

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 726 Session of 2013

INTRODUCED BY PETRI, WATSON, BISHOP, R. BROWN, CONKLIN, EVERETT, FABRIZIO, FARRY, GROVE, HARHART, C. HARRIS, HESS, KORTZ, MARSICO, MILLARD, MURT, O'NEILL, ROZZI, SANTARSIERO, SAYLOR, HARKINS AND BIZZARRO, FEBRUARY 14, 2013

AS REPORTED FROM COMMITTEE ON CHILDREN AND YOUTH, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 11, 2013

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child protective services, further
3 providing for definitions; PROVIDING FOR EXCLUSIONS FROM <--
4 CHILD ABUSE; AND FURTHER PROVIDING FOR DISPOSITION OF FOUNDED
5 AND INDICATED REPORTS, FOR RELEASE OF INFORMATION IN
6 CONFIDENTIAL REPORTS and for investigation of reports; and <--
7 providing for factors to consider when investigating child
8 abuse.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. The definitions of "child," "nonaccidental," <--
12 "recent acts or omissions," "serious physical injury" and
13 "sexual abuse or exploitation" in section 6303(a) of Title 23 of
14 the Pennsylvania Consolidated Statutes are amended, subsection
15 (a) is amended by adding definitions and subsection (b) is
16 amended to read:

17 SECTION 1. THE DEFINITIONS OF "CHILD," "NONACCIDENTAL," <--
18 "PERPETRATOR," "PERSON RESPONSIBLE FOR THE CHILD'S WELFARE,"
19 "RECENT ACTS OR OMISSIONS," "SERIOUS PHYSICAL INJURY" AND

1 "SEXUAL ABUSE OR EXPLOITATION" IN SECTION 6303(A) OF TITLE 23 OF
2 THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED, SUBSECTION
3 (A) IS AMENDED BY ADDING DEFINITIONS, SUBSECTION (B) IS AMENDED
4 AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

5 § 6303. Definitions.

6 (a) General rule.--The following words and phrases when used
7 in this chapter shall have the meanings given to them in this
8 section unless the context clearly indicates otherwise:

9 * * *

10 "Bodily injury." Impairment of physical condition or
11 substantial pain.

12 "Child." [Includes] An individual under 18 years of age. The
13 term includes a newborn.

14 * * *

15 "INTENTIONALLY." THE TERM SHALL HAVE THE SAME MEANING AS <--
16 PROVIDED IN 18 PA.C.S. § 302 (RELATING TO GENERAL REQUIREMENTS
17 OF CULPABILITY).

18 ~~"Nonaccidental." [An injury that is the result of an~~ <--
19 ~~intentional act that is committed with disregard of a~~
20 ~~substantial and unjustifiable risk]~~ Conduct that is knowing or
21 intentional or is committed with conscious disregard of a
22 substantial and unjustifiable risk.

23 "KNOWINGLY." THE TERM SHALL HAVE THE SAME MEANING AS <--
24 PROVIDED IN 18 PA.C.S. § 302 (RELATING TO GENERAL REQUIREMENTS
25 OF CULPABILITY).

26 * * *

27 ["NONACCIDENTAL." AN INJURY THAT IS THE RESULT OF AN
28 INTENTIONAL ACT THAT IS COMMITTED WITH DISREGARD OF A
29 SUBSTANTIAL AND UNJUSTIFIABLE RISK.]

30 "PEER." A PERSON SIMILAR IN AGE, GRADE LEVEL, PHYSICAL

1 MATURITY AND DEVELOPMENTAL ABILITY TO ANOTHER.

2 "PERPETRATOR." A PERSON WHO HAS COMMITTED CHILD ABUSE AND IS
3 A PARENT OF A CHILD, A PERSON RESPONSIBLE FOR THE WELFARE OF A
4 CHILD, AN INDIVIDUAL RESIDING IN THE SAME HOME AS A CHILD, A
5 RELATIVE OF THE CHILD OR A PARAMOUR, SPOUSE, FORMER PARAMOUR OR
6 FORMER SPOUSE OF A CHILD'S PARENT.

7 "PERSON RESPONSIBLE FOR THE CHILD'S WELFARE." A PERSON WHO
8 PROVIDES PERMANENT OR TEMPORARY CARE, SUPERVISION, MENTAL HEALTH
9 DIAGNOSIS OR TREATMENT, TRAINING OR CONTROL OF A CHILD IN LIEU
10 OF PARENTAL CARE, SUPERVISION AND CONTROL. [THE TERM DOES NOT
11 INCLUDE A PERSON WHO IS EMPLOYED BY OR PROVIDES SERVICES OR
12 PROGRAMS IN ANY PUBLIC OR PRIVATE SCHOOL, INTERMEDIATE UNIT OR
13 AREA VOCATIONAL-TECHNICAL SCHOOL.]

14 * * *

15 "Recent [acts or omissions." Acts or omissions] act or
16 failure to act." Any act or failure to act committed within two
17 years of the date of the report to the Department of Public
18 Welfare or county agency.

19 "RECKLESSLY." THE TERM SHALL HAVE THE SAME MEANING AS <--
20 PROVIDED IN 18 PA.C.S. § 302 (RELATING TO GENERAL REQUIREMENTS
21 OF CULPABILITY).

22 "RELATIVE." A PERSON WHO IS 14 YEARS OF AGE OR OLDER AND IS
23 RELATED TO THE CHILD WITHIN THE THIRD DEGREE OF CONSANGUINITY OR
24 AFFINITY, WHETHER OR NOT THE INDIVIDUAL LIVES IN THE SAME HOME
25 AS THE CHILD.

26 * * *

27 ["Serious physical injury." An injury that:

28 (1) causes a child severe pain; or

29 (2) significantly impairs a child's physical
30 functioning, either temporarily or permanently.]

1 "Serious physical neglect." Any of the following when
2 committed by a perpetrator that endangers a child's life or
3 health, threatens a child's well-being, causes bodily injury or
4 impairs a child's health, development or functioning:

5 (1) A repeated, prolonged or ~~egregious~~ UNCONSCIONABLE <--
6 failure to supervise a child in a manner that is appropriate
7 considering the child's developmental age and abilities.

8 (2) The failure to provide a child with adequate
9 essentials of life, including food, shelter or medical care.

10 ["Sexual abuse or exploitation." Any of the following:

11 (1) The employment, use, persuasion, inducement,
12 enticement or coercion of a child to engage in or assist
13 another individual to engage in sexually explicit conduct.

14 (2) The employment, use, persuasion, inducement,
15 enticement or coercion of a child to engage in or assist
16 another individual to engage in simulation of sexually
17 explicit conduct for the purpose of producing visual
18 depiction, including photographing, videotaping, computer
19 depicting and filming.

20 (3) Any of the following offenses committed against a
21 child:

22 (i) Rape.

23 (ii) Sexual assault.

24 (iii) Involuntary deviate sexual intercourse.

25 (iv) Aggravated indecent assault.

26 (v) Molestation.

27 (vi) Incest.

28 (vii) Indecent exposure.

29 (viii) Prostitution.

30 (ix) Sexual abuse.

1 (x) Sexual exploitation.]

2 "Sexual abuse or exploitation." Any of the following:

3 (1) The employment, use, persuasion, inducement,
4 enticement or coercion of a child to engage in or assist
5 another individual to engage in sexually explicit conduct,
6 which includes, but is not limited to, the following:

7 (i) Looking at the sexual or other intimate parts of
8 a child or another individual for the purpose of arousing
9 or gratifying sexual desire in any individual.

10 (ii) Participating in sexually explicit conversation
11 either in person, by telephone, by computer or by a
12 computer-aided device FOR THE PURPOSE OF SEXUAL <--
13 STIMULATION OR GRATIFICATION OF ANY INDIVIDUAL.

14 (iii) Actual or simulated sexual activity or nudity
15 for the purpose of sexual stimulation or gratification of
16 any individual.

17 (iv) Actual or simulated sexual activity for the
18 purpose of producing visual depiction, including
19 photographing, videotaping, computer depicting or
20 filming.

21 This paragraph does not include consensual activities between
22 a child who is 14 years of age or older and a ~~person~~ ANOTHER <--
23 PERSON WHO IS 14 YEARS OF AGE OR OLDER AND whose age is
24 within four years of the child's age.

25 (2) Any of the following offenses committed against a
26 child:

27 (i) Rape, as defined in 18 Pa.C.S. § 3121 (relating
28 to rape).

29 (ii) Statutory sexual assault, as defined in
30 18 Pa.C.S. § 3122.1 (relating to statutory sexual

1 assault).

2 (iii) Involuntary deviate sexual intercourse, as
3 defined in 18 Pa.C.S. § 3123 (relating to involuntary
4 deviate sexual intercourse).

5 (iv) Sexual assault, as defined in
6 18 Pa.C.S. § 3124.1 (relating to sexual assault).

7 (v) Institutional sexual assault, as defined in
8 18 Pa.C.S. § 3124.2 (relating to institutional sexual
9 assault).

10 (vi) Aggravated indecent assault, as defined in
11 18 Pa.C.S. § 3125 (relating to aggravated indecent
12 assault).

13 (vii) Indecent assault, as defined in
14 18 Pa.C.S. § 3126 (relating to indecent assault).

15 (viii) Indecent exposure, as defined in
16 18 Pa.C.S. § 3127 (relating to indecent exposure).

17 (ix) Incest, as defined in 18 Pa.C.S. § 4302
18 (relating to incest).

19 (x) Prostitution, as defined in 18 Pa.C.S. § 5902
20 (relating to prostitution and related offenses).

21 (xi) Sexual abuse, as defined in 18 Pa.C.S. § 6312
22 (relating to sexual abuse of children).

23 (xii) Unlawful contact with a minor, as defined in
24 18 Pa.C.S. § 6318 (relating to unlawful contact with
25 minor).

26 (xiii) Sexual exploitation, as defined in
27 18 Pa.C.S. § 6320 (relating to sexual exploitation of
28 children).

29 * * *

30 ~~(b) Child abuse.~~

<--

1 ~~(1) The term "child abuse" shall mean any of the~~
2 ~~following:~~

3 ~~(i) Any recent act or failure to act by a~~
4 ~~perpetrator which causes nonaccidental [serious physical~~
5 ~~injury] bodily injury to a child [under 18 years of age].~~

6 ~~(ii) An act or failure to act, or a series of such~~
7 ~~acts or failures to act, by a perpetrator which causes,~~
8 ~~or substantially contributes to, nonaccidental serious~~
9 ~~mental injury to [or] a child.~~

10 ~~(iii) An act or failure to act by a perpetrator~~
11 ~~which causes sexual abuse or sexual exploitation of a~~
12 ~~child [under 18 years of age].~~

13 ~~[(iii)] (iv) Any recent act, failure to act or~~
14 ~~series of such acts or failures to act by a perpetrator~~
15 ~~which creates [an imminent] a substantial and~~
16 ~~unjustifiable risk of [serious physical injury] bodily~~
17 ~~injury to or sexual abuse or sexual exploitation of a~~
18 ~~child [under 18 years of age].~~

19 ~~[(iv)] (v) Serious physical neglect by a perpetrator~~
20 ~~[constituting prolonged or repeated lack of supervision~~
21 ~~or the failure to provide essentials of life, including~~
22 ~~adequate medical care, which endangers a child's life or~~
23 ~~development or impairs the child's functioning].~~

24 ~~(2) [No child shall be deemed to be physically or~~
25 ~~mentally abused based on injuries that result solely from~~
26 ~~environmental factors that are beyond the control of the~~
27 ~~parent or person responsible for the child's welfare, such as~~
28 ~~inadequate housing, furnishings, income, clothing and medical~~
29 ~~care.~~

30 ~~(3) If, upon investigation, the county agency determines~~

1 ~~that a child has not been provided needed medical or surgical~~
2 ~~care because of seriously held religious beliefs of the~~
3 ~~child's parents, guardian or person responsible for the~~
4 ~~child's welfare, which beliefs are consistent with those of a~~
5 ~~bona fide religion, the child shall not be deemed to be~~
6 ~~physically or mentally abused. The county agency shall~~
7 ~~closely monitor the child and shall seek court ordered~~
8 ~~medical intervention when the lack of medical or surgical~~
9 ~~care threatens the child's life or long term health. In cases~~
10 ~~involving religious circumstances, all correspondence with a~~
11 ~~subject of the report and the records of the Department of~~
12 ~~Public Welfare and the county agency shall not reference~~
13 ~~"child abuse" and shall acknowledge the religious basis for~~
14 ~~the child's condition, and the family shall be referred for~~
15 ~~general protective services, if appropriate.] The term "child~~
16 ~~abuse" does not include any of the following:~~

17 ~~(i) Physical or mental injuries that result solely~~
18 ~~from environmental factors that are beyond the control of~~
19 ~~the parent or person responsible for the child's welfare,~~
20 ~~such as inadequate housing, furnishings, income, clothing~~
21 ~~and medical care.~~

22 ~~(ii) A refusal to provide needed medical,~~
23 ~~psychological or surgical care that is the result of~~
24 ~~seriously held religious beliefs, consistent with those~~
25 ~~of a bona fide religion, by the child's parents, guardian~~
26 ~~or person responsible for the child's welfare.~~

27 ~~(iii) The use of force by a parent or guardian or~~
28 ~~other person similarly responsible for the general care~~
29 ~~and supervision of a child or a person acting at the~~
30 ~~request of the parent, guardian or their responsible~~

1 ~~person, if all of the following apply:~~

2 ~~(A) the force is used for the purpose of~~
3 ~~safeguarding or promoting the welfare of the child,~~
4 ~~including the prevention or punishment of the child's~~
5 ~~misconduct;~~

6 ~~(B) the force used is not designed to cause or~~
7 ~~known to create a substantial risk of causing death,~~
8 ~~serious bodily injury, disfigurement, extreme pain or~~
9 ~~mental distress or gross degradation; and~~

10 ~~(C) the use of force is reasonable considering~~
11 ~~the circumstances, the physical and mental maturity~~
12 ~~of the child and the physical and mental condition of~~
13 ~~the child.~~

14 (B) CHILD ABUSE.--

<--

15 [(1) THE TERM "CHILD ABUSE" SHALL MEAN ANY OF THE
16 FOLLOWING:

17 (I) ANY RECENT ACT OR FAILURE TO ACT BY A
18 PERPETRATOR WHICH CAUSES NONACCIDENTAL SERIOUS PHYSICAL
19 INJURY TO A CHILD UNDER 18 YEARS OF AGE.

20 (II) AN ACT OR FAILURE TO ACT BY A PERPETRATOR WHICH
21 CAUSES NONACCIDENTAL SERIOUS MENTAL INJURY TO OR SEXUAL
22 ABUSE OR SEXUAL EXPLOITATION OF A CHILD UNDER 18 YEARS OF
23 AGE.

24 (III) ANY RECENT ACT, FAILURE TO ACT OR SERIES OF
25 SUCH ACTS OR FAILURES TO ACT BY A PERPETRATOR WHICH
26 CREATES AN IMMINENT RISK OF SERIOUS PHYSICAL INJURY TO OR
27 SEXUAL ABUSE OR SEXUAL EXPLOITATION OF A CHILD UNDER 18
28 YEARS OF AGE.

29 (IV) SERIOUS PHYSICAL NEGLECT BY A PERPETRATOR
30 CONSTITUTING PROLONGED OR REPEATED LACK OF SUPERVISION OR

1 THE FAILURE TO PROVIDE ESSENTIALS OF LIFE, INCLUDING
2 ADEQUATE MEDICAL CARE, WHICH ENDANGERS A CHILD'S LIFE OR
3 DEVELOPMENT OR IMPAIRS THE CHILD'S FUNCTIONING.

4 (2) NO CHILD SHALL BE DEEMED TO BE PHYSICALLY OR
5 MENTALLY ABUSED BASED ON INJURIES THAT RESULT SOLELY FROM
6 ENVIRONMENTAL FACTORS THAT ARE BEYOND THE CONTROL OF THE
7 PARENT OR PERSON RESPONSIBLE FOR THE CHILD'S WELFARE, SUCH AS
8 INADEQUATE HOUSING, FURNISHINGS, INCOME, CLOTHING AND MEDICAL
9 CARE.

10 (3) IF, UPON INVESTIGATION, THE COUNTY AGENCY DETERMINES
11 THAT A CHILD HAS NOT BEEN PROVIDED NEEDED MEDICAL OR SURGICAL
12 CARE BECAUSE OF SERIOUSLY HELD RELIGIOUS BELIEFS OF THE
13 CHILD'S PARENTS, GUARDIAN OR PERSON RESPONSIBLE FOR THE
14 CHILD'S WELFARE, WHICH BELIEFS ARE CONSISTENT WITH THOSE OF A
15 BONA FIDE RELIGION, THE CHILD SHALL NOT BE DEEMED TO BE
16 PHYSICALLY OR MENTALLY ABUSED. THE COUNTY AGENCY SHALL
17 CLOSELY MONITOR THE CHILD AND SHALL SEEK COURT-ORDERED
18 MEDICAL INTERVENTION WHEN THE LACK OF MEDICAL OR SURGICAL
19 CARE THREATENS THE CHILD'S LIFE OR LONG-TERM HEALTH. IN CASES
20 INVOLVING RELIGIOUS CIRCUMSTANCES, ALL CORRESPONDENCE WITH A
21 SUBJECT OF THE REPORT AND THE RECORDS OF THE DEPARTMENT OF
22 PUBLIC WELFARE AND THE COUNTY AGENCY SHALL NOT REFERENCE
23 "CHILD ABUSE" AND SHALL ACKNOWLEDGE THE RELIGIOUS BASIS FOR
24 THE CHILD'S CONDITION, AND THE FAMILY SHALL BE REFERRED FOR
25 GENERAL PROTECTIVE SERVICES, IF APPROPRIATE.]

26 THE TERM "CHILD ABUSE" SHALL MEAN INTENTIONALLY, KNOWINGLY OR
27 RECKLESSLY DOING ANY OF THE FOLLOWING:

28 (1) CAUSING BODILY INJURY TO A CHILD THROUGH ANY RECENT
29 ACT OR FAILURE TO ACT.

30 (2) CAUSING OR SUBSTANTIALLY CONTRIBUTING TO SERIOUS

1 MENTAL INJURY TO A CHILD THROUGH ANY ACT OR FAILURE TO ACT OR
2 A SERIES OF SUCH ACTS OR FAILURES TO ACT.

3 (3) CAUSING SEXUAL ABUSE OR EXPLOITATION OF A CHILD
4 THROUGH ANY ACT OR FAILURE TO ACT.

5 (4) CREATING A REASONABLE LIKELIHOOD OF BODILY INJURY TO
6 A CHILD THROUGH ANY RECENT ACT OR FAILURE TO ACT.

7 (5) CREATING A LIKELIHOOD OF SEXUAL ABUSE OR
8 EXPLOITATION OF A CHILD THROUGH ANY RECENT ACT OR FAILURE TO
9 ACT.

10 (6) CAUSING SERIOUS PHYSICAL NEGLECT OF A CHILD.

11 (7) ENGAGING IN ANY OF THE FOLLOWING RECENT ACTS:

12 (I) KICKING, BITING OR THROWING, BURNING, STABBING
13 OR CUTTING A CHILD IN A MANNER THAT ENDANGERS THE CHILD.

14 (II) UNREASONABLY PHYSICALLY RESTRAINING A CHILD,
15 BASED ON CONSIDERATION OF THE METHOD, LOCATION OR THE
16 DURATION OF THE RESTRAINT.

17 (III) FORCEFULLY SHAKING A CHILD UNDER ONE YEAR OF
18 AGE.

19 (IV) FORCEFULLY STRIKING A CHILD UNDER ONE YEAR OF
20 AGE.

21 (V) INTERFERING WITH THE BREATHING OF A CHILD.

22 (VI) CAUSING A CHILD TO BE PRESENT AT A LOCATION
23 WHERE ANY OF THE FOLLOWING OFFENSES HAS OCCURRED:

24 (A) A VIOLATION OF 18 PA.C.S. § 7508.2 (RELATING
25 TO OPERATION OF METHAMPHETAMINE LABORATORY) RESULTING
26 IN A CONVICTION.

27 (B) A FELONY VIOLATION OF THE ACT OF APRIL 14,
28 1972, KNOWN AS THE CONTROLLED STANCE, DRUG, DEVICE
29 AND COSMETICS ACT, RESULTING IN A CONVICTION.

30 (C) A VIOLATION OF 75 PA.C.S. § 3802 (RELATING

1 TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR A
2 CONTROLLED SUBSTANCE), WHERE THE CHILD IS A
3 PASSENGER, RESULTING IN A CONVICTION.

4 (8) CAUSING THE DEATH OF THE CHILD THROUGH ANY ACT OR
5 FAILURE TO ACT.

6 (C) CHILD ABUSE EXCLUSIONS.--THE TERM "CHILD ABUSE" DOES NOT
7 INCLUDE ANY CONDUCT FOR WHICH AN EXCLUSION IS PROVIDED IN
8 SECTION 6304 (RELATING TO EXCLUSIONS FROM CHILD ABUSE).

9 ~~Section 2. Section 6368 of Title 23 is amended by adding a <--~~
10 ~~subsection to read:~~

11 ~~§ 6368. Investigation of reports.~~

12 ~~* * *~~

13 ~~(e) If, upon investigation, the county agency determines~~
14 ~~that a child has not been provided needed medical, psychological~~
15 ~~or surgical care because of seriously held religious beliefs of~~
16 ~~the child's parents, guardian or person responsible for the~~
17 ~~child's welfare, which beliefs are consistent with those of a~~
18 ~~bona fide religion, the county agency shall closely monitor the~~
19 ~~child and shall seek court ordered medical intervention when the~~
20 ~~lack of medical or surgical care threatens the child's life or~~
21 ~~long term health. In cases involving religious circumstances,~~
22 ~~all correspondence with a subject of the report and the records~~
23 ~~of the department and the county agency shall not reference~~
24 ~~"child abuse" and shall acknowledge the religious basis for the~~
25 ~~child's condition, and the family shall be referred for general~~
26 ~~protective services, if appropriate.~~

27 ~~Section 3. Title 23 is amended by adding a section to read:~~

28 ~~§ 6368.1. Factors to consider when investigating child abuse.~~

29 ~~(a) Investigation of suspected physical abuse. When~~
30 ~~investigating suspected physical abuse, the county agency shall~~

1 ~~consider all relevant factors, including the following:~~

2 ~~(1) Whether bodily injury occurred, based on an obvious~~
3 ~~bodily injury or a substantial likelihood that the child's~~
4 ~~injury caused substantial pain or impairment of physical~~
5 ~~condition during or after the time of injury, considering the~~
6 ~~age, size, physical and mental condition of the child.~~

7 ~~(2) Whether the injury was nonaccidental.~~

8 ~~(3) Whether the injury was caused by the alleged~~
9 ~~perpetrator's act or failure to act.~~

10 ~~(4) Whether the injury was caused by justifiable force~~
11 ~~that does not constitute child abuse under this chapter.~~

12 ~~(b) Investigation of suspected sexual abuse or~~
13 ~~exploitation. When investigating suspected sexual abuse or~~
14 ~~exploitation, the county agency shall consider all relevant~~
15 ~~factors, including whether the alleged perpetrator's act or~~
16 ~~failure to act caused sexual abuse or exploitation of the child.~~

17 ~~(c) Investigation of suspected emotional abuse. When~~
18 ~~investigating suspected emotional abuse, the county agency shall~~
19 ~~consider all relevant factors, including the following:~~

20 ~~(1) Whether serious mental injury occurred to the child.~~

21 ~~(2) Whether the serious mental injury was nonaccidental.~~

22 ~~(3) Whether the alleged perpetrator caused or~~
23 ~~substantially contributed to the serious mental injury.~~

24 ~~(d) Investigation of creation of risk. When investigating~~
25 ~~whether suspected child abuse occurred by creating risk, the~~
26 ~~county agency shall consider all relevant factors, including the~~
27 ~~following:~~

28 ~~(1) Whether the alleged perpetrator's actions created~~
29 ~~foreseeable danger of bodily injury to or sexual abuse or~~
30 ~~exploitation of the child.~~

1 ~~(2) Whether the alleged perpetrator created a~~
2 ~~substantial and unjustifiable risk of bodily injury to or~~
3 ~~sexual abuse or exploitation of the child.~~

4 ~~(3) Whether the perpetrator's actions served any~~
5 ~~legitimate purpose.~~

6 ~~(c) Investigation of suspected serious physical neglect.~~
7 ~~When investigating suspected serious physical neglect, the~~
8 ~~county agency shall consider all relevant factors, including the~~
9 ~~following:~~

10 ~~(1) Whether the alleged perpetrator was responsible for~~
11 ~~providing the supervision of the child or the essentials of~~
12 ~~life that was not provided to the child.~~

13 ~~(2) Whether the alleged perpetrator knew or should have~~
14 ~~known that the child was in need of adequate essentials of~~
15 ~~life or age appropriate supervision.~~

16 ~~(3) Whether the child's life or health was endangered,~~
17 ~~the child's well being was threatened, bodily injury was~~
18 ~~caused to the child, or the child's health, development or~~
19 ~~functioning was impaired.~~

20 ~~(4) Whether a failure to supervise the child was~~
21 ~~repeated, prolonged or egregious given the physical and~~
22 ~~mental maturity of the child and the physical and mental~~
23 ~~condition of the child.~~

24 ~~(5) Whether the child lacked adequate food, shelter or~~
25 ~~timely medical care.~~

26 SECTION 2. TITLE 23 IS AMENDED BY ADDING A SECTION TO READ: <--
27 § 6304. EXCLUSIONS FROM CHILD ABUSE.

28 (A) ENVIRONMENTAL FACTORS.--NO CHILD SHALL BE DEEMED TO BE
29 PHYSICALLY OR MENTALLY ABUSED BASED ON INJURIES THAT RESULT
30 SOLELY FROM ENVIRONMENTAL FACTORS THAT ARE BEYOND THE CONTROL OF

1 THE PARENT OR GUARDIAN, SUCH AS INADEQUATE HOUSING, FURNISHINGS,
2 INCOME, CLOTHING AND MEDICAL CARE.

3 (B) PRACTICE OF RELIGIOUS BELIEFS.--IF, UPON INVESTIGATION,
4 THE COUNTY AGENCY DETERMINES THAT A CHILD HAS NOT BEEN PROVIDED
5 NEEDED MEDICAL OR SURGICAL CARE BECAUSE OF SINCERELY HELD
6 RELIGIOUS BELIEFS OF THE CHILD'S PARENTS OR GUARDIAN, WHICH
7 BELIEFS ARE CONSISTENT WITH THOSE OF A BONA FIDE RELIGION, THE
8 CHILD SHALL NOT BE DEEMED TO BE PHYSICALLY OR MENTALLY ABUSED.
9 IN SUCH CASES THE FOLLOWING SHALL APPLY:

10 (1) THE COUNTY AGENCY SHALL CLOSELY MONITOR THE CHILD
11 AND THE CHILD'S FAMILY AND SHALL SEEK COURT-ORDERED MEDICAL
12 INTERVENTION WHEN THE LACK OF MEDICAL OR SURGICAL CARE
13 THREATENS THE CHILD'S LIFE OR LONG-TERM HEALTH.

14 (2) ALL CORRESPONDENCE WITH A SUBJECT OF THE REPORT AND
15 THE RECORDS OF THE DEPARTMENT AND THE COUNTY AGENCY SHALL NOT
16 REFERENCE CHILD ABUSE AND SHALL ACKNOWLEDGE THE RELIGIOUS
17 BASIS FOR THE CHILD'S CONDITION.

18 (3) THE FAMILY SHALL BE REFERRED FOR GENERAL PROTECTIVE
19 SERVICES, IF APPROPRIATE.

20 (4) THIS SUBSECTION SHALL NOT APPLY IF THE FAILURE TO
21 PROVIDE NEEDED MEDICAL OR SURGICAL CARE CAUSES THE DEATH OF
22 THE CHILD.

23 (C) USE OF FORCE FOR SUPERVISION, CONTROL AND SAFETY
24 PURPOSES.--SUBJECT TO SUBSECTION (D), THE USE OF REASONABLE
25 FORCE ON OR AGAINST A CHILD BY A PERSON RESPONSIBLE FOR
26 SUPERVISION, CONTROL OR SAFETY OF THE CHILD SHALL NOT BE
27 CONSIDERED CHILD ABUSE IF ANY OF THE FOLLOWING CONDITIONS APPLY:

28 (1) THE USE OF REASONABLE FORCE CONSTITUTES INCIDENTAL,
29 MINOR OR REASONABLE PHYSICAL CONTACT WITH THE CHILD OR OTHER
30 ACTIONS THAT ARE DESIGNED TO MAINTAIN ORDER AND CONTROL.

1 (2) THE USE OF REASONABLE FORCE IS NECESSARY:

2 (I) TO QUELL A DISTURBANCE OR REMOVE THE CHILD FROM
3 THE SCENE OF A DISTURBANCE THAT THREATENS PHYSICAL INJURY
4 TO PERSONS OR DAMAGE TO PROPERTY;

5 (II) TO PREVENT THE CHILD FROM SELF-INFLECTED
6 PHYSICAL HARM;

7 (III) FOR SELF-DEFENSE OR THE DEFENSE OF ANOTHER
8 INDIVIDUAL; OR

9 (IV) TO OBTAIN POSSESSION OF WEAPONS OR OTHER
10 DANGEROUS OBJECTS OR CONTROLLED SUBSTANCES OR
11 PARAPHERNALIA THAT ARE ON THE CHILD OR WITHIN THE CONTROL
12 OF THE CHILD.

13 (D) REASONABLE FORCE BY PARENTS AND GUARDIANS AND OTHER
14 AUTHORIZED PERSONS.--NOTWITHSTANDING SUBSECTION (C), THIS
15 CHAPTER DOES NOT RESTRICT THE GENERALLY RECOGNIZED EXISTING
16 RIGHTS OF PARENTS, GUARDIANS AND PERSONS AUTHORIZED BY A PARENT
17 OR GUARDIAN TO USE REASONABLE FORCE FOR SUPERVISION, CONTROL AND
18 DISCIPLINE WHEN RAISING CHILDREN. SUCH FORCE SHALL NOT BE
19 CONSIDERED CHILD ABUSE, PROVIDED THAT FORCE IS USED IN A
20 REASONABLE AND CONTROLLED MANNER. WHEN DETERMINING WHETHER SUCH
21 FORCE IS REASONABLE, THE INTENT OF THE PARENT, GUARDIAN OR OTHER
22 AUTHORIZED PERSON, THE CIRCUMSTANCES, THE PHYSICAL AND MENTAL
23 MATURITY OF THE CHILD AND THE PHYSICAL AND MENTAL CONDITION OF
24 THE CHILD ARE FACTORS TO BE CONSIDERED. THIS SUBSECTION SHALL
25 NOT BE CONSTRUED TO SUPERSEDE ANY LAW OR REGULATION PROHIBITING
26 OR REGULATING THE USE OF DISCIPLINARY FORCE OR PHYSICAL
27 PUNISHMENT BY CERTAIN INDIVIDUALS WHO ARE NOT PARENTS OR
28 GUARDIANS, INCLUDING, BUT NOT LIMITED TO, FOSTER PARENTS, SCHOOL
29 EMPLOYEES, CHILD CARE EMPLOYEES AND EMPLOYEES OF RESIDENTIAL
30 FACILITIES.

1 (E) PARTICIPATION IN EVENTS THAT INVOLVE PHYSICAL CONTACT
2 WITH CHILD.--AN INDIVIDUAL PARTICIPATING IN A PRACTICE OR
3 COMPETITION IN AN INTERSCHOLASTIC SPORT, PHYSICAL EDUCATION, A
4 RECREATIONAL ACTIVITY OR AN EXTRACURRICULAR ACTIVITY THAT
5 INVOLVES PHYSICAL CONTACT WITH A CHILD DOES NOT, IN ITSELF,
6 CONSTITUTE CONTACT THAT IS SUBJECT TO THE REPORTING REQUIREMENTS
7 OF THIS CHAPTER.

8 (F) PEER-ON-PEER CONTACT.--NO CHILD SHALL BE DEEMED TO BE
9 PHYSICALLY OR MENTALLY ABUSED BASED ON INJURIES THAT RESULT FROM
10 A DISPUTE, FIGHT OR SCUFFLE WITH A PEER.

11 (G) DEFENSIVE FORCE.--REASONABLE FORCE FOR SELF-DEFENSE OR
12 THE DEFENSE OF ANOTHER INDIVIDUAL, CONSISTENT WITH THE
13 PROVISIONS OF WITH 18 PA.C.S. §§ 505 (RELATING TO USE OF FORCE
14 FOR SELF-PROTECTION) AND 506 (RELATING TO USE OF FORCE FOR THE
15 PROTECTION OF OTHER PERSONS), SHALL NOT BE CONSIDERED CHILD
16 ABUSE.

17 (H) ACCIDENTAL CONDUCT.--CONDUCT THAT CAUSES INJURY OR HARM
18 TO A CHILD OR CREATES A RISK OF INJURY OR HARM TO A CHILD SHALL
19 NOT BE CONSIDERED CHILD ABUSE IF THERE IS NO EVIDENCE THAT THE
20 PERSON ACTED INTENTIONALLY, KNOWINGLY OR RECKLESSLY WHEN CAUSING
21 THE INJURY OR HARM TO THE CHILD OR CREATING A RISK OF INJURY OR
22 HARM TO THE CHILD.

23 SECTION 3. SECTION 6338 OF TITLE 23 IS AMENDED BY ADDING
24 SUBSECTIONS TO TO READ:

25 § 6338. DISPOSITION OF FOUNDED AND INDICATED REPORTS.

26 * * *

27 (D) EXPUNCTION OF INFORMATION WHEN A PERPETRATOR ATTAINS 21
28 YEARS OF AGE.--NOTWITHSTANDING SUBSECTION (C), THE NAME OF A
29 PERPETRATOR OF CHILD ABUSE WHO WAS UNDER 18 YEARS OF AGE WHEN
30 THE INDIVIDUAL COMMITTED CHILD ABUSE SHALL BE EXPUNGED FROM THE

1 STATEWIDE CENTRAL REGISTER WHEN THE INDIVIDUAL REACHES 21 YEARS
2 OF AGE, IF THE INDIVIDUAL HAS NOT BEEN NAMED AS A PERPETRATOR IN
3 ANY SUBSEQUENT FOUNDED OR INDICATED REPORT OF CHILD ABUSE. THE
4 EXPUNCTION SHALL BE MANDATED AND GUARANTEED BY THE DEPARTMENT.

5 (E) NONAPPLICABILITY.--THE PROVISIONS OF SUBSECTION (D)
6 SHALL NOT APPLY IN THE CASE OF A:

7 (1) SEXUALLY VIOLENT DELINQUENT CHILD AS DEFINED IN 42
8 PA.C.S. § 9799.12 (RELATING TO DEFINITIONS) WHO:

9 (I) IS REQUIRED TO REGISTER UNDER 42 PA.C.S. CH. 97
10 SUBCH. H (RELATING TO REGISTRATION OF SEXUAL OFFENDERS);
11 AND

12 (II) WAS FOUND DELINQUENT AS A RESULT OF THE SAME
13 ACTS WHICH RESULTED IN THE SEXUALLY VIOLENT DELINQUENT
14 CHILD BEING NAMED A PERPETRATOR OF CHILD ABUSE; OR

15 (2) JUVENILE OFFENDER AS DEFINED IN 42 PA.C.S. § 9799.12
16 WHO:

17 (I) IS REQUIRED TO REGISTER UNDER 42 PA.C.S. CH. 97
18 SUBCH. H;

19 (II) IS REQUIRED TO REGISTER UNDER 42 PA.C.S. CH. 97
20 SUBCH. H AS A RESULT OF AN ADJUDICATION OF DELINQUENCY
21 FOR THE SAME ACTS WHICH RESULTED IN THE JUVENILE
22 OFFENDER'S BEING NAMED A PERPETRATOR OF CHILD ABUSE; AND

23 (III) HAS NOT BEEN REMOVED FROM THE STATEWIDE
24 REGISTRY OF SEXUAL OFFENDERS PURSUANT TO 42 PA.C.S. §
25 9799.17 (RELATING TO TERMINATION OF PERIOD OF
26 REGISTRATION FOR JUVENILE OFFENDERS).

27 SECTION 4. SECTIONS 6340(A)(9), (10) AND (13) AND 6368(A) OF
28 TITLE 23 ARE AMENDED TO READ:

29 § 6340. RELEASE OF INFORMATION IN CONFIDENTIAL REPORTS.

30 (A) GENERAL RULE.--REPORTS SPECIFIED IN SECTION 6339

1 (RELATING TO CONFIDENTIALITY OF REPORTS) SHALL ONLY BE MADE
2 AVAILABLE TO:

3 * * *

4 (9) LAW ENFORCEMENT OFFICIALS OF ANY JURISDICTION, AS
5 LONG AS THE INFORMATION IS RELEVANT IN THE COURSE OF
6 INVESTIGATING CASES OF:

7 (I) HOMICIDE OR OTHER CRIMINAL OFFENSE SET FORTH IN
8 SECTION 6344(C) (RELATING TO INFORMATION RELATING TO
9 PROSPECTIVE CHILD-CARE PERSONNEL), SEXUAL ABUSE, SEXUAL
10 EXPLOITATION, SERIOUS BODILY INJURY OR [SERIOUS PHYSICAL
11 INJURY] BODILY INJURY PERPETRATED BY PERSONS WHETHER OR
12 NOT RELATED TO THE VICTIM.

13 (II) CHILD ABUSE PERPETRATED BY PERSONS WHO ARE NOT
14 FAMILY MEMBERS.

15 (III) REPEATED PHYSICAL INJURY TO A CHILD UNDER
16 CIRCUMSTANCES WHICH INDICATE THAT THE CHILD'S HEALTH,
17 SAFETY OR WELFARE IS HARMED OR THREATENED.

18 (IV) A MISSING CHILD REPORT.

19 (10) THE DISTRICT ATTORNEY OR HIS DESIGNEE OR OTHER LAW
20 ENFORCEMENT OFFICIAL, AS SET FORTH IN THE COUNTY PROTOCOLS
21 FOR INVESTIGATIVE TEAMS REQUIRED IN SECTION 6365(C) (RELATING
22 TO SERVICES FOR PREVENTION, INVESTIGATION AND TREATMENT OF
23 CHILD ABUSE), SHALL RECEIVE, IMMEDIATELY AFTER THE COUNTY
24 AGENCY HAS ENSURED THE SAFETY OF THE CHILD, REPORTS OF ABUSE,
25 EITHER ORALLY OR IN WRITING, ACCORDING TO REGULATIONS
26 PROMULGATED BY THE DEPARTMENT, FROM THE COUNTY AGENCY IN
27 WHICH THE INITIAL REPORT OF SUSPECTED CHILD ABUSE OR INITIAL
28 INQUIRY INTO THE REPORT GIVES EVIDENCE THAT THE ABUSE IS:

29 (I) A CRIMINAL OFFENSE SET FORTH IN SECTION 6344(C),
30 NOT INCLUDING AN OFFENSE UNDER 18 PA.C.S. § 4304

1 (RELATING TO ENDANGERING WELFARE OF CHILDREN) OR AN
2 EQUIVALENT CRIME UNDER FEDERAL LAW OR THE LAW OF ANOTHER
3 STATE, SEXUAL ABUSE, SEXUAL EXPLOITATION OR SERIOUS
4 BODILY INJURY PERPETRATED BY PERSONS, WHETHER OR NOT
5 RELATED TO THE VICTIM;

6 (II) CHILD ABUSE PERPETRATED BY PERSONS WHO ARE NOT
7 FAMILY MEMBERS; OR

8 (III) [SERIOUS PHYSICAL INJURY] BODILY INJURY
9 INVOLVING EXTENSIVE AND SEVERE BRUISING, BURNS, BROKEN
10 BONES, LACERATIONS, INTERNAL BLEEDING, SHAKEN BABY
11 SYNDROME OR CHOKING OR AN INJURY THAT SIGNIFICANTLY
12 IMPAIRS A CHILD'S PHYSICAL FUNCTIONING, EITHER
13 TEMPORARILY OR PERMANENTLY.

14 * * *

15 (13) [PERSONS REQUIRED TO MAKE REPORTS UNDER SUBCHAPTER
16 C.1 (RELATING TO STUDENTS IN PUBLIC AND PRIVATE SCHOOLS).
17 INFORMATION UNDER THIS PARAGRAPH SHALL BE] IF THE ALLEGED
18 PERPETRATOR IS A SCHOOL EMPLOYEE, THE SCHOOL ADMINISTRATOR
19 SHALL RECEIVE INFORMATION LIMITED TO THE FINAL STATUS OF THE
20 REPORT FOLLOWING THE INVESTIGATION AS TO WHETHER THE REPORT
21 IS INDICATED, FOUNDED OR UNFOUNDED. INFORMATION DISCLOSED
22 PURSUANT TO THIS PARAGRAPH SHALL BE PROVIDED TO THE SCHOOL
23 ADMINISTRATOR WITHIN TEN DAYS OF THE COMPLETION OF THE
24 INVESTIGATION.

25 * * *

26 § 6368. INVESTIGATION OF REPORTS.

27 (A) GENERAL RULE.--UPON RECEIPT OF EACH REPORT OF SUSPECTED
28 CHILD ABUSE, THE COUNTY AGENCY SHALL IMMEDIATELY COMMENCE AN
29 APPROPRIATE INVESTIGATION AND SEE THE CHILD IMMEDIATELY IF
30 EMERGENCY PROTECTIVE CUSTODY IS REQUIRED OR HAS BEEN OR SHALL BE

1 TAKEN OR IF IT CANNOT BE DETERMINED FROM THE REPORT WHETHER
2 EMERGENCY PROTECTIVE CUSTODY IS NEEDED. OTHERWISE, THE COUNTY
3 AGENCY SHALL COMMENCE AN APPROPRIATE INVESTIGATION AND SEE THE
4 CHILD WITHIN 24 HOURS OF RECEIPT OF THE REPORT. THE
5 INVESTIGATION SHALL INCLUDE A DETERMINATION OF THE RISK OF HARM
6 TO THE CHILD OR CHILDREN IF THEY CONTINUE TO REMAIN IN THE
7 EXISTING HOME ENVIRONMENT, AS WELL AS A DETERMINATION OF THE
8 NATURE, EXTENT AND CAUSE OF ANY CONDITION ENUMERATED IN THE
9 REPORT, ANY ACTION NECESSARY TO PROVIDE FOR THE SAFETY OF THE
10 CHILD OR CHILDREN AND THE TAKING OF PHOTOGRAPHIC IDENTIFICATION
11 OF THE CHILD OR CHILDREN TO BE MAINTAINED WITH THE FILE. DURING
12 THE INVESTIGATION, THE COUNTY AGENCY SHALL PROVIDE OR ARRANGE
13 FOR SERVICES NECESSARY TO PROTECT THE CHILD WHILE THE AGENCY IS
14 MAKING A DETERMINATION PURSUANT TO THIS SECTION. IF THE
15 INVESTIGATION INDICATES [SERIOUS PHYSICAL INJURY] BODILY INJURY,
16 A MEDICAL EXAMINATION SHALL BE PERFORMED ON THE SUBJECT CHILD BY
17 A CERTIFIED MEDICAL PRACTITIONER. WHERE THERE IS REASONABLE
18 CAUSE TO SUSPECT THERE IS A HISTORY OF PRIOR OR CURRENT ABUSE,
19 THE MEDICAL PRACTITIONER HAS THE AUTHORITY TO ARRANGE FOR
20 FURTHER MEDICAL TESTS OR THE COUNTY AGENCY HAS THE AUTHORITY TO
21 REQUEST FURTHER MEDICAL TESTS. THE INVESTIGATION SHALL INCLUDE
22 COMMUNICATION WITH THE DEPARTMENT'S SERVICE UNDER SECTION 6332
23 (RELATING TO ESTABLISHMENT OF STATEWIDE TOLL-FREE TELEPHONE
24 NUMBER). PRIOR TO INTERVIEWING A SUBJECT OF THE REPORT, THE
25 COUNTY AGENCY SHALL ORALLY NOTIFY THE SUBJECT WHO IS ABOUT TO BE
26 INTERVIEWED OF THE EXISTENCE OF THE REPORT, THE SUBJECT'S RIGHTS
27 UNDER 42 PA.C.S. §§ 6337 (RELATING TO RIGHT TO COUNSEL) AND 6338
28 (RELATING TO OTHER BASIC RIGHTS) AND THE SUBJECT'S RIGHTS
29 PURSUANT TO THIS CHAPTER IN REGARD TO AMENDMENT OR EXPUNGEMENT.
30 WITHIN 72 HOURS FOLLOWING ORAL NOTIFICATION TO THE SUBJECT, THE

1 COUNTY AGENCY SHALL GIVE WRITTEN NOTICE TO THE SUBJECT. THE
2 NOTICE MAY BE REASONABLY DELAYED IF NOTIFICATION IS LIKELY TO
3 THREATEN THE SAFETY OF THE VICTIM, A NONPERPETRATOR SUBJECT OR
4 THE INVESTIGATING COUNTY AGENCY WORKER, TO CAUSE THE PERPETRATOR
5 TO ABSCOND OR TO SIGNIFICANTLY INTERFERE WITH THE CONDUCT OF A
6 CRIMINAL INVESTIGATION. HOWEVER, THE WRITTEN NOTICE MUST BE
7 PROVIDED TO ALL SUBJECTS PRIOR TO THE COUNTY AGENCY'S REACHING A
8 FINDING ON THE VALIDITY OF THE REPORT.

9 * * *

10 Section 4 5. This act shall take effect in 60 days.

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