



TESTIMONY REGARDING THE FOSTER CARE SYSTEM IN PENNSYLVANIA

PRESENTED TO THE HOUSE CHILDREN AND YOUTH COMMITTEE

APRIL 16, 2019

BY

**BRIAN BORNMAN, ESQ.
PCYA EXECUTIVE DIRECTOR**

My name is Brian Bornman. I am the Executive Director for the PA Children and Youth Administrators Association, an affiliate of the County Commissioners Association. Our association consists of all 67 county child welfare agencies and a number of associate members, primarily provider agencies. I have worked in the field of social work since 1988 in various roles, including those of child therapist, a child welfare caseworker, and legal counsel for a county child welfare agency. I thank you for the opportunity to testify before this body and appreciate the efforts being made here to address the critical issues impacting children and families in the Commonwealth.

As I realize that this committee has a number of new members, I wanted to take an opportunity to do a brief overview of the laws impacting child welfare and the process by which the system operates. While there are numerous federal laws impacting child welfare at the federal and state levels, including the Adoption and Safe Families Act, Child Abuse Prevention and Treatment Act, Indian Child Welfare Act, Multi-ethnic Placement Act, Every Student Succeeds Act, Families First Prevention Services Act, and a host of others, I want to focus primarily on the three laws most normally utilized by the county child welfare agencies in day to day operations.

The Child Protective Services Law (CPSL) is what many think of when they consider child protection in PA. Most of the changes that came from the Governor's Task Force on Child Protection, following the Sandusky prosecution, were amendments to this law. This is really the law dictating who is a mandated reporter, the means by which reports must be made, how investigations are categorized, appeal rights and processes regarding referral outcomes, and who is maintained on the child abuse registry. Since I believe Deputy Secretary Utz will be covering this in greater detail, I will not cover this area extensively, but would be happy to provide additional information or feedback should this committee desire.

While this law is critically important in ensuring that child abusers do not have the opportunity to be able to work with children in the future, this law is not really what provides the mechanism for

county agencies to be able to petition the court to assume custody in order to protect children who are being abused. The law that provides those processes is the Juvenile Act. 42 Pa.C.S. §6301, *et seq.* It is important to note the purposes of the Juvenile Act in §6301(b). Those are set forth below.

(1) To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained.

(1.1) To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter.

(2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety, by doing all of the following:

(i) employing evidence-based practices whenever possible and, in the case of a delinquent child, by using the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child; and

(ii) imposing confinement only if necessary and for the minimum amount of time that is consistent with the purposes under paragraphs (1), (1.1) and (2).

(4) To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

These purposes are really the guiding principle by which the entire system operates. Maintaining family unity is always top priority, if it can be done safely. When a child can't be maintained in their home safely, their removal from that home should always be for least amount of time possible to provide rehabilitative services necessary to reunify the family safely and the child should be placed wherever will cause the least detrimental impact to the child, leading to a strong preference for kinship placements.

There is often a misconception that County Children and Youth Agencies remove a child, but it must be noted that CYS staff do not have the authority to remove children. In order for a child to be removed from a parent, the court must issue an order authorizing such a removal. The separation of a child from their parent, even for their own safety, is vigorously protected by both the United States and Pennsylvania Constitutions. As such, there are numerous protections built into the Juvenile Act to ensure that such removals are absolutely necessary and that no less invasive efforts would be adequate to protect the child.

Some of these protections include a hearing before the court within 72 hours to determine whether allowing the child to remain in their home would be contrary to their welfare and whether the agency has made reasonable efforts to prevent the removal of the child from the home or that

there was an emergency situation such that reasonable efforts could not have been made. §6332. Additionally, a *Guardian Ad Litem* must be appointed for the child for all proceedings, whose duty is to represent the best interests of the child. §6311. At the 72 hour hearing, the court will determine whether the child should remain in care until a dependency hearing is held, within ten days, or whether the child will be returned home to their parent or caregiver. There are, of course, notice provisions that require parents and GALs be notified at every step of the process. These notices set out the parents' rights to counsel and to have counsel appointed, if they are unable to afford counsel, as well as how to request counsel.

Following the 72 hour hearing, although frequently filed concurrently with the shelter care application, the agency must set out the grounds for why they believe the child to be "Dependent." A "Dependent Child" is specifically defined in the Juvenile Act in §6302 and is set forth below.

"Dependent child." A child who:

- (1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;
- (2) has been placed for care or adoption in violation of law;
- (3) has been abandoned by his parents, guardian, or other custodian;
- (4) is without a parent, guardian, or legal custodian;
- (5) while subject to compulsory school attendance is habitually and without justification truant from school;
- (6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision;
- (7) has committed a delinquent act or crime, other than a summary offense, while under the age of ten years;
- (8) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (6);
- (9) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (6); or
- (10) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

Within ten days of the 72 hour hearing, there must be a hearing at which the agency must present evidence to the court that the child is a "Dependent Child." §6341. If found to be Dependent, there must be a Dispositional Hearing to determine the placement of the child and the services to be

provided. Additionally, a permanency goal is determined for the child, with Reunification with Parent being the most preferred goal. At the dispositional hearing, the court has broad latitude to determine the disposition that best meets the needs of the child, including a return with the parents, with or without legal custody, placement in the custody of the agency, or a transfer of custody to another individual that resides within or outside of the Commonwealth. §6351.

Before a child can be removed from their parents at a dispositional hearing, there must be specific findings by the court that must be put on the record. These are set forth in §6351(b) and reproduced below. The court is also to ensure that visitation occurs between siblings that were removed, in the event they are not placed together.

(b) Required preplacement findings.--Prior to entering any order of disposition under subsection (a) that would remove a dependent child from his home, the court shall enter findings on the record or in the order of court as follows:

(1) that continuation of the child in his home would be contrary to the welfare, safety or health of the child; and

(2) whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home, if the child has remained in his home pending such disposition; or

(3) if preventive services were not offered due to the necessity for an emergency placement, whether such lack of services was reasonable under the circumstances; or

(4) if the court has previously determined pursuant to section 6332 (relating to informal hearing) that reasonable efforts were not made to prevent the initial removal of the child from his home, whether reasonable efforts are under way to make it possible for the child to return home; and

(5) if the child has a sibling who is subject to removal from his home, whether reasonable efforts were made prior to the placement of the child to place the siblings together or whether such joint placement is contrary to the safety or well-being of the child or sibling.

Following an adjudication of dependency and disposition hearing, a Permanency Review must be held at least every six months, although many counties hold these reviews on a much more frequent basis in order to ensure the case is handled expeditiously and children not remain in care any longer than necessary. At the permanency review, the court must make numerous findings regarding compliance with permanency plans designed to address needs, whether reasonable efforts have been made to achieve the permanency goal, the appropriateness of the plan and permanency goal, whether the child is safe, and what services are necessary for children over 14 to be able to successfully transition to adulthood. §6351 (e), (f), & (g). These permanency reviews will continue throughout the life of the case, with court oversight at every step of the process. There may also be a Court Appointed Special Advocate appointed for the child.

In the small percentage of the cases in which the child is unable to be reunified with a parent, the other law greatly impacting child welfare comes into play. This law is the Adoption Act, 23 PA.C.S. §2101, *et seq.* The Adoption Act sets forth the conditions and processes by which there can be a petition filed to terminate parental rights in order to free a child for adoption. There are, once

again, substantial due process protections built into the Adoption Act. These hearings are held in the Orphan's Court, rather than Juvenile Court, although both are part of the Court of Common Pleas. The Adoption Act sets forth the specific grounds by which parental rights can be terminated. These are contained in §2511 and are set forth below.

Grounds for involuntary termination.

(a) **General rule.**--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

(3) The parent is the presumptive but not the natural father of the child.

(4) The child is in the custody of an agency, having been found under such circumstances that the identity or whereabouts of the parent is unknown and cannot be ascertained by diligent search and the parent does not claim the child within three months after the child is found.

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

(6) In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child.

(7) The parent is the father of a child conceived as a result of a rape or incest.

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

(9) The parent has been convicted of one of the following in which the victim was a child of the parent:

(i) an offense under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

(ii) a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault);

(iii) an offense in another jurisdiction equivalent to an offense in subparagraph (i) or (ii); or

(iv) an attempt, solicitation or conspiracy to commit an offense in subparagraph (i), (ii) or (iii).

(10) The parent has been found by a court of competent jurisdiction to have committed sexual abuse against the child or another child of the parent based on a judicial adjudication as set forth in paragraph (1)(i), (ii), (iii) or (iv) or (4) of the definition of "founded report" in section 6303(a) (relating to definitions) where the judicial adjudication is based on a finding of "sexual abuse or exploitation" as defined in section 6303(a).

(11) The parent is required to register as a sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders) or to register with a sexual offender registry in another jurisdiction or foreign country.

(b) Other considerations.--The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

There must be a two part analysis when considering whether the grounds have been met for the termination of parental rights. Not only must one of the grounds be met under §2511 (a), but there must be a best interest analysis under §2511(b).

While there are numerous other laws, court rules, and regulations directing how service delivery occurs in the child welfare system, those covered above will provide a good understanding of how the process actually works. While referrals come in through ChildLine, and are investigated so that a finding can be kept on the registry, it is the Juvenile Act and Adoption Act that protects the children at risk and allows them to move toward permanency, if they can't be safely reunified with a parent.

With the framework of laws briefly covered, I want to propose that we all consider how we discuss the challenges of the child protection system. The practice of child welfare has always been a difficult one, with caseworkers being subjected to very emotionally challenging situations. These are people who care deeply about the children and families they serve and they hate to see children being harmed. The burnout rate for new caseworkers can be quite high due to the stress of work and the constant concern regarding whether the right decision was made about the safety of a child.

It must be remembered that the decision of whether a child should be removed from a home represents no good options. Even when a child is unsafe and may have experienced severe abuse, they still have a relationship with their parent or caregiver and suffer a loss when that separation takes place. In some cases, the abuse is so severe that the detrimental effects of disrupting the

relationship between a parent and child is obviously warranted; however, in many situations the outcome is not as crystal clear as many believe.

Consider a 4 year old with two black eyes. He tells a school nurse that "daddy hit me" and nothing else. The parents tell the caseworker that the father opened a door while the child was running by and the door knob hit him in the face. No one else is available to provide information. How does one proceed? If the father purposely struck a child in the face hard enough to cause two black eyes, that is a high risk of additional, potentially life threatening, abuse. If it was an accident, a removal from the home would be traumatic for the parents and child alike. More often than not, these are the type of situations that caseworkers face. While you may have the best intentions, access to medical professionals, and a children's advocacy center to assist with the best child interview you can get, what you don't have is a crystal ball.

The one thing that can be relied on with certainty is that if the child is left in the home and the worst happens, the headline will read "CYS leaves abused child to their fate. Why are they failing our children?" If the child is removed from the home, the headline reads, "CYS traumatizes child and family over common household accident." This pervasive second guessing can be extremely difficult for staff to handle.

This is not to say that the failings of the system should not be evaluated and efforts made to improve. To be sure, any system in which human beings are being asked to evaluate other human beings and determine whether they pose a risk will always have its mistakes. I would suggest though, that more thought be given to how these are characterized in legislation and the press. For child welfare professionals, who have committed their careers to trying to help those most at risk, representations of their work as "Broken", "Failure", and "Apathetic" can be devastatingly demoralizing. In truth, "Overworked", "insufficiently resourced", and "unable to determine the future" may be more accurate.

Everyone involved with serving children and families wants to see the system improve. There is no benefit to DHS, the counties, or casework staff to seeing children harmed and, in my experience, they all make the best decisions they can with the information that is available to them and within the constraints of the laws they work under, but that information is nearly always incomplete and the laws are designed to protect parental rights, unless there is strong evidence that the relationship must be impeded upon in order to protect a child. That being said, we wouldn't want it any other way. The relationship between a parent and child should be protected to the highest degree as it is the most fundamental relationship we have.

County agencies have created some of the most innovative programs to address the needs of the children and families they serve. From dramatic increases in the use of kinship resources, to having drug and alcohol evaluators embedded with child welfare, to grants for tiny homes to provide older youth with housing that would continue long after CYS involvement ends, agencies are always looking at the possible ways that families can be better served.

It is important to think of human services as if you are building a home. Establishing safety, security, and healthy nurturing relationships is the foundation upon which a lifetime of development will take place. If you think of a quality education as the walls, you will be unable to build those walls if children are persistently experiencing trauma from abuse or neglect. Each of the human needs must

be met before further development can take place, with the ultimate goal of building a functioning member of society who can be productive and healthy. The child welfare system looks to protect the physical bodies of children, to be sure. That is important so that children can be safe, but beyond that, children need to be loved and supported, they need relationships that give them meaning and support, they need to develop a strong foundation and know that their safety and nurturance needs will be met consistently. If that is done, then they can develop and learn.

We need to help them develop skills that will allow them to function as adults, such as learning to drive, manage their money, and obtain housing. We need to assist them with learning skills to have meaningful employment, be that college or vocational education. I am glad to be working with the counties at a time when these have been areas of focus. We are so much further along now than we were ten or fifteen years ago. While it takes time to improve the system, it is better than it has been in the past and everyone is striving to improve going forward. But we must realize that the system is, in the end, people doing the work.

I want to thank this body for holding this hearing to learn more about our foster care system and look forward to working with you as you consider legislation in the future. I especially want to thank Rebecca, Jazmyn, Skylar, and Caitlyn for agreeing to testify today. I think it is critically important for you, who are making the important decisions regarding the laws impacting child welfare, to hear from those who are most impacted. Lastly, I want to thank all the professionals in Pennsylvania who have committed their lives to protecting and caring for the at-risk and abused children in the state

Thank you.

Brian C. Bornman, Esq.
PCYA Executive Director
bbornman@pacounties.org