent's health and development level.
    - Limit the religious beliefs exclusion to parents or guardians in their unique roles as the primary caretakers for a child.
    - Strike language in the "peer-on-peer contact" exclusion requiring mutual consent when involving injuries from a fight or scuffle. Such incidents are rarely "mutually entered into by mutual consent."
- Add an exclusion for "defensive force" to cover individuals who are not responsible for the care or supervision of a child, but may need to appropriately protect themselves or someone else from an act of aggression, as follows:
    - *(g) Defensive force. – Reasonable force for self-defense or the defense of another individual, consistent with the provisions of 18 Pa. C.S. §§ 505 (relating to use of force for self-protection) and 506 (relating to use of force for the protection of other persons), shall not be considered child abuse.*

We recognize the difficult and critically important task of appropriately defining child abuse. We hope our comments facilitate your efforts. Please let us know if we can be of assistance moving forward.

Thank you for considering our comments on Senate Bill 20.