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A1

199 A.3d 868

Supreme Court of Pennsylvania.

In the INTEREST OF: L.J.B., a Minor

Appeal of: A.A.R., Natural Mother

No. 10 MAP 2018

Argued September 25, 2018

Decided December 28, 2018

Synopsis

Background: County children and youth services agency filed dependency petition on behalf of minor child, alleging child was without proper parental care or control under the Juvenile Act, and that child was a victim of child abuse under the Child Protective Services Law (CPSL) due to mother's use of illegal drugs while pregnant. After entering order finding child dependent pursuant to Juvenile Act, the Court

of Common Pleas, Clinton County, Juvenile Division, No. CP-18-DP-0000009-2017, Craig P. Miller, J., issued opinion and order finding that agency could not establish child abuse under CPSL based on actions committed when child was a fetus. Agency appealed. The Superior Court, No. 884 MDA 2017, Moulton, J., 177 A.3d 308, vacated and remanded. Mother appealed.

Holding: The Supreme Court, No. 10 MAP 2018, Donohue, J., held that mother could not be found to be a “perpetrator” of child abuse under the CPSL based on her use of opioids while pregnant.

Reversed and remanded.

Saylor, J., filed concurring opinion in which Dougherty, J., joined.

Dougherty, J., filed concurring opinion.

Mundy, J., filed dissenting opinion in which Todd, J., joined.

***869** Appeal from the Order of the Superior Court at No. 884 MDA 2017 dated December 27, 2017 Vacating the Order of Clinton County Court of Common Pleas, Juvenile Division, dated May 24, 2017 at No. CP-18-DP-0000009-2017 and remanding for further proceedings, Miller, Craig P., President Judge

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SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHE
RTY, WECHT, MUNDY, JJ.

OPINION ANNOUNCING THE JUDGMENT OF
THE COURT

JUSTICE DONOHUE

The Pennsylvania General Assembly enacted the
Child Protective Services Law, 23 Pa.C.S. §§ 6301-
6386 (“CPSL”), based on its finding that child victims
of abuse urgently need effective services to prevent
further injury and impairment. *Id.*, § 6302(a). Its
purpose is to encourage more complete reporting of
suspected child abuse; to the extent permitted by this
chapter, to involve law enforcement agencies in
responding to child abuse; and to establish in each

county protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child ***870** and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk. *Id.*, § 6302(b). A finding that a person has committed child

abuse¹ results in the inclusion of the actor in a statewide database, *id.*, §§ 6331, 6338(a), the purpose of which is to protect children from further abuse. *P.R. v. Dep't of Pub. Welfare*, 569 Pa. 123, 801 A.2d 478, 483 (2002). Inclusion on the statewide database impacts a person's ability to obtain certain kinds of employment, housing, and participate in certain volunteer activities.

See 23 Pa.C.S. §§ 6344, 6344.1, 6344.2.

We address here an issue of first impression under the CPSL: whether a woman's use of opioids while pregnant, which results in a child born suffering from neonatal abstinence syndrome (“NAS”), constitutes “child abuse” as defined.² We conclude, based on the relevant statutory language, that a mother cannot be found to be a perpetrator of child abuse against her newly born child for drug use while

pregnant. We therefore reverse the decision of the Superior Court and remand the matter for reinstatement of the trial court's order.

As all of the pertinent terms are defined by statute, we set forth the relevant statutory definitions in order to provide context for our discussion of this case. The CPSL defines “child abuse,” in relevant part, as “intentionally, knowingly or recklessly ... (1) [c]ausing bodily injury to a child through any recent act or failure to act,” or “(5) [c]reating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.” 23 Pa.C.S. § 6303(b.1)(1), (5). A “recent act” is “[a]ny act committed within two years of the date of the report to the department or county agency.” Id., § 6303(a).

Not every person who harms or injures a child is a perpetrator of “child abuse” under the CPSL. Instead,

a “perpetrator” is defined as “[a] person who has committed child abuse as defined in this section,” *id.*, and is limited to the following individuals:

(i) A parent of the child.

(ii) A spouse or former spouse of the child's parent.

***871** (iii) A paramour or former paramour of the child's parent.

(iv) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(v) An individual 14 years of age or older who resides in the same home as the child.

(vi) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(vii) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

Id., § 6306(a)(1). The CPSL defines a “child” as “[a]n individual under 18 years of age.” *Id.*, § 6303(a).

With these definitions in mind, we turn to the uncontested facts of this case. In 2016, A.A.R. (“Mother”), was released from incarceration, after which she relapsed into drug addiction, using opioids (pain pills) and marijuana. Mother subsequently learned that she was pregnant with L.J.B. (“Child”). She estimated that she was approximately four months pregnant at that time. Thereafter, she sought treatment for her addiction, first through

a methadone maintenance program³ and then with subutex.⁴ Mother again relapsed and in mid-January 2017 she tested positive for opiates, benzodiazepines and marijuana, none of which were prescribed for her.

Mother gave birth to Child on January 27, 2017 at Williamsport Hospital. At the time of Child's birth, Mother tested positive for marijuana and subutex. By the third day of life, Child began exhibiting symptoms of NAS, including tremors, excessive suck, increased muscle tone and loose stools, which doctors treated with morphine. Mother reportedly left Child in the hospital and did not consistently check on her or stay with her (despite the availability of a room for her to do so). Hospital personnel communicated all of this information to the Clinton County Children and Youth Social Services Agency ("CYS").

On February 7, 2017, CYS sought and was granted emergency protective custody of Child. The juvenile court held a shelter hearing on February 10, 2017 and ordered Child to remain in CYS' care. CYS then filed a dependency petition alleging that (1) Child was “without proper parental care or control ... as required by law” pursuant to section 6302(1) of the Juvenile Act (42 Pa.C.S. §§ 6301-6375), and (2) that Child was a victim of child abuse by a perpetrator as defined by section 6303(b.1)(1) of the CPSL in that Mother “caus[ed] bodily injury to a child through any recent act or failure to act.” Dependency Petition, 2/13/2017, at 3, 5. The child abuse allegation was based on Child's hospitalization for nineteen days, during which Child “suffer[ed] from withdrawal due to substances Mother ingested while Mother was pregnant with her.” *Id.* at 5. The ***872** juvenile court

continued the initial dependency hearing because of its concern that Mother and J.W.B. ("Father") did not receive proper notice. Prior to the rescheduled hearing, CYS filed another dependency petition containing the same allegations of dependency and child abuse, but adding information concerning visits between the parents and Child and Mother's admitted continued drug use.

On March 15, 2017, by agreement of the parties, the juvenile court adjudicated Child dependent pursuant to section 6302(1) of the Juvenile Act. It deferred to a separate proceeding the question of whether Mother's drug use while pregnant constituted child abuse, and ordered the parties to file memoranda of law for the court's review.

CYS filed its brief in support of a finding of child abuse on March 23, 2017, therein averring that Mother's

conduct satisfied subsections (1) and (5) of the definition of “child abuse” in that her “recent act” caused or created a reasonable likelihood of causing bodily injury to Child. *See* 23 Pa.C.S. § 6303(b.1) (1), (5); *supra*, p. ——. Mother filed a memorandum of law the following day, asserting that the CPSL does not protect a fetus or unborn child, and thus Mother's actions could not be deemed child abuse as a matter of law.

The juvenile court held argument on May 9, 2017. After taking the matter under advisement, it issued an opinion and order, agreeing with Mother that “the law does not provide for [a] finding of abuse due to actions taken by an individual upon a fetus.” Juvenile Court Opinion, 5/24/2017, at 4. It thus held that CYS “cannot establish child abuse in this matter on the

actions committed by Mother while [C]hild was a fetus.” Juvenile Court Order, 5/24/2017, ¶ 1.

CYS appealed to the Superior Court, which reversed.

In a unanimous opinion, the court found, “Under the plain language of the statute, Mother's illegal drug use while pregnant may constitute child abuse if the drug use caused bodily injury to Child.” *In re L.B.*, 177 A.3d 308, 311 (Pa. Super. 2017). Although agreeing with Mother (and CYS) that the definition of “child” in the CPSL does not include a fetus or unborn child, it found that “Mother's drug use is a ‘recent act or failure to act’ under 6303(b.1)(1) and (5),” and that her conduct caused or was reasonably likely to cause injury to Child who, now born, constituted a “child.” *Id.* It therefore held “that a mother's use of illegal drugs while pregnant may constitute child abuse under the CPSL if CYS establishes that, by

using the illegal drugs, the mother intentionally, knowingly, or recklessly caused, or created a reasonable likelihood of, bodily injury to a child **after**birth.” *Id.* at 309 (emphasis in original).

Senior Judge Eugene B. Strassburger authored a concurring opinion, which the majority author joined. Judge Strassburger joined the majority opinion, agreeing that “the language of the statute” required that result. He wrote separately to express his concern of “whether treating as child abusers women who are addicted to drugs results in safer outcomes for children,” as this could cause a pregnant woman to avoid a hospital, fail to seek prenatal care, or decide not to pursue treatment for her addiction. *L.B., 177 A.3d at 313-14* (Strassburger, J., concurring). He also acknowledged that the majority's holding could easily be extended to other areas of a pregnant woman's

decision making (e.g., drinking coffee, traveling, eating sushi, or undergoing cancer treatment). Judge Strassburger expressed doubt that the General Assembly intended for actions taken by a woman prior to her child's birth to constitute “child abuse,” but ultimately agreed with the majority that this is the ***873** interpretation that the language of the statute required. *Id.* at 315.

Mother timely appealed to this Court, and we granted review of the following issues:

- (1) Does [the CPSL] allow a mother be found a perpetrator of “child abuse” in the event she is a drug addict while her child is a fetus[?]
- (2) Is the intent of 23 Pa.C.S. § 6386 limited to providing “protective services” to addicted newborns and their families and not so expansive to permit alcoholic or addicted mothers be found to have

committed child abuse while carrying a child in her womb[?] In Interest of L.J.B., 183 A.3d 971, 972 (2018) (per curiam).

This case presents questions of statutory interpretation for which our standard of review is de novo. Commonwealth v. Fant, 637 Pa. 135, 146 A.3d 1254, 1260 (2016). A court's role when interpreting a statute is to determine the intent of the General Assembly so as to give it its intended effect. 1 Pa.C.S. § 1921(a). “In discerning that intent, the court first resorts to the language of the statute itself. If the language of the statute clearly and unambiguously sets forth the legislative intent, it is the duty of the court to apply that intent to the case at hand and not look beyond the statutory language to ascertain its meaning.” In re L.B.M., 639 Pa. 428, 161 A.3d 172, 179 (2017); *see also* 1 Pa.C.S. § 1921(b) (“When the words

of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”).

Mother and her amici⁵ forward various arguments to this Court in support of reversing the Superior Court's decision. As we must, we begin by addressing the arguments aimed at the plain language of the statute. Mother contends that pursuant to the clear and unambiguous language of the CPSL, she did not commit “child abuse” while she was pregnant because there was no “child,” and she therefore was not a “perpetrator,” at the time she committed the act in question. *See* Mother's Brief at 12-21; 23 Pa.C.S. § 6303(a), (b.1). *See also* ACLU and FMF Amici Brief at 6-8. She observes that section 6386 of the CPSL requires medical personnel to report to CYS when a child is born, inter alia, experiencing withdrawal

symptoms because of prenatal drug exposure.⁶ *874 She argues, however, that the CPSL neither requires nor permits a finding of “child abuse” on this basis, again pointing to the pertinent definitions of section 6303, as well as failed amendments to the statute that would have made her conduct “child abuse” (but did not). *See* Mother's Brief at 21-28; 23 Pa.C.S. § 6386. According to Mother, a finding of child abuse based on harm caused by a mother's ingestion of narcotics during pregnancy also contradicts the stated purpose of the CPSL because it would do nothing to protect children from “further abuse,” as this form of “abuse” is not repeatable against the child. *See* Mother's Brief at 29-30; 23 Pa.C.S. § 6302 (stating, in pertinent part, that one of the purposes of the CPSL is “providing protection for children from further abuse”).

In response, CYS does not address Mother's assertion that she cannot be a “perpetrator” as defined by the CPSL. Instead, it points to section 6386 and its contemplation that the county agency may institute “child protective services” following its safety assessment after receiving a report from a healthcare provider that a child was born affected by prenatal drug exposure. Because “child protective services” are only instituted in cases of child abuse, CYS reasons that the General Assembly intended for drug use while pregnant to constitute an act that could be deemed child abuse once the child is born affected by his or her prenatal exposure to drugs. *See* CYS' Brief at 5-9; 23 Pa.C.S. § 6303(a) (defining “child protective services” as “services and activities provided by the department and each county agency for child abuse cases”). CYS further contends that a finding of child

abuse in this circumstance aligns with the legislative intent provided in section 6302 of the CPSL because Mother “may well be pregnant again in the future.” It asserts, without explanation, that a finding that Mother abused Child by using illegal drugs while pregnant would somehow “protect these children as well.” CYS' Brief at 12-13.

As stated hereinabove, a “perpetrator” is “[a] person who has committed child abuse” under the CPSL. 23 Pa.C.S. § 6303(a). Thus, at the time the individual committed the act that caused or was reasonably likely to have caused bodily injury to a child, he or she must have been a “perpetrator,” as defined. The delineation of each individual who is permissibly identified as “perpetrator” under the CPSL is based on his or her relationship to a “child” – in Mother's case, as “[a] parent of a child.” *See id.*, § 6303(a)(1). Reading

the clear and unambiguous language of the ***875** relevant definitions together, a person cannot have committed child abuse unless he or she was a perpetrator, and a person cannot be a perpetrator unless there is a “child” at the time of the act. *See* 23 Pa.C.S. § 6303(a), (b.1).

In the case at bar, however, the act alleged (ingesting opioids) occurred when Mother was pregnant. As the parties agree, and the Superior Court found, the CPSL's definition of a “child” does not include a fetus or an unborn child. By its plain language, a “child” is a person who is under eighteen years of age. *See* 23 Pa.C.S. § 6303(a). Had the General Assembly intended to include a fetus or unborn child under the protections of the CPSL, it would have done so, just as it has in other statutory schemes. *See, e.g.,* 18 Pa.C.S. §§ 2601-2609 (Crimes Against the Unborn Child

Act); 18 Pa.C.S. §§ 3201-3220 (Abortion Control Act).

“We are bound by the unambiguous language of the statute and cannot read language into it that simply does not appear.” Commonwealth v. Vasquez, 562 Pa. 120, 753 A.2d 807, 809 (2000). As such, Mother cannot be found to have committed child abuse against Child based on her illegal drug use while pregnant because she was not a “perpetrator” at the time of the act.

The Superior Court never considered the definition of “perpetrator” when arriving at its conclusion that Mother's actions while pregnant could constitute “child abuse.” Instead, it focused, almost exclusively, on the fact that Mother's drug use occurred within two years of Child's birth, which, in its view, constituted a “recent act” under the CPSL. See In re L.B., 177 A.3d at 311. By reaching back to consider conduct while Mother was pregnant, the Superior Court failed to

account for the fact that at any time prior to the birth of Child, Mother could not be a perpetrator of child abuse because a perpetrator must be “the parent of a child.” 23 Pa.C.S. § 6306(a)(1)(i). The Superior Court thus created a statutory relationship between a pregnant woman and a fetus that the CPSL does not recognize. Language was available to the General Assembly to create a category of child abuse to address this scenario, but it did not, and we must consider this omission as part of the legislative intent.⁷ See Kmonk-Sullivan v. State Farm Mut. Auto. Ins. Co., 567 Pa. 514, 788 A.2d 955, 962 (2001) (“As a matter of statutory interpretation, although one is admonished to listen attentively to what a statute says; one must also listen attentively to what it does not say.”). The plain language of the CPSL requires the existence of a child at the time of the allegedly

abusive act in order for the actor to be a “perpetrator” and for the act to constitute “child abuse.” The fact that the actor, at a later date, becomes a person who meets one of the statutorily-defined categories of “perpetrator” does not bring her earlier actions – even if committed within two years of the child's bodily injury – under the CPSL.⁸

***876** We also find CYS' reliance on section 6386 of the CPSL to be misplaced. As noted hereinabove, the version of section 6386 in effect at the time of Child's birth did not use the phrase “child abuse,” nor did it mention, cross-reference, or purport to modify section 6303. *See supra*, note 6. Instead, it created a protocol to be fulfilled by healthcare professionals when a baby was born experiencing withdrawal symptoms because of prenatal drug exposure and corresponding

responsibilities in the county agency. See 23 Pa.C.S. § 6386 (amended Oct. 2, 2018).

After performing a safety and/or risk assessment, the statute gave the county agency an option if it found that the family required agency involvement: in cases involving child abuse, to institute child protective services, or otherwise to institute general protective services. See *id.*, § 6386(b). Contrary to CYS' argument, section 6386 cannot be read to require that the birth of a child experiencing symptoms of NAS means that the mother who gave birth is a perpetrator of child abuse. The definition of perpetrator in section 6303 precludes the institution of child protective services based solely on a newborn's drug exposure in utero because, as discussed above, the General Assembly did not intend for this to constitute child abuse. See *Olson v. Kucenic*, 389 Pa. 506, 133 A.2d

596, 598 (1957) (“In interpreting a statute it must be construed as an integral part of the whole structure affected and not as a separate matter having an independent meaning of its own.”); Commonwealth v. Smith, — Pa. —, 186 A.3d 397, 402 (2018) (when discerning legislative intent, “we do not read words in isolation, but with reference to the context in which they appear”).⁹ We observe that safety and risk ***877** assessments require the county agency to investigate both the subject child and any other children who live in the child's household. See 23 Pa.C.S. § 6368(c)(1) (providing that investigation of reports by the county agency requires “[a] determination of the safety of or risk of harm to the child and any other child if each child continues to remain in the existing home environment”). Reading the provisions of the CPSL together and giving effect

to every provision contained in these statutes, as our Rules of Statutory Construction require, “child protective services” could be instituted after notification that a child was born experiencing symptoms of withdrawal if the county agency discovered, through its risk and/or safety assessment, indicia of child abuse as it relates to other children in the home. *See* 1 Pa.C.S. § 1921(a) (“Every statute shall be construed, if possible, to give effect to all its provisions.”).

Further, CYS' argument that a finding of abuse under the circumstances of this case somehow protects future children from abuse lacks any support in law or in fact. As stated above, the CPSL was enacted because of the General Assembly's finding that “[a]bused children are in urgent need of an effective child protective service to prevent them from

suffering **further injury and impairment.**” *Id.*, § 6302(a) (emphasis added). Its purpose is to protect the abused child and other children from suffering further abuse at the perpetrator's hands. *Id.*, § 6302(b). Labeling a woman as a perpetrator of child abuse does not prevent her from becoming pregnant or provide any protection for a later conceived child while in utero. It also does not ensure that the same woman will not use illegal drugs if she does again become pregnant. Moreover, once labeled as a perpetrator of child abuse, the likelihood that a new mother will be able to assimilate into the workforce and participate in activities of the child's life would be diminished. This would contravene the laudatory goal of preserving family unity and a supportive environment for the child.

Mother's act of ingesting opioids while pregnant did not constitute child abuse. We therefore reverse the decision of the Superior Court and remand the matter for reinstatement of the trial court's order.

Justices Baer and Wecht join the opinion.

Chief Justice Saylor files a concurring opinion in which Justice Dougherty joins.

Justice Dougherty files a concurring opinion.

Justice Mundy files a dissenting opinion in which Justice Todd joins.

CONCURRING OPINION

CHIEF JUSTICE SAYLOR

In terms of plain meaning, I believe the Superior Court's interpretation is reasonable in light of the two-year statutory lookback period. Nevertheless, I also find sufficient ambiguity to apply the principles

of *878 statutory construction, and on that basis I concur in the result.

Justice Dougherty joins this concurring opinion.

CONCURRING OPINION

JUSTICE DOUGHERTY

I concur in the result and join Chief Justice Saylor's concurring opinion. I write separately to emphasize the ambiguous nature of the applicable statutory text which, as exemplified by the divergent conclusions expounded by my colleagues on this Court and the lower tribunals, may result in reasonable minds reaching disparate interpretations.

As the plurality aptly explains, the Superior Court determined prenatal drug use may constitute a “recent act” causing or creating the reasonable likelihood of an injury to a child under the CPSL; thus the “recentness” relates back to the act from the time

of the reported injury, regardless of whether a child existed at the time of the act. Under such reasoning, an individual need **not** be a perpetrator at the time of the behavior causing or risking an injury to a child in order to later be found a perpetrator of child abuse following the injury. In reversing, the plurality determines an individual must be a perpetrator, *i.e.*, a person having some statutorily defined interaction with a child, at the same time as the commission of behavior causing or risking the injury; thus, prenatal drug use **cannot** be construed as child abuse.

As the statutory text provides, child abuse requires “intentionally, knowingly or recklessly ... (1) [c]ausing bodily injury to a child **through** any recent act or failure to act[,]” or “(5) [c]reating a reasonable likelihood of bodily injury to a child **through** any recent act or failure to act.” 23 Pa.C.S. § 6303(b.1)(1).

(5) (emphasis added). This statutory definition of child abuse does not contain the word “perpetrator,” nor does it reference who may commit child abuse. Indeed, the temporal proximity between a CPSL-defined “perpetrator” and a CPSL-defined “recent act or omission” described by the plurality, though logical, is not defined or referenced anywhere within the statutory text. Further, the intended use of the word “through” within its context here is also unclear: whether “through any recent act” is intended to temporally link the commission of the act to the injury as occurring within one block of time, or, instead, “through” merely means “by way of,” casts further ambiguity upon the language conferring a temporal period the plurality determines is clear from the plain language of the statute. For these reasons, I disagree

that the plain language of the statute is clear and unambiguous.

In construing ambiguous statutory language, “we presume to be erroneous any interpretation that leads to an absurd or unreasonable result[.]” Freedom Med. Supply, Inc. v. State Farm Fire & Cas. Co., 635 Pa. 86, 131 A.3d 977, 984 (2016); 1 Pa.C.S. § 1922(1).

Individuals must be able to rely on the law to afford them notice of when, temporally and qualitatively, certain relationships and interactions with children might trigger the consequences of perpetrating child abuse as delineated by the CPSL. Requiring the anticipation of the potentially injurious effects of one's behavior upon a child who does not exist seems, in my view, manifestly unreasonable, and as Judge Strassburger's concurrence below illustrates, the myriad of foreseeable circumstances fitting well

within the plain language of the definition of child abuse extends to situations which are patently absurd. See In re L.B., 177 A.3d 308, 313-14 (Pa. Super. 2017) (Strassburger, J., concurring). Thus, in my view, to the extent the CPSL's definition of child abuse encompasses an act or omission which predates ***879** the existence of a child (even if, at some later point, there is a child who suffers or is at risk of injury as a result of the act or omission) it is erroneous.

Nevertheless, I agree with the plurality's assessment of the legislative history and analysis of legislative intent, as well as the statutory construction requiring temporal proximity between the existence of a perpetrator, as the term is defined by the CPSL, and the behavior causing or risking injury to an existing child.

DISSENTING OPINION

JUSTICE MUNDY

“The term ‘child abuse’ shall mean intentionally, knowingly or recklessly ... [c]ausing bodily injury to a child through any recent act or failure to act.” 23 Pa.C.S. § 6303(b.1)(1). A recent act is defined as “[a]ny act or failure to act committed within two years of the date of the report to the department or county agency.” *Id.*, § 6303(a). Because Mother caused bodily injury to L.J.B. through a recent act, Mother perpetrated child abuse. *Id.* (defining perpetrator as “[a] person who has committed child abuse as defined in this section”).

The plurality concludes that “at the time the individual committed the act that caused or was reasonably likely to have caused bodily injury to a child, he or she must have been a ‘perpetrator’ as

defined.” OAJC at 10-11. Asserting that “[b]y reaching back to consider conduct while Mother was pregnant, the Superior Court failed to account for the fact that at any time prior to the birth of Child, Mother could not be a perpetrator of child abuse because a perpetrator must be ‘the parent of a child.’” I conclude that the individual is a perpetrator at the time the injury is manifested, not solely at the time of the act or failure to act that caused the injury. As the plain language of the statute states, child abuse is defined as “causing bodily injury.” 23 Pa.C.S. § 6303(b.1)(1).

In a majority of cases the act and the resultant injury occur in close temporal proximity, such as when a child is injured through physical force. The instant facts, however, present a scenario where the act and the injury do not occur simultaneously. The facts in this matter more closely resemble neglect cases where

the injury manifests at some point in time after the neglect as in cases of malnourishment from lack of food, or suffering from a severe diaper rash from failure to routinely change diapers. Child abuse by neglect is defined as “causing serious physical neglect to a child.” *Id.*, § 6303(b.1)(7). When a malnourished child, or the baby suffering severe diaper rash are reported, the first determination made is whether the child has been abused. The inquiry then proceeds to ascertaining who perpetrated the abuse. The failure to provide food or change a diaper on one isolated occasion is not going to necessarily rise to an act of abuse, but the repeated failure to properly care for the child that causes serious physical neglect, is child abuse by definition. Similarly, when a person has caused a physical injury, they have committed child abuse, and they are the perpetrator.¹

***880** Determining whether a child is a victim of child abuse first requires a determination that there is abuse, followed by a determination of who perpetrated the abuse. *See In re L.Z.*, 631 Pa. 343, 111 A.3d 1164, 1165 (2015) (examining “whether the child at issue in this case suffered abuse and whether that abuse was perpetrated by his mother”). L.J.B. suffered bodily injury after birth when she began exhibiting withdrawal symptoms. The bodily injury L.J.B. suffered was a direct result of a recent act of Mother, the use of illegal narcotics. Therefore, Mother was the perpetrator of the abuse on L.J.B., after birth, notwithstanding the fact that she ingested the drugs prior to birth. Accordingly, Mother was “a parent of the child” and “caused bodily injury through a recent act.” *See* 23 Pa.C.S. § 6303(a), (b.1)(1).

In my view, under the plain language of the statute, the Superior Court correctly determined Mother committed child abuse. Therefore, because I would affirm the Superior Court, I dissent.

Justice Todd joins this dissenting opinion.

Footnotes

1

Such reports are either “founded” or “indicated.” See 23 Pa.C.S. §§ 6303, 6338.

2

Opioid addiction has reached a crisis level in the United States, and Pennsylvania has not been immune from its effects. Recent statistics place Pennsylvania among the states with the highest rates of drug overdose deaths, with opioid-related overdose deaths occurring at a rate of 18.5 per 100,000 persons. Center for Disease Control and Prevention, *Drug Overdose Death Data* (Dec. 19, 2017), <https://www.cdc.gov/drugoverdose/data/statedeaths.html>(providing 2016 statistics indicating that “the states with the

highest rates of death due to drug overdose were West Virginia (52.0 per 100,000), Ohio (39.1 per 100,000), New Hampshire (39.0 per 100,000), the District of Columbia (38.8 per 100,000), and Pennsylvania (37.9 per 100,000)” – a forty-four percent increase from 2015 to 2016); National Institute on Drug Abuse, *Pennsylvania Opioid Summary* (Feb. 2018), <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-summaries-by-state/pennsylvania-opioid-summary> (stating that Pennsylvania's rate of opioid drug deaths are above the national average of 13.3 deaths per 100,000 persons). Indeed, on January 10, 2018, in the hopes of combating opioid addiction, Governor Tom Wolf took the unprecedented step of proclaiming the heroin and opioid epidemic to be a statewide disaster emergency. *See* Press Release, Governor Wolf Declares Heroin and Opioid Epidemic a Statewide Disaster Emergency (Jan. 10, 2018), <https://www.governor.pa.gov/governor-wolf-declares-heroin-and-opioid-epidemic-a-statewide-disaster-emergency/>. The issue we address today emanates from this epidemic.

Methadone is an opioid used to help dependent patients reduce their cravings and symptoms of withdrawal. *Clinical Guidelines for Withdrawal Management and Treatment of Drug Dependence in Closed Settings*, 6.1, Geneva: World Health Organization, 2009.

4

Subutex, also known as buprenorphine, is a prescription pill used to treat opioid dependence. See https://www.accessdata.fda.gov/drugsatfda_docs/label/2011/020732s006s007lbl.pdf (last visited 12/19/2018).

5

Amicus briefs were filed in support of Mother by (1) American Civil Liberties Union of Pennsylvania (“ACLU”) and Feminist Majority Foundation (“FMF”); (2) Frederick M. Henretig, M.D., Hallam Hurt, M.D., Juvenile Law Center, KidsVoice, Philadelphia Department of Human Services, and Support Center for Child Advocates; (3) The Drug Policy Alliance, Families for Sensible Drug Policy; Avik Chatterjee, M.D., M.P.H., Keith Humphreys, Ph.D., Hendrée Jones, Ph.D., Stephan R. Kandall, M.D., F.A.A.P., Mishka Terplan, M.D.,

M.P.H., F.A.C.O.G, D.F.A.S.A.M., Bruce Trigg, M.D., Michael S. Wald, J.D., and Tricia E. Wright, M.D., M.S.; and (4) National Advocates for Pregnant Women, Community Legal Services of Philadelphia, and Experts in Maternal and Child Health, Child Welfare, and Law.

6

At the time the parties submitted their briefs in this matter, section 6386 was titled “Mandatory reporting of children under one year of age,” and provided as follows:

(a) When report to be made.--A health care provider shall immediately make a report or cause a report to be made to the appropriate county agency if the provider is involved in the delivery or care of a child under one year of age who is born and identified as being affected by any of the following:

- (1) Illegal substance abuse by the child's mother.
- (2) Withdrawal symptoms resulting from prenatal drug exposure unless the child's mother, during the pregnancy, was:
 - (i) under the care of a prescribing medical professional; and

(ii) in compliance with the directions for the administration of a prescription drug as directed by the prescribing medical professional.

(3) A Fetal Alcohol Spectrum Disorder.

(b) Safety or risk assessment.--The county agency shall perform a safety assessment or risk assessment, or both, for the child and determine whether child protective services or general protective services are warranted.

(c) County agency duties.--Upon receipt of a report under this section, the county agency for the county where the child resides shall:

(1) Immediately ensure the safety of the child and see the child immediately if emergency protective custody is required or has been or shall be taken or if it cannot be determined from the report whether emergency protective custody is needed.

(2) Physically see the child within 48 hours of receipt of the report.

(3) Contact the parents of the child within 24 hours of receipt of the report.

(4) Provide or arrange reasonable services to ensure the child is provided with proper parental care, control and supervision.

23 Pa.C.S. § 6386 (amended effective Oct. 2, 2018).

7

In fact, we note that in 2011, Senator Patricia H. Vance proposed an amendment to section 6303's definition of “child abuse” to account for this very behavior by adding, “It shall be considered child abuse if a child tests positive at birth for a controlled substance as defined in section 2 of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, unless the child tests positive for a controlled substance as a result of the mother's lawful intake of the substance as prescribed.” S.B. 735, Printer's No. 761, Reg. Sess. (Pa. 2011). The bill was referred to the Senate Aging and Youth Committee on March 7, 2011, but it was never considered or voted upon by the full Senate.

8

The status of a “perpetrator” must be acquired at the time of the abusive act to give effect to the legislative intention in other contexts under the CPSL. For example: a twelve-year-old boy

intentionally breaks the arm and leg of his ten-year-old brother who lives in the same household. The twelve-year-old boy does not become a “perpetrator” once he turns fourteen even though “[a]n individual 14 years of age or older who resides in the same home as the child” is a “perpetrator” and, in our example, his act occurred within two years. *See* 23 Pa.C.S. § 6303(a)(1)(v), (b.1)(1). In choosing the age of fourteen to define a perpetrator in this subsection, the General Assembly made a policy decision as to the appropriate age to trigger a finding that the actor committed child abuse. The same type of policy decision was made by the General Assembly in requiring a parent-child relationship and not a pregnant woman-unborn child relationship in section 6303(a)(1)(i).

The Dissent is of the view that a person need only be a perpetrator at the time the injury to the child manifests, not at the time of the act that causes the injury. *See* Dissenting Op. at ——. Respectfully, this ignores the aforementioned policy decision of the General Assembly as to who is a perpetrator. Modifying the above example, take instead a twelve-year-old boy who intentionally strikes his younger brother in the head

with a baseball bat. No injury is initially apparent, but two years later the younger brother develops a massive brain hemorrhage that was caused by his brother's act. Under the Dissent's interpretation, the now-fourteen-year-old is labeled a perpetrator for the act committed when he was twelve. This, respectfully, is an absurd result given the General Assembly's clear definition of the term. The General Assembly made it abundantly clear that fourteen is the age that triggers the designation of “perpetrator” under section 6303(a)(1)(v) CPSL. It likewise made clear that a parent of a child, not a woman pregnant with an unborn child, triggers the designation of “perpetrator” under the CPSL.

9

The General Assembly's recent amendment to section 6386 resolves any ambiguity that may have arisen from the language used in the prior version of section 6386 entirely. In July 2018, the General Assembly completely overhauled section 6386, and the amended version took effect on October 2, 2018. The amendment changes the title of the statute to “Notification to department and development of plan of safe care for children

under one year of age.” It further adds subsection (a.1), which states, “The notification by a health care provider to the department and any transmittal to the county agency by the department shall not constitute a child abuse report,” and removes reference to the county agency instituting “child protective services” based on notification from hospital personnel that a baby was born affected by prenatal drug exposure. *See* 23 Pa.C.S. § 6386(a.1). A large portion of the statute is now dedicated to the “[d]evelopment of interagency protocols and plan of safe care” to ensure that the child's needs, as well as those of the child's parents and immediate caregivers, are appropriately met. *See id.*, § 6386(b.1). This provision even contemplates that “[o]ngoing involvement of the county agency after taking into consideration the individual needs of the child and the child's parents and immediate caregivers may not be required.” *Id.*, § 6386(b.1)(2).

1

Admittedly, these are not completely analogous scenarios because the perpetrator would meet the definition of perpetrator throughout the duration of the neglect. The

important component is that in this scenario child abuse is “causing serious physical neglect.” The child abuse determination is triggered at the time the serious physical neglect manifests. Likewise, child abuse manifests when a serious physical injury is caused. At the time a serious physical injury occurred, Mother met the statutory definition of perpetrator, and child met the statutory definition of child. 23 Pa.C.S. § 6303(a).

A2

177 A.3d 308

Superior Court of Pennsylvania.

IN the INTEREST OF: L.B., a Minor

Appeal of: CCCYS

No. 884 MDA 2017

Submitted September 11, 2017

Filed December 27, 2017

Synopsis

Background: County children and youth services agency filed dependency petition on behalf of minor child, alleging child was without proper parental care or control and that child was a victim of child abuse as defined under Child Protective Services Law (CPSL), stemming from mother's use of illegal drugs while pregnant. After entering order finding the child dependent, the Court of Common Pleas, Clinton

County, Juvenile Division, No. CP-18-DP-0000009-2017, Craig P. Miller, J., entered order finding that agency could not establish child abuse based on actions committed when child was a fetus. Agency appealed.

Holding: The Superior Court, No. 884 MDA 2017, Moulton, J., held that as a matter of first impression, prenatal conduct would support finding of child abuse if mother intentionally, knowingly, or recklessly caused injury to child after birth.

Vacated and remanded.

Stabile, J. joined the opinion.

Strassburger, J. filed a concurring opinion in which Molton, J. joined.

***309** Appeal from the Order Entered May 24, 2017, In the Court of Common Pleas of Clinton County

Juvenile Division at No(s): CP-18-DP-0000009-
2017, Before CRAIG P. MILLER, J.

Attorneys and Law Firms

Amanda B. Browning, Lock Haven, for appellant.

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Litem, for appellee.

BEFORE: STABILE, MOULTON,

and STRASSBURGER*, JJ.

Opinion

OPINION BY MOULTON, J.:

Clinton County Children and Youth Services (“CYS”) appeals from the order entered May 24, 2017 finding that CYS cannot establish child abuse under the Child Protective Services Law (“CPSL”), 23 Pa.C.S. §§ 6301 et seq., based “on the actions committed by”

A.A.R. (“Mother”) while she was pregnant with L.B. (“Child”). We conclude that a mother's use of illegal drugs while pregnant may constitute child abuse under the CPSL if CYS establishes that, by using the illegal drugs, the mother intentionally, knowingly, or recklessly caused, or created a reasonable likelihood of, bodily injury to a child **after** birth. We therefore vacate the order and remand for further proceedings. The trial court summarized the relevant procedural and factual history as follows:

On February 7, 2017, [CYS] filed an Application for Emergency Protective Custody indicating that [Child] was born [in] January [] 2017 at the Williamsport Hospital, that Mother had tested positive for marijuana and suboxone and that Mother on January 27, 2017 while pregnant had completed a drug test and was positive for opiates, benzodiazepines and

marijuana. [CYS] also alleged that [Child] was suffering from withdrawal symptoms and was undergoing treatment at the Williamsport Hospital. This Court issued an Order for Emergency Protective Custody on February 7, 2017. On February 10, 2017, the Honorable Michael F. Salisbury conducted a 72 hour Shelter Care Hearing due to this Court's unavailability and continued legal and physical custody of the child with [CYS]. [CYS] timely filed a Dependency Petition on February 13, 2017 alleging that the child was without proper parental care or control and further alleged that the child was a victim of child abuse as defined by 23 Pa. C.S.A. § 6303. Specifically, [CYS] alleged and has continued to argue that under Subsection 6303(b.1)(1) ... the parent, specifically Mother, caused bodily injury to the child through a recent act or failure to act.¹ [CYS] alleged

in the Dependency Petition that the child had been in Williamsport Hospital for a period of nineteen (19) days suffering from drug dependence withdrawal due to the substances Mother ingested while Mother was pregnant with the child and that Mother tested positive for marijuana, ***310** opiates and benzodiazepines at the time of the child's birth. Mother had no prescription for any of these medications.

...

[T]his Court entered an Order finding the child dependent on March 15, 2017, maintaining legal and physical custody of the child with [CYS] and deferring a decision on the issue whether the child was a victim of abuse until the Dispositional Hearing which was agreed to by all of the parties.

On March 16, 2017, this Court entered an Order directing the Solicitor for [CYS], the attorney for Mother and the attorney for Father to file an appropriate Memorandum of Law on the issue of whether Mother may be found to have committed abuse of this child as alleged by [CYS]. Mother's attorney and Father's attorney, along with [CYS's] Solicitor filed said Memorandums of Law timely and at the Dispositional Hearing on March 30, 2017, this Court continued legal and physical custody of the child with [CYS]. This Court also at the Dispositional Hearing directed the Office of Court Administrator to schedule a further hearing concerning the abuse issue as insufficient time was allotted at that March 30, 2017 proceeding to receive sufficient evidence to decide that issue. The Office of Court Administrator scheduled the issue of abuse for an extended hearing

on May 26, 2017. Further, a Permanency Review Hearing was also scheduled for May 26, 2017. The Guardian Ad Litem filed a request for argument on April 4, 2017 regarding the issue of abuse, indicating that the Guardian Ad Litem believed that it would be advantageous for this Court and the parties for this Court to decide the legal issue before receiving testimony and evidence at an extended hearing. This Court scheduled argument for May 9, 2017.

Trial Court Opinion, 5/24/17, at 1–4 (“Rule 1925(a) Op.”).

The trial court heard argument from all counsel and the guardian ad litem on May 9, 2017 to determine whether Mother had committed child abuse within the meaning of section 6303(b.1) of the CPSL. On May 24, 2017, the trial court filed an order finding that CYS “cannot establish child abuse ... on the actions

committed by Mother while the child was a fetus.” Order, 5/23/17; ***see also*** Rule 1925(a) Op. at 4 (“[T]he law does not provide for finding of abuse due to actions taken by an individual upon a fetus.”). On May 25, 2017, CYS timely filed a notice of appeal.

On appeal, CYS raises the following issue for our review: “Whether the Trial Court erred by finding that [CYS] cannot establish child abuse in the matter of the actions committed by Mother, reasoning that the child was a fetus and not considered a child pursuant to 23 Pa.C.S. § 630[3].” CYS's Br. at 4.

CYS argues that Mother's prenatal drug use was a “recent act or failure to act” that “caus[ed],” or “creat[ed] a reasonable likelihood of,” bodily injury under section 6303(b.1)(1) or (5) because that drug use caused Child to be born with withdrawal symptoms. The trial court rejected this argument,

concluding that the CPSL does not permit a finding of child abuse based on Mother's actions before Child was born.

“A challenge to the court's interpretation and application of a statute raises a question of law.” *In re A.B.*, 987 A.2d 769, 773 (Pa.Super. 2009) (*en banc*).

Our standard of review is *de novo*, and our scope of review is plenary. *D.K. v. S.P.K.*, 102 A.3d 467, 471 (Pa.Super. 2014). This Court has set forth the following principles for statutory interpretation:

[O]ur Court has long recognized the following principles of statutory construction ***311** set forth in the Statutory Construction Act, 1 Pa.C.S.A. § 1501 *et seq.*:

The goal in interpreting any statute is to ascertain and effectuate the intention of the General Assembly. Our Supreme Court has stated that the plain

language of a statute is in general the best indication of the legislative intent that gave rise to the statute. When the language is clear, explicit, and free from any ambiguity, we discern intent from the language alone, and not from the arguments based on legislative history or ‘spirit’ of the statute. We must construe words and phrases in the statute according to their common and approved usage. We also must construe a statute in such a way as to give effect to all its provisions, if possible, thereby avoiding the need to label any provision as mere surplusage.

Id. at 471–72 (quoting ***C.B. v. J.B.***, 65 A.3d 946, 951 (Pa.Super. 2013)).

¹“As part of [a] dependency adjudication, a court may find a parent to be the perpetrator of child abuse,” as defined by the CPSL. ***In re L.Z.***, 631 Pa. 343, 111 A.3d

1164, 1176 (2015). The CPSL defines “child abuse” in relevant part as follows:

The term “child abuse” shall mean intentionally, knowingly or recklessly doing any of the following:

(1) Causing bodily injury to a child through any recent act or failure to act.

...

(5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

23 Pa.C.S. § 6303(b.1)(1), (5). The CPSL defines “child” as “[a]n individual under 18 years of age,” 23 Pa.C.S. § 6303(a), and “bodily injury” as “[i]mpairment of physical condition or substantial pain.” *Id.* at 6303(a).²

2Under the plain language of the statute, Mother's illegal drug use while pregnant may constitute child abuse if the drug use caused bodily injury to Child. We

agree with Mother that a “fetus” or “unborn child” does not meet the definition of “child” under the CPSL.³ CYS does not appear to disagree.⁴ Once born, however, the infant is a “child”—“[a]n individual under 18 years of age”—as defined by the statute. Further, Mother's drug use is a “recent act or failure to act” under 6303(b.1)(1) and (5). Therefore, if CYS establishes that through Mother's prenatal illegal drug use she “intentionally, knowingly or recklessly” caused, or created a reasonable likelihood of, bodily injury to Child after birth, a finding of “child abuse” would be proper under section 6303(b.1)(1) and/or (5).

***312** 3A finding of “child abuse” under the CPSL is not a finding of criminal conduct.⁵ The Pennsylvania Supreme Court has described the purpose of the CPSL as follows:

The need to prevent child abuse and to protect abused children from further injury is critical. The legislature sought to encourage greater reporting of suspected child abuse in order to prevent further abuse and to provide rehabilitative services for abused children and their families.^[6] The Act also establishes a statewide central registry for the maintenance of indicated and founded reports of child abuse, as identifying perpetrators of abuse serves to further protect children. Recognizing that identifying someone as a child abuser can profoundly impact that person's reputation, the release of such information is advocated only in certain limited venues. [R]eports of indicated and founded abuse identifying the perpetrator can be released to law enforcement, social work agencies, employers in child care services and other related venues[].

G.V. v. Dep't of Public Welfare, 625 Pa. 280, 91 A.3d 667, 670–71 (2014) (quoting *P.R. v. Dept. of Pub. Welfare*, 569 Pa. 123, 801 A.2d 478, 483 (2002)) (alterations in original). Further, “[a]n individual can ... petition to expunge the founded report^[7] from ChildLine through a Department of Public Welfare administrative process that would eventually be subject to appeal in Commonwealth Court.” *In re L.Z.*, 111 A.3d at 1177.

The sole question before us is whether a mother's illegal drug use while pregnant may constitute child abuse under the CPSL if it caused, or created a reasonable likelihood of, bodily injury to a child after birth. We make no determination as to whether CYS has met its burden in this case. Nor do we address what other acts ***313** by a mother while pregnant may give rise to a finding of child abuse. We emphasize,

however, that prenatal conduct supports such a finding only when the actor “intentionally, knowingly, or recklessly” caused, or created a reasonable likelihood of, bodily injury to a child after birth.

Order vacated. Case remanded for further proceedings. Jurisdiction relinquished.

Judge Stabile joins the opinion.

Judge Strassburger files a concurring opinion in which Judge Moulton joins.

CONCURRING OPINION BY STRASSBURGER, J.:

There is no doubt that prenatal drug use is affecting adversely increasing numbers of our Commonwealth's children. Fueled in part by the opiate drug epidemic, the rate of neonatal hospital stays related to substance use increased by 250% between fiscal years 2000 and 2015. PA Healthcare Cost Containment Council, NEONATAL AND MATERNAL

HOSPITALIZATIONS RELATED TO SUBSTANCE USE, (2016). Nearly 1 in 50 neonatal hospital stays in fiscal year 2015 involved a substance-related condition. *Id.*

There is also no doubt that most pregnant women who use illegal drugs during their pregnancies do so not because they wish to harm their child, but because they are addicted to the drugs. While I join the Majority's opinion today based upon the language of the statute, I question whether treating as child abusers women who are addicted to drugs results in safer outcomes for children.

The Child Protective Services Law (CPSL) contains explicit provisions allowing child welfare agencies to intervene in certain instances where a child is affected by maternal drug use at birth. *See* 23 Pa.C.S. § 6386 (requiring health care providers to report to the

appropriate county agency instances of children who are under one year of age and affected by certain types of substance abuse and mandating the agency to conduct an assessment of risk to the child, ensure the child's safety, and provide services to the family as needed). Pennsylvania added these requirements to the CPSL in 2006 in response to a 2003 amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA).

When addressing Congress during the debate of the 2003 amendment to CAPTA, Congressman James Greenwood, a former child services caseworker who authored the amendment, stated that the goal was to intervene after birth and prevent future harm to children who are at risk of child abuse and neglect due to their parents' drug use. 149 Cong. Rec. H2313, H2362 (daily ed. March 26, 2003) (statement of

Congressman James Greenwood). Congressman Greenwood noted, however, that treating prenatal drug use as child abuse is “problematic” because the drug use typically results from a woman's substance abuse problem. *Id.* Furthermore, he described how treating prenatal drug use as child abuse may result in further unintended harm to the child because it “may even drive [the mother] away from the hospital if she knows she is going to face [being treated as a child abuser], and she may choose to deliver at home in a dangerous situation.”¹ *Id.*

Not only may it cause a woman to avoid the hospital, in my view, labeling a woman ***314** as a child abuser may make it less likely that the woman would choose to seek help for her addiction during pregnancy or receive prenatal care. Moreover, because the CPSL permits the agency to intervene when a newborn is

affected by prenatal drug use, and the agency may even seek to remove the child or have the child adjudicated dependent if continued drug use poses an ongoing risk to the child, determining that a woman is a child abuser solely based upon her prenatal drug use does little to ensure the safety of the child.²

In addition, although the Majority limits its decision to illegal drug use during pregnancy, *see* Majority Opinion at 312–13, its construction of the statute supports no such limitation. We should not delude ourselves into thinking that our decision does not open the door to interpretations of the statute that intrude upon a woman's private decisionmaking as to what is best for herself and her child. There are many decisions a pregnant woman makes that could be reasonably likely to result in bodily injury to her child after birth,³ which may vary depending on the advice

of the particular practitioner she sees and cultural norms in the country where she resides. Should a woman engage in physical activity or restrict her activities? Should she eat a turkey sandwich, soft cheese, or sushi? Should she drink an occasional glass of wine? What about a daily cup of coffee? Should she continue to take prescribed medication even though there is a potential risk to the child? Should she travel to countries where the Zika virus is present? Should she obtain cancer treatment even though it could put her child at risk? Should she travel across the country to say goodbye to a dying family member late in her pregnancy? Is she a child abuser if her partner kicks or punches her in her abdomen during her pregnancy and she does not leave the relationship because she fears for her own life? While it is true that the woman must act at least recklessly for her decision to

constitute child abuse, reasonable people may differ as to the proper standard of conduct.⁴

Although the legislature expanded the definition of child abuse in 2013 to capture more instances where children are placed at risk, I am not certain that the legislature really intended the CPSL's child abuse definition to apply to decisions that pregnant women make. However, based upon the language of the statute, what we ***315** have decided today is that the legislature intended that a woman be found to be a child abuser when she engages in any act, or fails to engage in any act, prior to a child's birth, if that act creates a reasonable likelihood of bodily injury to a child once he or she is born, so long as she consciously disregards a substantial and unjustifiable risk that such an injury may result.⁵ This is quite broad indeed.

This case presents an issue of first impression. In my opinion, it also presents an issue of substantial public importance that should be reviewed by this Court *en banc* or our Supreme Court. I respectfully concur.

Judge Moulton joins.

All Citations

177 A.3d 308, 2017 PA Super 411

Footnotes

*

Retired Senior Judge assigned to the Superior Court.

1

The dependency petition alleged Mother committed child abuse under subsection 6303(b.1)(1). At argument and in its briefs before both the trial court and this Court, CYS argued that Mother committed child abuse under subsections 6303(b.1)(1) or (5).

2

The question whether Child suffered “bodily injury” within the meaning of the CPSL is not before us on this appeal.

3

We note that the CPSL also includes a definition of “newborn,” providing that a “newborn” is “[a] child less than 28 days of age as reasonably determined by a physician.” 23 Pa.C.S. § 6303(a) (incorporating definition of newborn contained in section 6502); 23 Pa.C.S. § 6502. Further, the Pennsylvania General Assembly included in other statutes a definition of, and provided protections for, “fetus” and “unborn child.” For example, the Pennsylvania Abortion Control Act defines “unborn child” and “fetus,” stating “[e]ach term shall mean an individual organism of the species homo sapiens from fertilization until live birth,” 18 Pa.C.S. § 3203, and the Crimes Against the Unborn Child Act adopts the definition of “unborn child” found in the Abortion Control Act, 18 Pa.C.S. § 2602. The CPSL includes no such definitions.

4

Rather, CYS argues that a mother's actions while pregnant may result in a finding of child abuse “once the fetus is born and a child as defined by 23 Pa.C.S. § 6303.” CYS's Br. at 17.

The Pennsylvania General Assembly has not created a distinct crime of “child abuse.” Instead, crimes that specifically address child victims are found in various parts of the crimes code. *See, e.g.,* 18 Pa.C.S. § 3122.1 (statutory sexual assault); 18 Pa.C.S. § 3121(c) (rape of a child); 18 Pa.C.S. § 3121(d) (rape of a child with serious bodily injury); 18 Pa.C.S. § 2901(a.1) (kidnapping of a minor); 18 Pa.C.S. § 2702(a)(8) (defining aggravated assault to include “to cause or intentionally, knowingly or recklessly causes bodily injury to a child less than six years of age, by a person 18 years of age or older”); and 18 Pa.C.S. § 2701(b) (grading simple assault as a misdemeanor of the first degree if committed against a child under the age of 12 by a person over the age of 18).

6

Section 6386 of the CPSL requires mandatory reporting with respect to children under one year of age, under the following circumstances:

(a) When report to be made.—A health care provider shall immediately make a report or cause a report to be made to the appropriate county agency if the provider is involved in the

delivery or care of a child under one year of age who is born and identified as being affected by any of the following:

- (1) Illegal substance abuse by the child's mother.
- (2) Withdrawal symptoms resulting from prenatal drug exposure unless the child's mother, during the pregnancy, was:
 - (i) under the care of a prescribing medical professional; and
 - (ii) in compliance with the directions for the administration of a prescription drug as directed by the prescribing medical professional.
- (3) A Fetal Alcohol Spectrum Disorder.

23 Pa.C.S. § 6386(a).

7

If a trial court finds a parent to be a perpetrator of child abuse as part of a dependency adjudication, the CYS agency would file a “founded report” with the Department of Public Welfare, which would trigger inclusion on the ChildLine Registry. *In re L.Z.*, 111 A.3d at 1176–77. Inclusion on the ChildLine Registry also can be triggered outside of the dependency process. *Id.* at 1177.

CAPTA explicitly specifies that the requirement that health care providers notify child protective services “shall not be construed to—(I) establish a definition under Federal law of what constitutes child abuse or neglect; or (II) require prosecution for any illegal action[.]” 42 U.S.C. § 5106a(b)(2)(B)(ii).

2

L.B.'s guardian *ad litem* did not take a position on this issue in the trial court and did not file a brief before this Court. Although the issue primarily affects Mother, it does affect L.B. indirectly; therefore, in my view, the guardian *ad litem* should have determined whether it was in L.B.'s best interest to make a finding of child abuse against Mother and advanced the corresponding position.

3

Child abuse may exist even when the child does not suffer bodily injury as long as there is a reasonable likelihood of bodily injury. *See* 23 Pa.C.S. § (b.1)(5).

4

The CPSL incorporates the following definition of recklessness:

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

23 Pa.C.S. § 6303(a) (incorporating 18 Pa.C.S. § 302). The CPSL emphasizes that “conduct that causes injury or harm to a child or creates a risk of injury or harm to a child shall not be considered child abuse if there is no evidence that the person acted intentionally, knowingly or recklessly when causing the injury or harm to the child or creating a risk of injury or harm to the child.” 23 Pa.C.S. § 6303(c).

5

I note, as the Majority does, that the dependency petition in this case alleged only that Mother committed child abuse under subsection 6303(b.1)(1). CYS did not begin to rely upon subsection 6303(b.1)(5), which is broader than subsection

6303(b.1)(1), until CYS presented argument and briefs before the juvenile court. It does not appear that Mother objected to inclusion of subsection 6303(b.1)(5). However, parents are entitled to notice of the allegations being pled against them and CYS should have requested permission to amend its dependency petition.

A3

IN THE COURT OF COMMON PLEAS OF
CLINTON COUNTY, PENNSYLVANIA
JUVENILE

In the Interest of: L.J.B.,

DOB 01/26/2017

NO. DP 7-2017

OPINION AND ORDER

OPINION

On February 7, 2017, the Clinton County Children and Youth Social Services Agency (hereinafter referred to as the Agency) filed an Application for Emergency Protective Custody indicating that L.J.B. .. was born January 26, 2017 at the Williamsport Hospital, that Mother had tested positive for marijuana and suboxone and that Mother on January 27, 2017 while pregnant had completed a drug test and was positive for opiates, benzodiazepines and

marijuana. The Agency also alleged that the child was suffering from withdrawal symptoms and was undergoing treatment at the Williamsport Hospital. This Court issued an Order for Emergency Protective Custody on February 7, 2017. On February 10, 2017, the Honorable Michael F. Salisbury conducted a 72 hour Shelter Care Hearing due to this Court's unavailability and continued legal and physical custody of the child with the Agency. The Agency timely filed a Dependency Petition on February 13, 2017 alleging that the child was without proper parental care or control and further alleged that the child was a victim of child abuse as defined by 23 Pa. C.S.A. § 6303. Specifically, the Agency alleged and has continued to argue that under Subsection 6303(b.1)(1) that the parent, specifically Mother, caused bodily injury to the child through a recent act or failure to

act. The Agency alleged in the Dependency Petition that the child had been in Williamsport Hospital for a period of nineteen (19) days suffering from drug dependence withdrawal due to the substances Mother ingested while Mother was pregnant with the child and that Mother tested positive for marijuana, opiates and benzodiazepines at the time of the child's birth. Mother had no prescription for any of these medications.

On February 15, 2017, an Adjudication Hearing was scheduled, but it appeared that Mother and Father had not been given appropriate notice and therefore, the hearing was continued by the Honorable Michael F. Salisbury to Wednesday, March 15, 2017. In the meantime, this Court entered an Order adjudicating (J.W.B.) as the father of the child after appropriate testing had been completed by the

Domestic Relations Section of this Court. Said Order was uncontested by any of the parties. This Court entered an Order finding the child dependent on March 15, 2017, maintaining legal and physical custody of the child with the Agency and deferring a decision on the issue whether the child was a victim of abuse until the Dispositional Hearing which was agreed to by all of the parties.

On March 16, 2017, this Court entered an Order directing the Solicitor for the Agency, the attorney for Mother and the attorney for Father to file an appropriate Memorandum of Law on the issue of whether Mother may be found to have committed abuse of this child as alleged by the Agency. Mother's attorney and Father's attorney, along with the Agency's Solicitor filed said Memorandums of Law

timely and at the Dispositional Hearing on March 30, 2017, this Court continued legal and physical custody of the child with the Agency. This Court also at the Dispositional Hearing directed the Office of Court Administrator to schedule a further hearing concerning the abuse issue as insufficient time was allotted at that March 30, 2017 proceeding to receive sufficient evidence to decide that issue. The Office of Court Administrator scheduled the issue of abuse for an extended hearing on May 26, 2017. Further, a Permanency Review Hearing was also scheduled for May 26, 2017. The Guardian Ad Litem filed a request for argument on April 4, 2017 regarding the issue of abuse, indicating that the Guardian Ad Litem believed that it would be advantageous for this Court and the parties for this Court to decide the legal issue before receiving testimony and evidence at an

extended hearing. This Court scheduled argument for May 9, 2017. This Court received argument from all counsel and the Guardian Ad Litem that date and is now prepared to issue an appropriate Order.

As indicated above, the Agency relies on the definition of abuse found in 23 Pa. C.S.A. § 6301(b.1)(1) which indicates that child abuse could be found if an individual intentionally, knowingly or recklessly caused bodily injury to a child through any recent act or failure to act. The Agency claims that Mother's actions prior to the birth are a recent act which caused the child to have bodily injury. The Agency has claimed and no party contests that the child had been hospitalized after birth for a period of nineteen (19) days due to suffering from withdrawal due to substances Mother ingested while Mother was pregnant with the child and that the child's symptoms

of withdrawal included tremors, increased muscle tone, excessive suck and loose stools. Mother and Father argue that any actions of Mother occurred before the child was born and that there is no legal authority for this Court to find any abuse due to the child being a fetus when Mother's actions occurred. The Agency argues that although the actions took place prior to the child being born, that this Court still may and should find that Mother abused this child. As noted by all parties, the child is defined by the Child Protective Services Law as an individual under eighteen (18) years of age. See 23 Pa. C.S.A. § 6302(a). Clearly, a fetus is not considered a child pursuant to the above definition. Further, the Legislature has seen fit to adopt the Newborn Protection Act at 23 Pa. C.S.A. § 6501 et. seq. in the year 2002 and in this Act there is no mention of any protection to be given to a

fetus or that abuse may be found by a court after a live birth has occurred due to actions done to a fetus. Further, all counsel, along with the Guardian Ad Litem, had indicated that there are no appellate decisions and apparently no other county court decisions on this issue. Clearly, the law does not provide for finding of abuse due to actions taken by an individual upon a fetus. Therefore, the Court is constrained to hold that the Court is not able to find that Mother abused this child pursuant to the definitions in the Child Protective Services Law. 23 Pa. C.S.A. § 6301 et. seq.

In no way, should this decision be seen as the Court condoning the actions of Mother. Mother's actions were deplorable but this Court must follow the Law. This Court deems this an issue for the Legislature to resolve and not for this Court to reach a decision by

interpreting the legislation to mean something that the legislation clearly does not state.

This Court will issue an appropriate Order.

ORDER

AND NOW, this 23rd day of May, 2017, pursuant to the above Opinion, IT IS HEREBY ORDERED as follows:

1. This Court finds that the Agency cannot establish child abuse in this matter on the actions committed by Mother while the child was a fetus.
2. The hearing scheduled for May 26, 2017 at 8:30 A.M. concerning testimony on the child abuse issue is CANCELLED.
3. The Permanency Review Hearing scheduled for May 26, 2017 at 8:30 A.M. shall remain scheduled.

By the Court,

Craig P. Miller, President Judge

A4

Constitution of the United States

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state,

excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United

States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the

United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

A5

Constitution of the United States

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the

United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

A6

23 Pa.C.S.A. § 6302

§ 6302. Findings and purpose of chapter

(a) Findings.--Abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment.

(b) Purpose.--It is the purpose of this chapter to encourage more complete reporting of suspected child abuse; to the extent permitted by this chapter, to involve law enforcement agencies in responding to child abuse; and to establish in each county protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family

life wherever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk.

(c) Effect on rights of parents.--This chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children.

A7

23 Pa.C.S.A. § 6303

§ 6303. Definitions

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

“Accept for service.” Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

“Adult.” An individual 18 years of age or older.

“Adult family member.” A person 18 years of age or older who has the responsibility to provide care or services to an individual with an intellectual disability or chronic psychiatric disability.

“Bodily injury.” Impairment of physical condition or substantial pain.

“Child.” An individual under 18 years of age.

“Child-care services.” Includes any of the following:

- (1) Child day-care centers.
- (2) Group day-care homes.
- (3) Family child-care homes.
- (4) Foster homes.
- (5) Adoptive parents.
- (6) Boarding homes for children.
- (7) Juvenile detention center services or programs for delinquent or dependent children.
- (8) Mental health services for children.
- (9) Services for children with intellectual disabilities.
- (10) Early intervention services for children.
- (11) Drug and alcohol services for children.

(12) Day-care services or programs that are offered by a school.

(13) Other child-care services that are provided by or subject to approval, licensure, registration or certification by the department or a county social services agency or that are provided pursuant to a contract with the department or a county social services agency.

The term does not apply to services provided by administrative or other support personnel unless the administrative or other support personnel have direct contact with children.

“Child protective services.” Those services and activities provided by the department and each county agency for child abuse cases.

“Children's advocacy center.” A local public agency in this Commonwealth or a not-for-profit entity incorporated in this Commonwealth which:

(1) is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)); and

(2) operates within this Commonwealth for the primary purpose of providing a child-focused, facility-based program dedicated to coordinating a formalized multidisciplinary response to suspected child abuse that, at a minimum, either onsite or through a partnership with another entity or entities, assists county agencies, investigative teams and law enforcement by providing services, including forensic interviews, medical evaluations, therapeutic interventions, victim support and advocacy, team case reviews and a system for case tracking.

“Cooperation with an investigation or assessment.”

Includes, but is not limited to, a school or school district which permits authorized personnel from the department or county agency to interview a student while the student is in attendance at school.

“County agency.” The county children and youth social service agency established pursuant to section 405 of the act of June 24, 1937 (P.L. 2017, No. 396),¹ known as the County Institution District Law, or its successor, and supervised by the department under Article IX of the act of June 13, 1967 (P.L. 31, No. 21),² known as the Public Welfare Code.

“Department.” The Department of Human Services of the Commonwealth.

“Direct contact with children.” The care, supervision, guidance or control of children or routine interaction with children.

“Direct volunteer contact.” The care, supervision, guidance or control of children and routine interaction with children.

“Education enterprise.” An educational activity in this Commonwealth:

(1) for which college credits or continuing education units are awarded, continuing professional education is offered or tuition or fees are charged or collected; and

(2) that is sponsored by a corporation, entity or institution that is incorporated or authorized by other means in a state other than this Commonwealth and is approved and authorized to operate in this Commonwealth under 15 Pa.C.S. Pt. II Subpt. B (relating to business corporations)³ or C (relating to nonprofit corporations)⁴ and 24 Pa.C.S. Ch. 65

(relating to private colleges, universities and seminaries).

“Electronic technologies.” The transfer of information in whole or in part by technology having electrical, digital, magnetic, wireless, optical, electromagnetic, photo-electronic or photo-optical systems, or similar capabilities. The term includes, but is not limited to, e-mail, Internet communication or other means of electronic transmission.

“Expunge.” To strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise.

“Family child-care home.” A residence where child day care is provided at any time to no less than four children and no more than six children who are not relatives of the caregiver.

“Family members.” Spouses, parents and children or other persons related by consanguinity or affinity.

“Founded report.” A child abuse report involving a perpetrator that is made pursuant to this chapter, if any of the following applies:

(1) There has been a judicial adjudication based on a finding that a child who is a subject of the report has been abused and the adjudication involves the same factual circumstances involved in the allegation of child abuse. The judicial adjudication may include any of the following:

(i) The entry of a plea of guilty or nolo contendere.

(ii) A finding of guilt to a criminal charge.

(iii) A finding of dependency under 42 Pa.C.S. § 6341 (relating to adjudication) if the court has entered a finding that a child who is the subject of the report has been abused.

(iv) A finding of delinquency under 42 Pa.C.S. § 6341 if the court has entered a finding that the child who is the subject of the report has been abused by the child who was found to be delinquent.

(2) There has been an acceptance into an accelerated rehabilitative disposition program and the reason for the acceptance involves the same factual circumstances involved in the allegation of child abuse.

(3) There has been a consent decree entered in a juvenile proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), the decree involves the same factual circumstances involved in the allegation of child abuse and the terms and conditions of the consent decree include an acknowledgment, admission or finding that a child who is the subject of

the report has been abused by the child who is alleged to be delinquent.

(4) A final protection from abuse order has been granted under section 6108 (relating to relief), when the child who is a subject of the report is one of the individuals protected under the protection from abuse order and:

(i) only one individual is charged with the abuse in the protection from abuse action;

(ii) only that individual defends against the charge;

(iii) the adjudication involves the same factual circumstances involved in the allegation of child abuse; and

(iv) the protection from abuse adjudication finds that the child abuse occurred.

“General protective services.” Those services and activities provided by each county agency for cases

requiring protective services, as defined by the department in regulations.

“Health care facility.” As defined in section 802.1 of the act of July 19, 1979 (P.L. 130, No. 48),⁵ known as the Health Care Facilities Act.

“Health care provider.” A licensed hospital or health care facility or person who is licensed, certified or otherwise regulated to provide health care services under the laws of this Commonwealth, including a physician, podiatrist, optometrist, psychologist, physical therapist, certified nurse practitioner, registered nurse, nurse midwife, physician's assistant, chiropractor, dentist, pharmacist or an individual accredited or certified to provide behavioral health services.

“Immediate vicinity.” An area in which an individual is physically present with a child and can see, hear, direct and assess the activities of the child.

“Independent contractor.” An individual who provides a program, activity or service to 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. The term does not apply to administrative or other support personnel unless the administrative or other support personnel have direct contact with children.

“Indicated report.”

(1) Subject to paragraphs (2) and (3), a report of child abuse made pursuant to this chapter if an investigation by the department or county agency determines that substantial evidence of the alleged

abuse by a perpetrator exists based on any of the following:

- (i) Available medical evidence.
- (ii) The child protective service investigation.
- (iii) An admission of the acts of abuse by the perpetrator.

(2) A report may be indicated under paragraph (1)(i) or (ii) for any child who is the victim of child abuse, regardless of the number of alleged perpetrators.

(3) A report may be indicated under paragraph (1)(i) or (ii) listing the perpetrator as “unknown” if substantial evidence of abuse by a perpetrator exists, but the department or county agency is unable to identify the specific perpetrator.

“Institution of higher education.” Any of the following:

(1) A community college which is an institution now or hereafter created pursuant to Article XIX-A of the

act of March 10, 1949 (P.L. 30, No. 14),⁶ known as the Public School Code of 1949, or the act of August 24, 1963 (P.L. 1132, No. 484),⁷ known as the Community College Act of 1963.

(2) An independent institution of higher education which is an institution of higher education located in and incorporated or chartered by the Commonwealth, entitled to confer degrees as set forth in 24 Pa.C.S. § 6505 (relating to power to confer degrees) and entitled to apply to itself the designation “college,” “university” or “seminary” as provided for by standards and qualifications prescribed by the State Board of Education under 24 Pa.C.S. Ch. 65.

(3) A State-owned institution.

(4) A State-related institution.

(5) An education enterprise.

“Intentionally.” The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

“Knowingly.” The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

“Law enforcement official.” The term includes the following:

- (1) The Attorney General.
- (2) A Pennsylvania district attorney.
- (3) A Pennsylvania State Police officer.
- (4) A municipal police officer.

“Mandated reporter.” A person who is required by this chapter to make a report of suspected child abuse.

“Matriculated student.” A student who is enrolled in an institution of higher education and pursuing a

program of study that results in a postsecondary credential, such as a certificate, diploma or degree.

“Near fatality.” A child's serious or critical condition, as certified by a physician, where that child is a subject of the report of child abuse.

“Newborn.” As defined in section 6502 (relating to definitions).

“Parent.” A biological parent, adoptive parent or legal guardian.

“Perpetrator.” A person who has committed child abuse as defined in this section. The following shall apply:

(1) The term includes only the following:

(i) A parent of the child.

(ii) A spouse or former spouse of the child's parent.

(iii) A paramour or former paramour of the child's parent.

(iv) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(v) An individual 14 years of age or older who resides in the same home as the child.

(vi) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(vii) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

(2) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(i) A parent of the child.

(ii) A spouse or former spouse of the child's parent.

(iii) A paramour or former paramour of the child's parent.

(iv) A person 18 years of age or older and responsible for the child's welfare.

(v) A person 18 years of age or older who resides in the same home as the child.

“Person affiliated with.” A person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

“Person responsible for the child's welfare.” A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment,

training or control of a child in lieu of parental care, supervision and control.

“Police department.” A public agency of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of criminal or traffic laws.

“Police officer.” A full-time or part-time employee assigned to criminal or traffic law enforcement duties of a police department of a county, city, borough, town or township. The term also includes a member of the State Police Force.

“Police station.” The station or headquarters of a police department or a Pennsylvania State Police station or headquarters.

“Private agency.” A children and youth social service agency subject to the requirements of 55 Pa. Code Ch.

3680 (relating to administration and operation of a children and youth social service agency).

“Program, activity or service.” Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (1) A youth camp or program.
- (2) A recreational camp or program.
- (3) A sports or athletic program.
- (4) A community or social outreach program.
- (5) An enrichment or educational program.
- (6) A troop, club or similar organization.

“Protective services.” Those services and activities provided by the department and each county agency for children who are abused or are alleged to be in need of protection under this chapter.

“Recent act.” Any act committed within two years of the date of the report to the department or county agency.

“Recent act or failure to act.” Any act or failure to act committed within two years of the date of the report to the department or county agency.

“Recklessly.” The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

“Resource family.” A family which provides temporary foster or kinship care for children who need out-of-home placement and may eventually provide permanency for those children, including an adoptive family.

“Risk assessment.” A Commonwealth-approved systematic process that assesses a child's need for

protection or services based on the risk of harm to the child.

“Routine interaction.” Regular and repeated contact that is integral to a person's employment or volunteer responsibilities.

“Safety assessment.” A Commonwealth-approved systematic process that assesses a child's need for protection or services, based on the threat to the safety of the child.

“School.” A facility providing elementary, secondary or postsecondary educational services. The term includes the following:

- (1) Any school of a school district.
- (2) An area vocational-technical school.
- (3) A joint school.
- (4) An intermediate unit.
- (5) A charter school or regional charter school.

(6) A cyber charter school.

(7) A private school licensed under the act of January 28, 1988 (P.L. 24, No. 11),⁸ known as the Private Academic Schools Act.

(8) A private school accredited by an accrediting association approved by the State Board of Education.

(9) A nonpublic school.

(10) An institution of higher education.

(11) to (13) Deleted by 2015, July 1, P.L. 94, No. 15, § 1, imd. effective.

(14) A private school licensed under the act of December 15, 1986 (P.L. 1585, No. 174),⁹ known as the Private Licensed Schools Act.

(15) The Hiram G. Andrews Center.

(16) A private residential rehabilitative institution as defined in section 914.1-A(c) of the Public School Code of 1949.¹⁰

“School employee.” An individual who is employed by a school or who provides a program, activity or service sponsored by a school. The term does not apply to administrative or other support personnel unless the administrative or other support personnel have direct contact with children.

“Secretary.” The Secretary of Human Services of the Commonwealth.

“Serious bodily injury.” Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.

“Serious mental injury.” A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

(1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or

(2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

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

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

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

“Sexual abuse or exploitation.” Any of the following:

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

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

(ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

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

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

This paragraph does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within four years of the child's age.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Student.” An individual enrolled in a public or private school, intermediate unit or area vocational-technical school who is under 18 years of age.

“Subject of the report.” Any child, parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator in a report made to the department or a county agency under this chapter.

“Substantial evidence.” Evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.

“Substantiated child abuse.” Child abuse as to which there is an indicated report or founded report.

“Under investigation.” A child abuse report pursuant to this chapter which is being investigated to determine whether it is “founded,” “indicated” or “unfounded.”

“Unfounded report.” Any report made pursuant to this chapter unless the report is a “founded report” or an “indicated report.”

(b) Deleted by 2013, Dec. 18, P.L. 1170, No. 108, § 1, effective Dec. 31, 2014.

(b.1) Child abuse.--The term “child abuse” shall mean intentionally, knowingly or recklessly doing any of the following:

(1) Causing bodily injury to a child through any recent act or failure to act.

(2) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(3) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(4) Causing sexual abuse or exploitation of a child through any act or failure to act.

(5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(7) Causing serious physical neglect of a child.

(8) Engaging in any of the following recent acts:

(i) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(ii) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.

(iii) Forcefully shaking a child under one year of age.

(iv) Forcefully slapping or otherwise striking a child under one year of age.

(v) Interfering with the breathing of a child.

(vi) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(vii) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders),¹¹ where the victim of the sexual offense was under 18 years of age when the crime was committed.

(B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(D) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to

assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(9) Causing the death of the child through any act or failure to act.

(10) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

(c) Restatement of culpability.--Conduct that causes injury or harm to a child or creates a risk of injury or harm to a child shall not be considered child abuse if there is no evidence that the person acted intentionally, knowingly or recklessly when causing the injury or harm to the child or creating a risk of injury or harm to the child.

(d) Child abuse exclusions.--The term “child abuse” does not include any conduct for which an exclusion is provided in section 6304 (relating to exclusions from child abuse).

A8

Effective: October 2, 2018

23 Pa.C.S.A. § 6386

§ 6386. Notification to department and development of plan of safe care for children under one year of age
Currentness

(a) Notification to department.--For the purpose of assessing a child and the child's family for a plan of safe care, a health care provider shall immediately give notice or cause notice to be given to the department if the provider is involved in the delivery or care of a child under one year of age and the health care provider has determined, based on standards of professional practice, the child was born affected by:

(1) substance use or withdrawal symptoms resulting from prenatal drug exposure; or

(2) a Fetal Alcohol Spectrum Disorder.

(a.1) Notification not to constitute child abuse report.-

-The notification by a health care provider to the department and any transmittal to the county agency by the department shall not constitute a child abuse report.

(b) Deleted by 2018, June 28, P.L. 375, No. 54, § 2, eff. Oct. 2, 2018.

(b.1) Development of interagency protocols and plan of safe care.--The department, in collaboration with the Department of Health and the Department of Drug and Alcohol Programs, shall develop written protocols that include, but are not limited to:

(1) Definitions and evidence-based screening tools, based on standards of professional practice, to be utilized by health care providers to identify a child born affected by substance use or withdrawal

symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder.

(2) Notification to the department that a child born affected by substance use or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder has been born and identified. Ongoing involvement of the county agency after taking into consideration the individual needs of the child and the child's parents and immediate caregivers may not be required.

(3) Collection of data to meet Federal and State reporting requirements.

(4) Identification, informed by an assessment of the needs of the child and the child's parents and immediate caregivers, of the most appropriate lead agency responsible for developing, implementing and monitoring a plan of safe care, informed by a

multidisciplinary team meeting that is held prior to the child's discharge from the health care facility, which may include:

- (i) public health agencies;
 - (ii) maternal and child health agencies;
 - (iii) home visitation programs;
 - (iv) substance use disorder prevention and treatment providers;
 - (v) mental health providers;
 - (vi) public and private children and youth agencies;
 - (vii) early intervention and developmental services;
 - (viii) courts;
 - (ix) local education agencies;
 - (x) managed care organizations and private insurers;
- and
- (xi) hospitals and medical providers.

(5) Engagement of the child's parents and immediate caregivers in order to identify the need for access to treatment for any substance use disorder or other physical or behavioral health condition that may impact the safety, early childhood development and well-being of the child.

A9

Effective: July 1, 2015 to October 1, 2018

23 Pa.C.S.A. § 6386

§ 6386. Mandatory reporting of children under one
year of age

<Text of section effective until Oct. 2, 2018. See also,
text of 23 Pa.C.S.A. § 6386 effective Oct. 2, 2018.>

(a) When report to be made.--A health care provider shall immediately make a report or cause a report to be made to the appropriate county agency if the provider is involved in the delivery or care of a child under one year of age who is born and identified as being affected by any of the following:

(1) Illegal substance abuse by the child's mother.

(2) Withdrawal symptoms resulting from prenatal drug exposure unless the child's mother, during the pregnancy, was:

(i) under the care of a prescribing medical professional; and

(ii) in compliance with the directions for the administration of a prescription drug as directed by the prescribing medical professional.

(3) A Fetal Alcohol Spectrum Disorder.

(b) Safety or risk assessment.--The county agency shall perform a safety assessment or risk assessment, or both, for the child and determine whether child protective services or general protective services are warranted.

(c) County agency duties.--Upon receipt of a report under this section, the county agency for the county where the child resides shall:

(1) Immediately ensure the safety of the child and see the child immediately if emergency protective custody is required or has been or shall be taken or if it cannot be determined from the report whether emergency protective custody is needed.

(2) Physically see the child within 48 hours of receipt of the report.

(3) Contact the parents of the child within 24 hours of receipt of the report.

(4) Provide or arrange reasonable services to ensure the child is provided with proper parental care, control and supervision.

A10

42 U.S.C.A. § 5106a

§ 5106a. Grants to States for child abuse or neglect
prevention and treatment programs

(a) Development and operation grants

The Secretary shall make grants to the States, from allotments made under subsection (f) for each State that applies for a grant under this section, for purposes of assisting the States in improving the child protective services system of each such State in--

(1) the intake, assessment, screening, and investigation of reports of child abuse or neglect;

(2)(A) creating and improving the use of multidisciplinary teams and interagency, intra-agency, interstate, and intrastate protocols to enhance investigations; and

(B) improving legal preparation and representation, including--

(i) procedures for appealing and responding to appeals of substantiated reports of child abuse or neglect; and

(ii) provisions for the appointment of an individual appointed to represent a child in judicial proceedings;

(3) case management, including ongoing case monitoring, and delivery of services and treatment provided to children and their families;

(4) enhancing the general child protective system by developing, improving, and implementing risk and safety assessment tools and protocols, including the use of differential response;

(5) developing and updating systems of technology that support the program and track reports of child abuse and neglect from intake through final

disposition and allow interstate and intrastate information exchange;

(6) developing, strengthening, and facilitating training including--

(A) training regarding research-based strategies, including the use of differential response, to promote collaboration with the families;

(B) training regarding the legal duties of such individuals;

(C) personal safety training for case workers; and

(D) training in early childhood, child, and adolescent development;

(7) improving the skills, qualifications, and availability of individuals providing services to children and families, and the supervisors of such individuals, through the child protection system,

including improvements in the recruitment and retention of caseworkers;

(8) developing, facilitating the use of, and implementing research-based strategies and training protocols for individuals mandated to report child abuse and neglect;

(9) developing, implementing, or operating programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions, including--

(A) existing social and health services;

(B) financial assistance;

(C) services necessary to facilitate adoptive placement of any such infants who have been relinquished for adoption; and

(D) the use of differential response in preventing child abuse and neglect;

(10) developing and delivering information to improve public education relating to the role and responsibilities of the child protection system and the nature and basis for reporting suspected incidents of child abuse and neglect, including the use of differential response;

(11) developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level;

(12) supporting and enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems;

(13) supporting and enhancing interagency collaboration among public health agencies, agencies in the child protective service system, and agencies carrying out private community-based programs--

(A) to provide child abuse and neglect prevention and treatment services (including linkages with education systems), and the use of differential response; and

(B) to address the health needs, including mental health needs, of children identified as victims of child abuse or neglect;¹ including supporting prompt, comprehensive health and developmental evaluations for children who are the subject of substantiated child maltreatment reports; or

(14) developing and implementing procedures for collaboration among child protective services, domestic violence services, and other agencies in--

(A) investigations, interventions, and the delivery of services and treatment provided to children and families, including the use of differential response, where appropriate; and

(B) the provision of services that assist children exposed to domestic violence, and that also support the caregiving role of their nonabusing parents.

(b) Eligibility requirements

(1) State plan

(A) In general

To be eligible to receive a grant under this section, a State shall submit to the Secretary a State plan that specifies the areas of the child protective services system described in subsection (a) that the State will address with amounts received under the grant.

(B) Duration of plan

Each State plan shall--

(i) remain in effect for the duration of the State's participation under this section; and

(ii) be periodically reviewed and revised as necessary by the State to reflect changes in the State's strategies and programs under this section.

(C) Additional information

The State shall provide notice to the Secretary--

(i) of any substantive changes, including any change to State law or regulations, relating to the prevention of child abuse and neglect that may affect the eligibility of the State under this section; and

(ii) of any significant changes in how funds provided under this section are used to support activities described in this section, which may differ from the activities described in the current State application.

(2) Contents

A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including-

-

(A) an assurance that the State plan, to the maximum extent practicable, is coordinated with the State plan under part B of title IV of the Social Security Act [42 U.S.C. 621 et seq.] relating to child welfare services and family preservation and family support services;

(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes--

(i) provisions or procedures for an individual to report known and suspected instances of child abuse and

neglect, including a State law for mandatory reporting by individuals required to report such instances;

(ii) policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants, except that such notification shall not be construed to--

(I) establish a definition under Federal law of what constitutes child abuse or neglect; or

(II) require prosecution for any illegal action;

(iii) the development of a plan of safe care for the infant born and identified as being affected by substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder to ensure the safety and well-being of such infant following release from the care of health care providers, including through--

(I) addressing the health and substance use disorder treatment needs of the infant and affected family or caregiver; and

(II) the development and implementation by the State of monitoring systems regarding the implementation of such plans to determine whether and in what manner local entities are providing, in accordance with State requirements, referrals to and delivery of appropriate services for the infant and affected family or caregiver;

(iv) procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports;

(v) triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;

(vi) procedures for immediate steps to be taken to ensure and protect the safety of a victim of child abuse or neglect and of any other child under the same care who may also be in danger of child abuse or neglect and ensuring their placement in a safe environment;

(vii) provisions for immunity from civil or criminal liability under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance,

including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect;

(viii) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this subchapter and subchapter III of this chapter shall only be made available to--

(I) individuals who are the subject of the report;

(II) Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);

(III) child abuse citizen review panels;

(IV) child fatality review panels;

(V) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and

(VI) other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;

(ix) provisions to require a State to disclose confidential information to any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from child abuse and neglect;

(x) provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality;

(xi) the cooperation of State law enforcement officials, court of competent jurisdiction, and appropriate State agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse and neglect;

(xii) provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment;

(xiii) provisions and procedures requiring that in every case involving a victim of child abuse or neglect

which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings--

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child;

(xiv) the establishment of citizen review panels in accordance with subsection (c) of this section;

(xv) provisions, procedures, and mechanisms--

(I) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and

(II) by which individuals who disagree with an official finding of child abuse or neglect can appeal such finding;

(xvi) provisions, procedures, and mechanisms that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction--

(I) to have committed murder (which would have been an offense under section 1111(a) of Title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(II) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter;

(IV) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent;

(V) to have committed sexual abuse against the surviving child or another child of such parent; or

(VI) to be required to register with a sex offender registry under section 16913(a) of this title;

(xvii) an assurance that, upon the implementation by the State of the provisions, procedures, and mechanisms under clause (xvi), conviction of any one of the felonies listed in clause (xvi) constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (although case-by-case determinations of whether or

not to seek termination of parental rights shall be within the sole discretion of the State);

(xviii) provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse or neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant;

(xix) provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families

from the initial time of contact during investigation through treatment;

(xx) provisions and procedures for improving the training, retention, and supervision of caseworkers;

(xxi) provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

(xxii) provisions and procedures for requiring criminal background record checks that meet the requirements of section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)) for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household;

(xxiii) provisions for systems of technology that support the State child protective service system

described in subsection (a) and track reports of child abuse and neglect from intake through final disposition;

(xxiv) provisions and procedures requiring identification and assessment of all reports involving children known or suspected to be victims of sex trafficking (as defined in section 7102(10) of Title 22); and

(xxv) provisions and procedures for training child protective services workers about identifying, assessing, and providing comprehensive services for children who are sex trafficking victims, including efforts to coordinate with State law enforcement, juvenile justice, and social service agencies such as runaway and homeless youth shelters to serve this population;

(C) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for--

(i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

(ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions); and

(iii) authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions;

(D) a description of--

(i) the services to be provided under the grant to individuals, families, or communities, either directly or through referrals aimed at preventing the occurrence of child abuse and neglect;

(ii) the training to be provided under the grant to support direct line and supervisory personnel in report taking, screening, assessment, decision making, and referral for investigating suspected instances of child abuse and neglect;

(iii) the training to be provided under the grant for individuals who are required to report suspected cases of child abuse and neglect;

(iv) policies and procedures encouraging the appropriate involvement of families in decisionmaking pertaining to children who experienced child abuse or neglect;

(v) policies and procedures that promote and enhance appropriate collaboration among child protective service agencies, domestic violence service agencies, substance abuse treatment agencies, and other agencies in investigations, interventions, and the delivery of services and treatment provided to children and families affected by child abuse or neglect, including children exposed to domestic violence, where appropriate; and

(vi) policies and procedures regarding the use of differential response, as applicable;

(E) an assurance or certification that the programs or projects relating to child abuse and neglect carried out under part B of title IV of the Social Security Act [42 U.S.C. 621 et seq.] comply with the requirements set forth in paragraph (1) and this paragraph;

(F) an assurance or certification that programs and training conducted under this subchapter address the unique needs of unaccompanied homeless youth, including access to enrollment and support services and that such youth are eligible for under parts B and E of title IV of the Social Security Act [42 U.S.C. 621 et seq., 670 et seq.] and meet the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(G) an assurance that the State, in developing the State plan described in paragraph (1), has collaborated with community-based prevention agencies and with families affected by child abuse or neglect.

Nothing in subparagraph (B) shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families.

(3) Limitation

With regard to clauses (vi) and (vii) of paragraph (2)(B), nothing in this section shall be construed as restricting the ability of a State to refuse to disclose identifying information concerning the individual

initiating a report or complaint alleging suspected instances of child abuse or neglect, except that the State may not refuse such a disclosure where a court orders such disclosure after such court has reviewed, in camera, the record of the State related to the report or complaint and has found it has reason to believe that the reporter knowingly made a false report.

(4) Definitions

For purposes of this subsection--

(A) the term “near fatality” means an act that, as certified by a physician, places the child in serious or critical condition; and

(B) the term “serious bodily injury” means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(c) Citizen review panels

(1) Establishment

(A) In general

Except as provided in subparagraph (B), each State to which a grant is made under this section shall establish not less than 3 citizen review panels.

(B) Exceptions

(i) Establishment of panels by States receiving minimum allotment

A State that receives the minimum allotment of \$175,000 under section 5116b(b)(1)(A) of this title for a fiscal year shall establish not less than 1 citizen review panel.

(ii) Designation of existing entities

A State may designate as panels for purposes of this subsection one or more existing entities established under State or Federal law, such as child fatality

panels or foster care review panels, if such entities have the capacity to satisfy the requirements of paragraph (4) and the State ensures that such entities will satisfy such requirements.

(2) Membership

Each panel established pursuant to paragraph (1) shall be composed of volunteer members who are broadly representative of the community in which such panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect, and may include adult former victims of child abuse or neglect.

(3) Meetings

Each panel established pursuant to paragraph (1) shall meet not less than once every 3 months.

(4) Functions

(A) In general

Each panel established pursuant to paragraph (1) shall, by examining the policies, procedures, and practices of State and local agencies and where appropriate, specific cases, evaluate the extent to which State and local child protection system agencies are effectively discharging their child protection responsibilities in accordance with--

- (i) the State plan under subsection (b) of this section;
- (ii) the child protection standards set forth in subsection (b) of this section; and
- (iii) any other criteria that the panel considers important to ensure the protection of children, including--

(I) a review of the extent to which the State and local child protective services system is coordinated with the foster care and adoption programs established

under part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.); and

(II) a review of child fatalities and near fatalities (as defined in subsection (b)(4) of this section).

(B) Confidentiality

(i) In general

The members and staff of a panel established under paragraph (1)--

(I) shall not disclose to any person or government official any identifying information about any specific child protection case with respect to which the panel is provided information; and

(II) shall not make public other information unless authorized by State statute.

(ii) Civil sanctions

Each State that establishes a panel pursuant to paragraph (1) shall establish civil sanctions for a violation of clause (i).

(C) Public outreach

Each panel shall provide for public outreach and comment in order to assess the impact of current procedures and practices upon children and families in the community and in order to meet its obligations under subparagraph (A).

(5) State assistance

Each State that establishes a panel pursuant to paragraph (1)--

(A) shall provide the panel access to information on cases that the panel desires to review if such information is necessary for the panel to carry out its functions under paragraph (4); and

(B) shall provide the panel, upon its request, staff assistance for the performance of the duties of the panel.

(6) Reports

Each panel established under paragraph (1) shall prepare and make available to the State and the public, on an annual basis, a report containing a summary of the activities of the panel and recommendations to improve the child protection services system at the State and local levels. Not later than 6 months after the date on which a report is submitted by the panel to the State, the appropriate State agency shall submit a written response to State and local child protection systems and the citizen review panel that describes whether or how the State will incorporate the recommendations of such panel

(where appropriate) to make measurable progress in improving the State and local child protective system.

(d) Annual State data reports

Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

(1) The number of children who were reported to the State during the year as victims of child abuse or neglect.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were--

(A) substantiated;

(B) unsubstantiated; or

(C) determined to be false.

(3) Of the number of children described in paragraph

(2)--

(A) the number that did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) the number that received services during the year under the State program funded under this section or an equivalent State program; and

(C) the number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services, including use of differential response, from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7)(A) The number of child protective service personnel responsible for the--

(i) intake of reports filed in the previous year;

(ii) screening of such reports;

(iii) assessment of such reports; and

(iv) investigation of such reports.

(B) The average caseload for the workers described in subparagraph (A).

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.

(10) For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the State--

(A) information on the education, qualifications, and training requirements established by the State for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;

(B) data on the education, qualifications, and training of such personnel;

(C) demographic information of the child protective service personnel; and

(D) information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse or neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

(13) The annual report containing the summary of the activities of the citizen review panels of the State required by subsection (c)(6) of this section.

(14) The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system.

(15) The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

(16) The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.).

(17) The number of children determined to be victims described in subsection (b)(2)(B)(xxiv).

(18) The number of infants--

(A) identified under subsection (b)(2)(B)(ii);

(B) for whom a plan of safe care was developed under subsection (b)(2)(B)(iii); and

(C) for whom a referral was made for appropriate services, including services for the affected family or caregiver, under subsection (b)(2)(B)(iii).

(e) Annual report by Secretary

Within 6 months after receiving the State reports under subsection (d) of this section, the Secretary shall prepare a report based on information provided by the States for the fiscal year under such subsection and shall make the report and such information available to the Congress and the national clearinghouse for information relating to child abuse and neglect.

(f) Allotments

(1) Definitions

In this subsection:

(A) Fiscal year 2009 grant funds

The term “fiscal year 2009 grant funds” means the amount appropriated under section 5106h of this title for fiscal year 2009, and not reserved under section 5106h(a)(2) of this title.

(B) Grant funds

The term “grant funds” means the amount appropriated under section 5106h of this title for a fiscal year and not reserved under section 5106h(a)(2) of this title.

(C) State

The term “State” means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(D) Territory

The term “territory” means Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(2) In general

Except as otherwise provided in this section, the Secretary shall make allotments to each State and territory that applies for a grant under this section in an amount equal to the sum of--

(A) \$50,000; and

(B) an amount that bears the same relationship to any grant funds remaining after all such States and territories have received \$50,000, as the number of children under the age of 18 in the State or territory bears to the number of such children in all States and territories that apply for such a grant.

(3) Allotments for decreased appropriation years

In the case where the grant funds for a fiscal year are less than the fiscal year 2009 grant funds, the Secretary shall ratably reduce each of the allotments under paragraph (2) for such fiscal year.

(4) Allotments for increased appropriation years

(A) Minimum allotments to States for increased appropriations years

In any fiscal year for which the grant funds exceed the fiscal year 2009 grant funds by more than \$1,000,000, the Secretary shall adjust the allotments under paragraph (2), as necessary, such that no State that applies for a grant under this section receives an allotment in an amount that is less than--

(i) \$100,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by more than \$1,000,000 but less than \$2,000,000;

(ii) \$125,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by at least \$2,000,000 but less than \$3,000,000; and

(iii) \$150,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by at least \$3,000,000.

(B) Allotment adjustment

In the case of a fiscal year for which subparagraph (A) applies and the grant funds are insufficient to satisfy the requirements of such subparagraph (A), paragraph (2), and paragraph (5), the Secretary shall, subject to paragraph (5), ratably reduce the allotment of each State for which the allotment under paragraph (2) is an amount that exceeds the applicable minimum under subparagraph (A), as necessary to ensure that each State receives the applicable minimum allotment under subparagraph (A).

(5) Hold harmless

Notwithstanding paragraphs (2) and (4), except as provided in paragraph (3), no State or territory shall

receive a grant under this section in an amount that is less than the amount such State or territory received under this section for fiscal year 2009.