



THE FIELD CENTER

for Children's Policy, Practice & Research

Testimony Presented to the
Pennsylvania Task Force on Child Protection
May 3, 2012
Harrisburg, PA

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Meeting the Challenge of Protecting Children

I want to thank Judge Heckler and the members of the Task Force for providing me the opportunity to present to you today. My name is Richard Gelles and I am currently the Dean of the School of Social Policy & Practice at the University of Pennsylvania. I also hold the Joanne and Raymond Welsh Chair of Child Welfare and Family Violence at the University of Pennsylvania. I am a Faculty Director of the Field Center for Children's Policy, Practice and Research, and Founding Director of the Ortner-Unity Program on Family Violence. In addition, I hold a joint appointment in the Department of Sociology. I have published widely on the topics of child maltreatment, child abuse and neglect, domestic violence, violence toward women, child welfare social policy, and child protective services. I have provided training and consultations to numerous federal, state, and local child welfare and child protective service agencies. I have qualified as an expert witness on child welfare, child protective services, and child welfare systems in state and federal courts in Rhode Island, Pennsylvania, North Dakota, New York,

Maryland, Arizona, and New Jersey. In 1996 and 1997 I helped draft the Federal Adoption and Safe Families Act (PL 105-89).

Protecting children from abuse and neglect is not brain surgery—it is much more difficult. Brain surgeons have the advantage of a decade of specialized training and the use of the latest and most advanced technology. Front-line child protective service case workers often have only a bachelor's degree in the liberal arts and job tenure of three to five years. The latest technology in child protective service work is a cell phone and, if budgets allow, a laptop computer.

Brain surgeons never have to choose between fixing the brain and losing the patient or saving the patient and letting the brain stop functioning. Child protective service work involves choices between three often incompatible goals—preserving the family, assuring the safety and well-being of the child-victim, or assuring the child has permanent caregiving from a loving parent. Prioritizing safety can lead to removing children from parents who might have responded to help. Preserving often leads to re-abuse and even a fatality. Permanency by placement with birth parents runs the same risks as preservation. To achieve permanency through adoption requires the early termination of parental rights.

Today I want to speak to what those in the field of child protective services refer to as the front end of the system. The front end of the system can be conceptualized as a series of gates through which reports of suspected child abuse and neglect may pass or be halted. The initial gate that lies outside of the formal child welfare system is the decision by a professional or concerned individual of whether to report an instance of child abuse or neglect. As you know, some individuals are mandated by state law to report suspected abuse or neglect. Other individuals, because of their professional positions, are required to

report suspected maltreatment. While the Federal Child Abuse Protection and Treatment Act requires states to have a procedure for mandatory reporting, each state is free to develop its own definition of child maltreatment and specify who are mandated reporters.

The first gate operated by the child protective service system, Gate 1, is what is generally referred to as “screening.” Every state has some sort of “hotline” that receives reports by telephone, fax, or in writing.¹ The task of the gatekeeper of the hotline gate is to screen reports and determine which ones should be investigated and the speed with which an investigation should be mounted.

Gate 2 is the investigation. At this point a child protective service worker begins the task of assembling information in order to determine whether there is a “substantiated” or valid case of child maltreatment. Standard practice typically requires seeing the suspected victim(s), speaking with the caregivers and suspected perpetrator, and gathering relevant collateral information from schools, medical facilities, criminal justice agencies, and the child protective service agencies’ own files. The result of the investigation is a decision whether to substantiate the report—in other words, determine that maltreatment has occurred or whether to “unsubstantiate” a report, in other words either maltreatment did not occur or there is insufficient evidence to justify substantiation.²

Gate 3 and 4 are placed immediately after Gate 2. For those cases that are substantiated, the investigator must make an additional decision at Gate 3—should the child remain in the household or should the child be removed? Gate 4 is the decision regarding children who remained in the home even after the report is substantiated. At Gate 4, the investigator or case

¹ In some states there is a state-wide hotline, while other states have hot-lines for each county or organizational geographic or administrative unit.

² The actual terms used vary from state to state—some states use the terms substantiated/unsubstantiated, while others use the terms founded/unfounded (Meyers, 2006). Some states have three-part decision trees—substantiated, unsubstantiated, or indicated.

worker must decide if the family should be provided voluntary services if the case is to be closed. The time frame and gatekeepers vary. Typically, the Gate 3 decision is made in real time during the initial stage or hours of the investigation. Gate 4 decisions may be made by someone other than the investigator and are made in the course of, or at the conclusion of, the investigation.

Subsequent gates include Gate 5, if the child is to be removed from the home, where should the child be placed? Gate 6 is the gate that comes into play if a child must be moved from one out-of-home placement to another. Gate 7 is the gate at which point a decision is made whether to return the child to the birth parents, and Gate 8 is the decision to terminate parental rights. One could conceivably identify sub-gates and other decisions that must be made by case managers, but the eight-gate system is a reasonably accurate picture of the structure of child protective services in the United States.

The instance of alleged sexual abuse carried out at Pennsylvania State University shined a light on the initial gate of child protection: who should be required to make a report of suspected child maltreatment, what is the definition of child maltreatment, to whom should the report be made (child protective services or law enforcement), and the whether school should have a distinctive pathway for reporting compared to pathways for individuals or other institutions.

I attended Congressional hearings nearly 40 years ago when the initial federal legislation was enacted calling for mandatory reporting of suspected child abuse and neglect. Until today, there has not been a serious public and policy reconsideration of the 1974 law. Perhaps the current discussion will lead to improved laws and closing of the cracks through which abused children slip. But the discussion of mandatory reporting laws should be carried out with care and facts.

The Size and Scope of the Problem

In 1974, when the Child Abuse Prevention and Treatment Act was signed into law, the highest estimate of the extent of child maltreatment was 150,000 children. At the time, the primary focus of child maltreatment was on physical injury. No one who testified at the hearings or drafted the legislation could have imagined that by 2012 there would be 3,000,000 reports of maltreatment involving some 5 million children.

The numbers of reports grew, not because the problem grew, but because of three major factors. First, the mandate to report increased public and professional awareness of the problem of abuse and neglect. Second, the actual definition of abuse and neglect expanded over the years as professionals and law makers recognized the varied ways in which children could be maltreated. Sexual abuse, in particular, was not a well understood issue in 1974. Third, child protective service gatekeepers allowed the “gates” to open wider. There are a few reasons for the widening of the gates, but two bear mention. First, child advocates believed that if they could demonstrate that the problem of abuse and neglect was substantial, the advocates could successfully compete for more federal and state funding for services. Second, when the federal government ratcheted back funds for social problem in the early 1980s, child advocates believed that they needed to use “child abuse” as a “means test” to direct social services to needy families—even if it meant stigmatizing families with the label of “abuser.”

Unfortunately, or predictably, the advocates were wrong. As the number of reports of maltreatment grew from hundreds or thousands to millions, resources for social services did not follow. The only federal funding that increased was funding for what we call “back-end services,” in particular, foster care. The tradeoff of receiving so-called help from child protective service agencies in return for being labeled a “child abuser” never motivated families to seek social support through the child protective service system.

Drinking From a Fire Hose

There are serious doubts about whether enacting mandatory reporting laws actually improved the safety and well-being of children and/or increased the quality and effectiveness of services offered to families. What the influx of reports did, however, was force state and local child protective service agencies to drink through a fire hose.

The most current data on child abuse and neglect reporting are for 2009. That year state agencies received 3.3 million reports of suspected child abuse and neglect. The reports involved some 5 million children. State agencies investigated 2 million of the 3 million reports. About a million reports were not investigated primarily because the report failed to include sufficient information needed to initiate an investigation (e.g. name of victim or offender, address of victim or offender), or because the allegation did not meet the state definition of child abuse and neglect.

Of the 2 million investigations, 442,005 children were deemed to be abused or neglected. The remaining 1.6 million reports were not false reports, but rather the investigators were unable to uncover sufficient evidence that abuse had actually occurred. So in the end, slightly more than 1 out of 5 reports of suspected child abuse and neglect is confirmed to be abuse after an investigation. This percentage, which is referred to as the “substantiation rate,” has not changed much in the last 30 years.

Figure 1

The Child Abuse and Neglect Pyramid

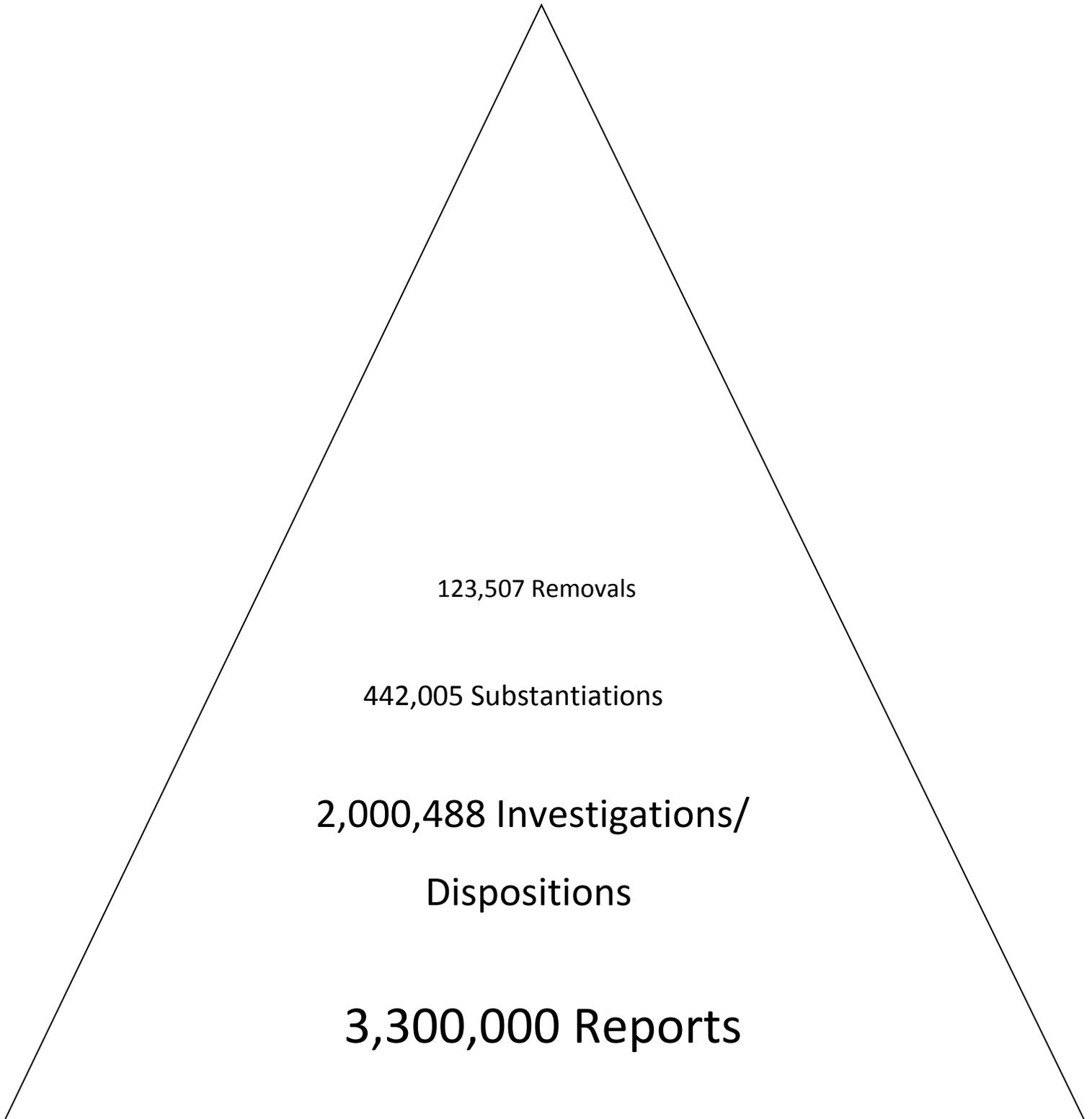


Figure 1 demonstrates that narrowing of the population of child abuse and neglect cases after initial reports. After 443,005 children have been substantiated as victims of abuse or neglect, about half of the cases are closed and the families are offered voluntary services. Of the remaining 200,000 or so children, half of their families receive services while the children remain in the home. The remaining 123,000 children are removed and placed in foster care.

With the exception of a small amount of federal funds provided through the Child Abuse Prevention and Treatment Act, states and local communities bear the entire cost of screening, investigating, and processing suspected cases of child abuse and neglect.

Are Children Protected?

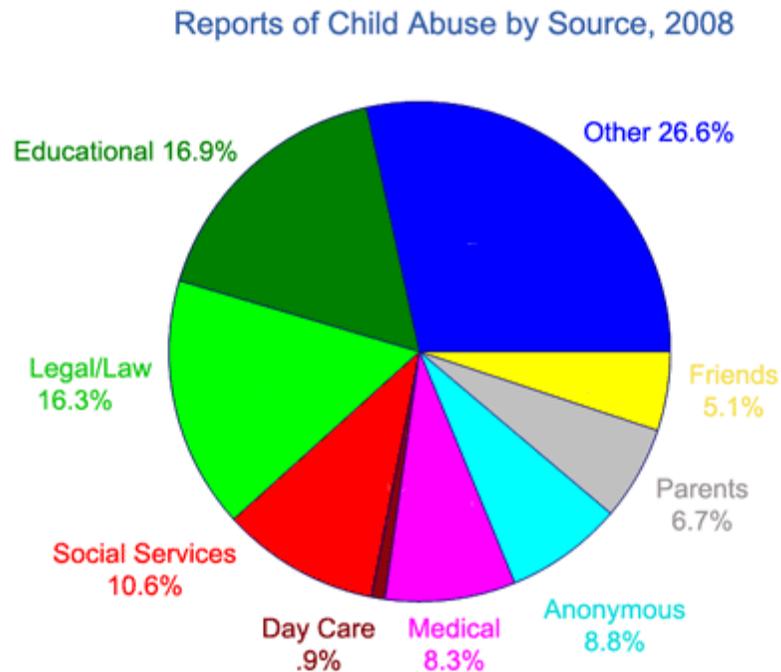
Mandatory reporting has been a 40 year experiment in the United States. Only Canada and Australia (with the exception of Western Australia) have emulated US mandatory reporting. And while there are certainly pros and cons regarding mandatory reporting laws, there are not as yet any definitive data that such laws serve their initial goal—to better protect children and assure their safety and well-being.

Who Should Report?

The state reporting statutes regarding mandated reporters vary from requiring all adults to report suspected child maltreatment to states that specify professional groups

that are mandated reporters. Overall, in 2008 professionals were the most frequent source of reports of suspected maltreatment (See Figure 2): Educators reported 16.9 % of all reports in the United States followed by Legal and Law Enforcement sources (U.S. Department of Health and Human Services, 2009).

Figure 2



Not only are professionals the most likely source of reports, but professional reports are the most likely to be substantiated. In 2008, 70.7 percent of reports substantiated were made by professionals (U.S. Department of Health and Human Services, 2008).

Data on substantiation rates for the Commonwealth of Pennsylvania display a similar picture. In 2010 there were 24,516 reports of child abuse. Overall, 14.9 percent of the reports were substantiated after an investigation. School personnel submitted the most reports, 6,921, but only 5.5 percent of those reports were substantiated. Anonymous reports, of which there were 1048 in 2010, had a substantiation rate similar to that of educational personnel—5.1 percent. Not including reports made by perpetrators or the

three reports submitted by coroners, reports submitted by law enforcement and dentists had the highest rates of substantiation in Pennsylvania.

Table 1

**REFERRAL SOURCE BY
STATUS DETERMINATION AND
CHILDREN MOVED⁶, 2010**

REFERRAL SOURCE	TOTAL	SUBSTANTIATED	PERCENT	CHILDREN MOVED
SCHOOL	6,921	389	5.6%	965
OTHER PUB/PRI SOC SER AGENCY	4,252	790	18.6%	1,667
HOSPITAL	2,783	636	22.9%	1,151
PARENT/GUARDIAN	1,757	310	17.6%	620
LAW ENFORCEMENT AGY	1,387	586	42.2%	636
RESIDENTIAL FACILITY	1,168	47	4.0%	558
ANONYMOUS	1,048	53	5.1%	144
PUBLIC MH/MR AGY	1,035	137	13.2%	287
RELATIVE	969	115	11.9%	272
OTHER	702	188	26.8%	249
FRIEND/NEIGHBOR	697	53	7.6%	131
PRIVATE DOCTOR/NURSE	432	82	19.0%	151
DAY CARE STAFF	426	28	6.6%	76
PRIVATE PSYCHIATRIST	426	75	17.6%	138
CHILD-SELF REFERRAL	345	105	30.4%	176
SIBLING	69	12	17.4%	19
CLERGY	42	12	28.5%	15
DENTIST	36	14	38.9%	11
PUBLIC HEALTH DEPT	35	2	5.7%	10
BABYSITTER	30	5	16.7%	6
COURTS	26	6	23.1%	9
PERPETRATOR	18	9	50.0%	5
LANDLORD	7	0	0.0%	4
CORONER	3	2	66.7%	2
UNKNOWN SOURCE	1	0	0.0%	1
TOTAL	24,615	3,656	14.9%	7,303

Towards Protecting Children

If our goal is to protect children who are in harm's way, we will be unlikely to achieve that goal by expanding the list of groups and individuals required to make reports. Whatever the advantage of mandatory reporting laws, mandating reporting does not increase services to families or protection to children.

Similarly, creating punishments and sanctions for failing to report suspected child abuse is also not going to increase services or offer greater protection. Following my metaphor from above, increasing the flow and pressure of the fire hose will not enhance the quality of the work carried out by front-line child protective service workers.

My experience in the areas of research, policy, and practice in the field of child protective services, as well as what I have learned as an expert witness in class action and civil cases involving state and county child welfare agencies, leads me to make the following suggestions to the Task Force.

1. First and most important, measure all of your decisions and suggestions for legislative reform against the question of whether a change or changes will improve the protection offered to vulnerable and dependent children. While this seems obvious, I know that many well-intended legal reforms actually end up placing more rather than fewer children at risk for abuse and neglect.
2. Carefully consider the definition of child abuse in Pennsylvania Code 23 Pa. C.S. Paragraph 6303 (b:1:i) that specifies abuse as "Any recent failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age." While the definition appears well intended and designed to assure that only intentional serious injury is defined as child abuse, the terms

“nonaccidental” and “serious” set both a high bar as well as an ambiguous standard for what constitutes child abuse. Forty years ago, my colleague David Gil, in explaining his concern about the ambiguity in the Federal definition of the Child Abuse and Treatment Act opined that, if he threw his twin sons to the floor and one landed on concrete and fractured his skull while the other twin landed on a carpet and was unscathed, would he, Gil, be a one-handed child abuser only? More importantly, how would anyone determine whether the act was intentional? Pennsylvania has one of the lowest substantiation rates for child abuse in the nation of 15% compared to the national rate of 19% (U.S. Department of Health and Human Services, 2011). A high bar for substantiation of child abuse creates the risk of false negatives—determining that children are safe when, in reality, they are in danger of injury and harm.

3. The Commonwealth definition of a perpetrator (Pennsylvania Code 23 Pa. C.S. Paragraph 6303 (a) is a “person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same house as a child or a paramour of a child’s parent.” While this definition is suitable for physical abuse and most forms of neglect, it is much too narrow for child sexual abuse. While the majority of child sex abusers would fall under the Commonwealth’s definition, some important exceptions still exist. Pennsylvania might want to adopt a definition of sexual abuse that is used in New Jersey that identifies sexual abusers as: “sexual penetration of a person over the age of 13 and under the age of 16 by one who is 5 years or more older than the victim constitutes sexual assault, a second degree crime” (N.J.S.A. 2C:14-2(C)(4)). Such a definition would

encompass the full range of individuals who engage in sexually abusive acts against children and would eliminate some of the ambiguity in the current statute.

4. The institutional “carve out” in 23 PA. C.S. Paragraph 6311 (c) that directs an institutional employee to report suspected abuse to a person in charge of the institution or designated official and then requires the official or designee to make the report is unnecessarily complex and creates a separation between the person with the most direct knowledge of the suspected maltreatment from the local child and youth service agency that will decide whether and how to conduct an investigation. While it is reasonable for the person who suspects abuse to notify appropriate officials of the institution, it is also better practice for the person with direct knowledge of suspected abuse to make a direct report to child protective service agencies.

I want to thank you for the opportunity to share my thoughts and experiences with you today.

The child protective service system is a complex system with many gates governed by federal and state regulations. Most importantly, the system is one where the primary task is to make hard decisions often with only soft data available. Each contemplated legislative change will involve numerous intended and unintended consequences. Protecting children must be the primary criterion to assess the cost and benefit of any proposed changes or revisions.

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