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## A Practitioner's Guide to New Developments in Pennsylvania's Child Protection Law

Lucy Johnston-Walsh  
ljj12@psu.edu

Megan M. Riesmeyer  
mam941@psu.edu

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# A Practitioner's Guide To New Developments In Pennsylvania's Child Protection Law

By LUCY JOHNSTON-WALSH AND MEGAN M. RIESMEYER,<sup>1</sup>  
Cumberland County  
Members of the Pennsylvania Bar



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## ABSTRACT

*In the wake of the Jerry Sandusky child abuse scandal in 2011, the Pennsylvania General Assembly appointed a task force to review our child protection system. In 2012, the Task Force on Child Protection released a report which analyzed problems with Pennsylvania's system. The legislature responded by passing twenty-three new laws\*, many of which went into effect on December 31, 2014. The laws make dramatic changes in the area of child protection, but also reform the custody statute, crimes code, and school code. This article explores the impact the new laws will have on lawyers and their practice.*

## INTRODUCTION

In 2013 and 2014, the Pennsylvania Legislature passed many new laws focused on improving the child protection system. The new laws were developed based on recommendations of the Task Force on Child Protection, which was established in December of 2011 by the General Assembly. The Task Force members included attorneys, physicians, advocates, and a social worker. It was formed to "conduct a comprehensive review of the laws and procedures related to the reporting of child abuse and protection of the

\* Newly enacted laws: Act 105 of 2013; Act 107 of 2013; Act 108 of 2013; Act 116 of 2013; Act 117 of 2013; Act 118 of 2013; Act 119 of 2013; Act 120 of 2013; Act 123 of 2013; Act 4 of 2014; Act 27 of 2014; Act 28 of 2014; Act 29 of 2014; Act 31 of 2014; Act 32 of 2014; Act 33 of 2014; Act 34 of 2014; Act 44 of 2014; Act 45 of 2014; Act 56 of 2014; Act 153 of 2014; Act 168 of 2014; and Act 176 of 2014.

1. Lucy Johnston-Walsh and Megan Riesmeyer are Clinical Professors at Penn State Dickinson Law. Professor Johnston-Walsh is the Director of the Children's Advocacy Clinic, which receives court appointments to represent children in the child dependency system. Prof. Johnston-Walsh served on the Department of Public Welfare's Child Protective Services Law Implementation Team. The team, composed of over 120 members from a variety of disciplines, came together to ensure the timely and consistent implementation of these amendments across Pennsylvania. Professor Riesmeyer is the Director of the Community Law Clinic which represents low-income individuals in the areas of family and disability law. Both clinics provide an experiential learning opportunity for students at Penn State Dickinson Law.

health and safety of children.”<sup>2</sup> The Task Force was created “in the wake of the Jerry Sandusky child sexual abuse allegations at Penn State University.”<sup>3</sup> The Task Force report was released in November of 2012, and legislation was introduced shortly thereafter to implement its recommendations. The new laws have various effective dates, but the majority of the new laws went into effect on December 31, 2014.

The Task Force determined that the Commonwealth needed to implement changes to statutes, policies, procedures and practice. One necessary change was to improve the process of reporting child abuse. Consequently, the legislature amended the reporting law to expand those individuals who are legally obligated to report suspected child abuse, as well as clarifying and streamlining the reporting process. For example, one change was to allow for electronic reporting, instead of the old process of completing a paper form by hand. Additionally, the legislature increased the criminal penalties for failing to report suspected child abuse. The goal of the statutory and practice changes is to strengthen the state’s ability to protect children. The new laws also promote the use of multi-disciplinary investigative teams to investigate child abuse related crimes. Pennsylvania will increase the use of technology and data in tracking child abuse.

**The goal of the statutory and practice changes is to strengthen the state’s ability to protect children.**

This article will focus on some of the key changes to the laws which impact attorneys and specific areas practitioners should take note of when counseling clients, serving on various boards, and offering volunteer services to the community. The first two sections cover the revised definition of child abuse, as well as the expansions to the categories of individuals who are legally obligated to report suspected child abuse. The next section of the article covers the new requirements for the background checks required for employees and volunteers working with children.

The following section discusses the training requirements for individuals working with children. The last section discusses the impact of the new laws on family law practice specifically. While many of the changes to the law affect primarily those working directly with children, some aspects of the new laws will impact parents, and therefore, family law practitioners must be aware of the changes.

### EXPANSION OF DEFINITION OF CHILD ABUSE

The Task Force on Child Protection recommended extensive revisions to The Pennsylvania Child Protective Services Law (CPSL).<sup>4</sup> One of the most significant changes was to the definition of child abuse. Historically, Pennsylvania has had one of the lowest reported rates of child abuse victims in the country.<sup>5</sup> The low incidence of child abuse victimization is not necessarily because Pennsylvania has less child abuse but instead perhaps the low rate is caused by how we have legally defined child abuse. The Task Force indicated that “greater protection can be provided by expanding the definition of what constitutes child abuse.”<sup>6</sup>

The changes to the child abuse definition include: expanding the definition of the term “perpetrator;” replacing the definition of “serious bodily injury” by removing the word “serious;” adding actions such as kicking, biting and burning a child; adding terms of “intentionally, knowingly, and recklessly,” etc. By expanding the definition of what would constitute child abuse, the amendments will likely lead to more investigations and substantiation of child abuse. New staff positions are being added to Childline, which is the public agency which accepts reports of suspected child abuse, and offers guidance and referral services. More staff members are needed to be able to respond

2. Joint State Government Commission, “Child Protection in Pennsylvania: Proposed Recommendations,” Report of the Task Force on Child Protection, November 2012, p. 1, available at [www.jsg.legis.state.pa.us/childprotection.state.pa.us/](http://www.jsg.legis.state.pa.us/childprotection.state.pa.us/).

3. *Ibid.*, p. 10.

4. 23 Pa.C.S. §6301 *et. seq.*

5. “Child Maltreatment 2013,” U.S. Department of Health and Human Services, Administration for Children and Families.

6. *Ibid.*, p. 29.

appropriately to the increased number of reports of suspected child abuse.<sup>7</sup> County agencies are likewise adding more staff in order to provide for an increased number of investigations.

### EXPANSION OF CATEGORIES OF MANDATED REPORTERS OF CHILD ABUSE

The revisions to the CPSL expanded the categories of individuals who are legally obligated to report child abuse, referred to commonly as "mandated reporters."<sup>8</sup> This section of the article will focus specifically on changes in the area of attorney reporting,<sup>9</sup> the addition of volunteers as mandated reporters,<sup>10</sup> and the expanded definition of school employees who are obligated to report suspicions of child abuse.<sup>11</sup>

Furthermore, the CPSL has a new provision which requires a mandated reporter to make a report of suspected abuse even when the mandated reporter is not involved directly with the abuse at the site of their paid or unpaid work location. A mandated reporter must make a report of suspected abuse under the newly amended law whenever a person makes a disclosure to a mandated reporter that an identifiable child is the victim of child abuse.<sup>12</sup> Previously the law indicated that mandated reporters were only mandated to make reports if they learned about the suspected abuse in the course of their employment.<sup>13</sup> The new law indicates that if a mandated reporter learns of the abuse outside the context of the position that makes the individual mandated to report, they would still be obligated to report.

### Attorneys

The amended reporting law broadens the responsibility of some attorneys in regard to their obligation to report child abuse. The presumption is that the intent of the Task Force's recommendation to add attorneys as mandated reporters was to broaden the scope of categories of individuals who are legally obligated to make reports of suspected abuse. Under the prior reporting laws, attorneys were not listed as enumerated persons required to report,<sup>14</sup> yet could be obligated to report per the definition of persons required to report suspected child abuse as a "person who in the course of employment came into contact with children."<sup>15</sup> Therefore, prior to December 31, 2014, attorneys who regularly came into contact with children in the course of their practice were legally obligated to report suspected abuse, except if the attorney learned of the abuse during confidential communications with their client.<sup>16</sup> The newly amended law broadens the obligation of attorney reporting from those attorneys who regularly come into contact with children during the course of their employment, to:

An attorney affiliated with an agency, institution, organization or other entity, including a school or regularly established religious organization that is responsible for the care, supervision, guidance or control of children.<sup>17</sup>

This definition thus includes attorneys that serve on school boards, attorneys who are solicitors for school districts, attorneys serving on religious organization committees, etc. Additionally, attorneys could be mandated reporters, even if not affiliated with such institutions, if the attorney is an "individual paid or unpaid, who, on the basis of the individual's role as an integral part of a regularly scheduled program, activity or service, accepts responsibility for a child."<sup>18</sup>

7. [http://www.pennlive.com/politics/index.ssf/2015/02/laws\\_aimed\\_at\\_increasing\\_child.html](http://www.pennlive.com/politics/index.ssf/2015/02/laws_aimed_at_increasing_child.html); [http://www.pennlive.com/politics/index.ssf/2015/03/addressing\\_child-abuse\\_clearan.html](http://www.pennlive.com/politics/index.ssf/2015/03/addressing_child-abuse_clearan.html).

8. Act 32 and 33 of 2014.

9. Act 32 of 2014.

10. Act 33 of 2014.

11. *Ibid.*

12. 23 Pa.C.S. §6311(b)(1)(iii).

13. 23 Pa.C.S. §6311(a), prior to amendments as of December 31, 2014.

14. 23 Pa.C.S. 6311(b).

15. 23 Pa.C.S. 6311(a).

16. Prior law, 23 Pa.C.S. §6311(a).

17. 23 Pa.C.S. §6311(a)(14).

18. 23 Pa.C.S. §6311(a)(7).

The child abuse reporting law addresses privileged communications between a mandated reporter and a client of the mandated reporter, indicating that generally privileged communication between a mandated reporter and client shall not apply to a situation involving child abuse and shall not relieve the mandated reporter of the duty to make a report of suspected abuse.<sup>19</sup> However, the statute also indicates that confidential communications made to members of the clergy are protected, and confidential communications made to an attorney are protected as long as they are: 1) within the scope of 42 Pa.C.S. §§5916 and 5928 (relating to confidential communications to attorney); or 2) the attorney work product doctrine; or 3) the rules of professional conduct for attorneys.<sup>20</sup> We will address each exception in turn.

The Pennsylvania Judicial Code<sup>21</sup> governs, among other issues, confidential communications with attorneys. The CPSL references the Pennsylvania Judicial Code where the law states that attorney client communications are protected. Specifically the CPSL references the Code section: “an attorney shall not testify in criminal or civil proceedings regarding confidential communications made to him by his client, unless confidentiality is waived by client.”<sup>22</sup> This provision appears to permit an attorney to make an appropriate report to the authorities (i.e. ChildLine), but not permit the attorney to testify in court about confidential communications.

The CPSL also addresses attorney client confidential communications in relation to the attorney work product doctrine. The Pennsylvania attorney work product doctrine provides even broader protections than the attorney-client privilege.<sup>23</sup> Pennsylvania courts have recognized that the work product doctrine protects material, regardless of whether it is confidential, prepared by an attorney in anticipation of litigation.<sup>24</sup> This exception indicates that any documents that were gathered or developed by the attorney in the course of the attorney client relationship are protected.

The final prong of the confidential communications exception for attorneys relates to the issue of the attorney rules of professional conduct. The Pennsylvania Rules of Professional Conduct indicate that a lawyer *may* reveal client confidential information to the extent necessary to prevent reasonably certain death or substantial bodily harm.<sup>25</sup> Therefore an attorney *could* make a report despite the presumed attorney client privilege if the attorney deems it is necessary to prevent death or substantial bodily harm. Such a situation would arise if a client reveals to their attorney that they were going to specifically hurt a child and the attorney deems it necessary to make the report to avoid future harm to the child. The attorney would not have the legal obligation to report the abuse, as the information was obtained during the course of a confidential attorney client relationship, however the attorney may feel morally obligated to protect a child in this scenario.

For attorneys who are affiliated with institutions or agencies, the attorney will need to clearly identify who is their client in order to determine what conversations would constitute confidential communications. For example, if an attorney is serving on a school board, they fit the definition of attorney affiliated with a school, but would there be any attorney client privileged communication? Presumably as a board member, the attorney is not filling the role as the attorney / solicitor for the school district and therefore not having confidential communications. Attorneys affiliated with an institution such as a hospital as general counsel, would have an obligation to report suspected abuse unless they learned of the abuse during the course of confidential communication with their client. Should attorneys who represent parents in family law matters warn their clients that their communications will not be kept confidential if the client were to reveal that they are putting their child in imminent risk of substantial bodily harm? How would

19. 23 Pa.C.S. §6311.1.(a).

20. 23 Pa.C.S. 6311.1.(b).

21. 42 Pa.C.S. §101 *et seq.*

22. 42 Pa.C.S. §§5916 & 5928.

23. *Comm. v. Noll*, 662 A.2d 1123, 1126 (Pa. Super. Ct. 1995).

24. *Nat'l R.R. Passenger Corp. v. Fowler*, 788 A.2d 1053, 1065 (Pa. Cmwlth. Ct. 2001), Pa.R.Civ.P. 4003.

25. Pa Rules of Professional Conduct 1.6(c).

such a warning impact attorney client relationships? Would the attorney need to inform the client that he/she made such a report? Could the attorney continue to represent the client in the legal action?

### Volunteers

The newly amended CPSL makes a dramatic change by adding volunteers as mandated reporters.<sup>26</sup> Previously the law was primarily focused on requiring individuals, who in the course of their employment, came into contact with children, to report any suspected child abuse. Potential concerns associated with requiring volunteers to be mandated reporters are providing adequate training to volunteers to be able to recognize suspected child abuse, and also to be aware of their obligation to report suspected abuse. Organizations that rely upon volunteers are scrambling to develop appropriate training programs for volunteers to make them aware of their new obligations to report suspected abuse.

### School Employees

The newly amended CPSL expands the definition of school, and consequently "school employee" and amends the reporting process for abuse discovered in schools.<sup>27</sup> Previously, a school employee was considered to be an "individual employed by a public or private school, intermediate unit or area vocational-technical school."<sup>28</sup> Schools are now defined more broadly to include such entities as public and nonpublic schools, community colleges, institutions of higher education, etc.<sup>29</sup> The term "school employee" describes an individual who is employed by a school or who provides a program, activity or service sponsored by a school.<sup>30</sup> This definition goes beyond school teachers and staff to arguably include non-school employees who run an after-school program within a school. The term specifically excludes an individual who does not have direct contact with children. Institutions of higher education across the Commonwealth are working to identify employees who are included in the definition of school employee, and developing trainings for employees on recognizing and reporting child abuse. For example, a school employee who only enters buildings late at night for cleaning and who has no contact with students, would not be considered a mandated reporter. A college professor who teaches freshman courses would be a mandated reporter, as many freshmen begin their first year of college before the age of eighteen.

One of the complications with the former reporting law was that there was a separate reporting structure for abuse discovered by school employees. The Task Force on Child Protection recommended "eliminating the distinction and to treat school employees in the same manner as any other person involved with children."<sup>31</sup> Under the former law, a school employee was to contact their school administrator, and then the administrator was to contact law enforcement,<sup>32</sup> not Childline. This process has been revised in an attempt to eliminate the possibility that the administrator would not report the abuse to the authorities after learning of the suspected abuse from an employee. Additionally, now school employees must make reports of suspected abuse to ChildLine, instead of law enforcement. The new law indicates that the staff person shall report immediately to Childline, then immediately thereafter notify the person in charge of the institution.<sup>33</sup> The law does not require more than one report from any such institution.<sup>34</sup>

26. 23 Pa.C.S. §6311(a)(7).

27. 23 Pa.C.S. §6303.

28. 23 Pa.C.S. §6303 before 2014 amendments.

29. 23 Pa.C.S. §6303(a)(1-16).

30. 23 Pa.C.S. §6303.

31. "Child Protection in Pennsylvania: Proposed Recommendations," Report of the Task Force on Child Protection, November 2012.

32. Former 23 Pa.C.S. §6352 & 6353.

33. 23 Pa.C.S. §6311(c).

34. *Ibid.*

## IMPACT OF EXTENDED BACKGROUND CHECKS

The revisions to CPSL add requirements for background checks for employees and volunteers working with children. Perhaps the most significant change relates to background checks for volunteers. The newly added 23 Pa.C. S. §6344.2 addresses background checks for adults applying for unpaid positions, or already volunteering in positions responsible for the welfare of a child or having direct contact with children. Organizations must identify whether a volunteer's activities put the individual in a position to be responsible for the welfare of a child or have direct contact with children. "Direct contact" is defined as "the care, supervision, guidance or control of children or routine interaction with children."<sup>35</sup> If an organization utilizes volunteers in roles that meet this description, the organization will need to require volunteers to undergo the following background clearances: 1) criminal history record from Pennsylvania State Police; 2) certification from the Department of Human Services (now DHS, formerly known as the Department of Public Welfare) which addresses whether the individual is an alleged perpetrator in a pending child abuse investigation, or the perpetrator of a founded or indicated report of child abuse; and 3) federal criminal history record, for which fingerprints must be submitted to the Federal Bureau of Investigation to verify the identity of the applicant in order to obtain a current record of any arrests or convictions.<sup>36</sup> Volunteers can be exempted out of the requirement for the FBI check if: 1) the position is unpaid; 2) the prospective volunteer has been a resident of the Commonwealth of Pennsylvania for the entirety of the previous ten-year period; and 3) the prospective volunteer swears or affirms in writing that he/she is NOT disqualified from service because of one of the following: named perpetrator of a founded report committed within the five-year period immediately preceding; has a criminal history record involving crimes related to violent offenses, or crimes related to children; or if the applicant has been convicted of a felony under the Controlled Substance, Drug, Device and Cosmetic Act within the preceding five-year period.<sup>37</sup>

While it is appropriate and necessary for organizations to determine whether volunteers working with children have criminal or civil records of crimes and child abuse, organizations are grappling with the costs of completing the clearances. As of March 2015, the cost of the Pennsylvania State Police clearance is \$10; the Pennsylvania Department of Human Services Clearance costs \$10; and the FBI clearance costs \$27.50.<sup>38</sup>

The DHS website has the following rules for grace periods and renewed clearances:

Beginning July 1, 2015, all volunteers will be required to obtain clearances every 36 months. Time frames for renewed clearances are based upon the date of each individual clearance. Volunteers are required to obtain updated clearances as follows:

- Within 36 months of the date of the most recent clearance;
- By July 1, 2016, if the clearance is older than 36 months; or
- By July 1, 2016, if they were approved as a volunteer before July 1, 2015, and had not received a clearance because they previously were not required to obtain clearances.<sup>39</sup>

The Department of Human Services has recently increased staff positions to handle the increased demand for child abuse clearances. Nevertheless, as of March 15, 2015, there were considerable reported backlogs in processing clearances.<sup>40</sup>

## TRAINING REQUIREMENTS FOR MANDATED REPORTERS

With the many changes to the CPSL, various institutions are developing training programs to educate their employees and volunteers about the statutory amendments. The

35. 23 Pa.C.S. §6303 (a).

36. 23 Pa.C.S. §6344(b).

37. 23 Pa.C.S. §6344.2(b & b.1); §6344(c).

38. As per Department of Human Services website: [http://keepkidssafe.pa.gov/cs/groups/webcontent/documents/document/c\\_135249.pdf](http://keepkidssafe.pa.gov/cs/groups/webcontent/documents/document/c_135249.pdf).

39. [http://keepkidssafe.pa.gov/cs/groups/webcontent/documents/document/c\\_135249.pdf](http://keepkidssafe.pa.gov/cs/groups/webcontent/documents/document/c_135249.pdf).

40. [http://www.pennlive.com/politics/index.ssf/2015/03/addressing\\_child-abuse\\_clearan.html](http://www.pennlive.com/politics/index.ssf/2015/03/addressing_child-abuse_clearan.html).

CPSL now requires that the following individuals undergo training related to reporting child abuse: all persons applying for a license or certification issued by a Department of State licensing board; certain operators of institutions, facilities, or agencies which care for children and are subject to supervision by the Department of Human Services; and certain foster parents.<sup>41</sup> Many organizations that are not legally required to provide training are beginning to offer training to their volunteers.

Additionally, the law allows for a graduated compliance schedule. In 2012, Governor Corbett signed Act 126 into law which amended the Public School Code to mandate that all school entities and independent contractors of school entities provide training to all employees on recognizing child abuse and the reporting requirements. Act 126, which went into effect in 2013, requires three hours of training every five years.

## **IMPACT ON FAMILY LAW PRACTICE**

### **Changes to Custody Statute**

A few of the revisions to the CPSL should be of specific note to attorneys working in the area of family law and representing parents in custody and dependency actions.

One of the changes to the law which is relevant to family law practitioners is what might be considered child abuse by a parent. Section 6303(b.1)(8)(vii) of the CPSL specifically states that it is "child abuse" for a parent to leave a child in the care of a person who is known, or reasonably should be known, to be one of an enumerated list of sexually violent predators.<sup>42</sup> This section specifically excludes the child's other parent as one with whom the child cannot be left. To what extent should a parent go to determine a potential caregiver's background in order to know whether that caregiver has committed one of the enumerated crimes? Courts have not yet defined, in the context of child abuse, what "knows or reasonably should have known" means. A 1992 Commonwealth Court case may be relevant. In *Bucks County Children and Youth Social Services Agency v. Department of Public Welfare*, the Commonwealth Court vacated the recommendation of the Department of Public Welfare Hearing Officer to expunge Mother's information as an indicated perpetrator of child abuse from a statewide registry. The Court remanded the case to the Office of Hearings and Appeals to determine specifically whether a mother "reasonably should have known that her daughter was subjected to acts of abuse" despite not having actual knowledge of the abuse.<sup>44</sup> The Commonwealth Court noted that "considering [mother's] personal experiences with [paramour], one must ask whether a reasonable person would place her eleven year old child in the hands of such a caretaker while she was in the hospital."<sup>45</sup> Perhaps a similar inquiry will apply to parents reasonably knowing about their child caretaker's history.

Obviously, parents have a duty of providing proper supervision when leaving their children with others to ensure that the caregivers for their children are safe. However, our new laws go farther to make parents potentially indicated as perpetrators of child abuse if they do not take the reasonable steps to ensure safety. The appellate courts have not had an opportunity to interpret what "reasonableness" might mean in these circumstances, but an argument can be made that it would be the reasonable person standard. With a world of information from internet searches literally available at our fingertips today, it would be hard for anyone to argue that he or she did not know something about the person caring for his or her child.

### **Reporting Involvement with Children and Youth Services in Custody Cases**

The second major change of which custody attorneys should take note actually occurred in January 2014 but references sections that only took effect as a result of the new

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41. 23 Pa.C.S. §6383(b) & (c).

42. 23 Pa.C.S. §6303(b.1)(8)(vii).

43. *Id.*

44. *Bucks County Children and Youth Social Services Agency v. Department of Public Welfare*, 616 A.2d 170 (1992).

45. *Id.* At 174.



changes to the law. 23 Pa.C.S. §5329.1 requires parties to a custody action to disclose information about child welfare involvement of the party or any adult individual residing in that party's home. Attorneys representing parents or other parties in custody cases should be aware that they must file a report, commonly known as "a 5329 report" upon initiation of a custody action, or when filing for modification of custody. The custody statute directs courts to "consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any" of a series of crimes listed in the statute.<sup>46</sup> Since 2011, attorneys should include in custody pleadings when a change in the status quo is requested, a document that lists whether or not one of the parties or member of the parties' household participated in one of the enumerated crimes.<sup>47</sup>

As of January 1, 2014, under 23 Pa.C.S. §5329.1, courts shall now also consider child abuse and involvement with protective services along with that list of enumerated crimes.<sup>48</sup> Similar to §5329, this section requires disclosure of any involvement by the party and any other adult member of the party's household.<sup>49</sup> The section expands what the court has authority to review, however, and references §6340(a)(5.1) which allows for release by county child welfare agencies of information in confidential reports to "a court of common pleas in connection with any matter involving custody of a child. . ."<sup>50</sup> Neither the statute nor the rules describe the specific way(s) in which counties shall share this information other than to say that it is the court that shall have the report be made available to it, and that it shall be available for "examination of the parties."<sup>51</sup> This part of the statute has caused many county officials to struggle to determine how to present information to the parties. Does each party have the right to see exactly what the court sees in the exact form the court sees it? Is it just the right of the attorney to see what the court is reviewing? What if a party is *pro se*? Should the information be available for review only within the court's chambers? Should the information be part of the record, and should it be made clear that the court is using such information for decision-making in the case?<sup>52</sup> Should courts rely on self-reporting of the parties, or should the court be requesting a search of Children and Youth records for every custody case that comes before it? Is it even logistically possible for courts to review each party and every cohabitant of each party in every custody case that comes before it?

One of the new revisions to the law is to §6331, Establishment of Statewide Database.<sup>53</sup> At this time, the database is not active for every county. However, when it is active, the database is to include extensive information including reports of child abuse, the status of court and agency actions and reports, family case records, information on reports made to the agency, and false reports of child abuse "for the purpose of identifying and tracking patterns of intentionally false reports."<sup>54</sup> Clearly, access to this type of database will make research by a court much easier, but it is not available yet and the statute does not give a deadline for when the database shall be available across the state.

What is also not clear is how far reaching the requests for information about child welfare involvement shall go. Family law practitioners know all too well that the web of relationships involved in custody cases can be quite large. It is not a completely unforeseen consequence for an individual who is only tangentially related to a matter to suddenly have his or her previously closed Children and Youth matter become an issue in someone else's custody action, to be used as a weapon by one side against another.

For counties that utilize the conciliation process, it is also unclear at what stage of the custody proceeding this information should be requested or made available. In Cumber-

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46. 23 Pa.C.S. §5329.

47. *Id.*

48. 23 Pa.C.S. §5329.1.

49. *Id.*

50. 23 Pa.C.S. §6340(a)(5.1).

51. 23 Pa.C.S. §5329.1.

52. *Note Pa v. Ritchie*, 480 U.S. 62 (1987), in which the US Supreme Court specifically held that a defendant in a criminal matter is entitled to have a child welfare record reviewed by the trial court *in camera* but not necessarily by defense counsel. The trial court, in turn, has an obligation to turn over to defense counsel only potentially exculpatory evidence.

53. 23 Pa.C.S. §6331.

54. 23 Pa.C.S. §6331 (11).

land County, for example, the information is not even requested until the Court is made aware that the parties have been unable to resolve the matter at conciliation and a hearing before a judge is necessary. At that time, the conciliator makes a formal, written request to the court which directs Children and Youth personnel to gather the requested information for the judge assigned to hear the case. Because the rules are silent, each county can have its own procedure. As always, it is important for attorneys to know the specific rules and procedures of the counties they practice in. Some counties do not yet have procedures defined for this process, and in those situations, it becomes incumbent upon attorneys to call this to the court's attention, and request that proper procedures be put in place.

Because this is such a new section of the law, with no reported judicial interpretation, it is too early to know how each county will treat requests for information, how many degrees removed from the parties the requests will be recognized, and what exactly the courts will do with such information. Suffice it to say, however, that it is still important for attorneys to be soliciting this information from clients and to be including the information with all custody pleadings requesting a change in the status quo.

### **CONCLUSION**

The sweeping changes to our CPSL and related laws make dramatic changes in Pennsylvania's child protection system. How the changes will improve child safety, remains to be seen as we monitor the implementation process and analyze the data which is generated. Attorneys need to familiarize themselves with these changes. There are questions of interpretation which will be likely answered through future case law and rules.