



Reform the Child Abuse Registry System in Pennsylvania

The child abuse registry unnecessarily blocks low-wage workers from employment, harming children and families. It must be reformed.

Every year, thousands of Pennsylvanians are placed on the child abuse registry for alleged child abuse or neglect, without first having an opportunity to challenge the allegations against them. These Pennsylvanians suffer devastating economic consequences, often for life, and the harm falls disproportionately on low-wage workers, workers of color, and their children. As the job market restricts in the wake of the COVID-19 pandemic, it is crucial that low-income families can access employment, especially in high growth fields like health care.

Unfortunately, many more Pennsylvanians are at risk of being placed on the child abuse registry today due to the continued aftermath of the Jerry Sandusky child sex-abuse scandal. One of the most significant changes to Pennsylvania's Child Protective Services Law (CPSL) in the wake of the Sandusky scandal was expanding the requirement for who needs to undergo child abuse background checks. These expanded background checks have had significant consequences for low-income workers and their families. Many of the types of jobs available to low-wage workers include contact with children—childcare, jobs in schools (including cafeteria workers, crossing guards, school bus drivers, janitorial staff), jobs in hospitals, and home health care jobs. As such, placement on the child abuse registry disproportionately impacts low-wage workers, people of color, especially Black and brown women, and the families they are trying to support.

Blocking off the ability of parents and caregivers to access employment in high-growth fields only serves to hurt the very children the child abuse registry is supposed to protect in the first place. The child abuse registry thus exacerbates child poverty and places vulnerable families in even more precarious circumstances. And all too often, placement on the registry is based on faulty or incomplete investigations, or on the caseworkers' misapplication of evidence or misunderstanding of statutory definitions. In many cases, racial, cultural, or economic differences create an additional bias that factors into a caseworker's determination of whether child abuse or neglect occurred.

In this current time of extreme vulnerability where low-income families are struggling to survive the COVID-19 pandemic, reform of the child abuse registry system is urgently needed. We propose reforms in four categories that prioritize: 1) strengthening due process protections before someone can be placed on the registry and provide for a right to counsel; 2) restructuring the registry to distinguish between serious incidents of abuse

(e.g. sexual assault) from more minor incidents (e.g. missed doctor appointments) and limit how long people must stay on the registry; 3) limiting the use of the registry as an employment screening tool by narrowing the category of jobs that must have child abuse clearances and only reporting individuals whose conduct is tied to ability to perform the job safely; and 4) conducting a racial impact analysis of the registry and address structural racial bias at every step of the process. Ultimately, we note this a moment for reimagining what child safety and family well-being looks like, and that there are more effective and equitable ways to protect children than relying on an overly punitive child abuse registry system.

While the goal of protecting children from abuse is laudable, the child abuse registry has gone too far in serving as an employment screening tool that prevents loving parents and caregivers from being able to financially support their children. As we look toward economic recovery from the COVID-19 pandemic, it is more urgent than ever to reform the child abuse registry system in Pennsylvania to ensure that low-wage workers are not unnecessarily excluded from desperately needed employment.

Introduction

Kalia is a twenty-three-year-old woman who works as a home health aide. When she was nineteen and her son was two, she was experiencing homelessness. She brought her son to live with his father while she worked to stabilize her life. While in his father's care, her son had an accidental burn injury. The burn got infected and when the father brought her son to the hospital, child welfare was called to investigate. Both Kalia and her son's father were placed on the child abuse registry for medical neglect, even though Kalia wasn't with her son at the time the injury happened. Placement on the registry made it difficult for Kalia to become employed in the medical field. For several years, Kalia struggled to find a job. Eventually, she was able to connect with a lawyer at Community Legal Services and clear her name, allowing her to secure work in home health care.

Many other Pennsylvanians are not able to access legal help and continue to suffer the economic consequences of having been placed on the child abuse registry, often for life. As the job market restricts in response to the COVID-19 pandemic, it is particularly important that we don't jeopardize opportunities for families to achieve financial security by making it harder for them to access employment, especially in high growth fields like health care. In doing so, we may subject them to a life sentence of poverty and state surveillance, as low-income and unemployed people are more likely to face housing instability and childcare challenges which make them more vulnerable to child protective service intervention.

Unfortunately, many more Pennsylvanians are at risk of being placed on the child abuse registry today due to the continued aftermath of the Jerry Sandusky child sex-abuse scandal. In 2014, the Pennsylvania legislature passed twenty-three bills containing hundreds of amendments to the Child Protective Services Law (CPSL). Exactly two of those amendments may possibly have stopped Sandusky's abuse of children at an earlier age. Most of the other changes involved redefining what child abuse is and who can be considered perpetrators of abuse, expanding the range of people who are required to report suspected child abuse, and restructuring child welfare systems.

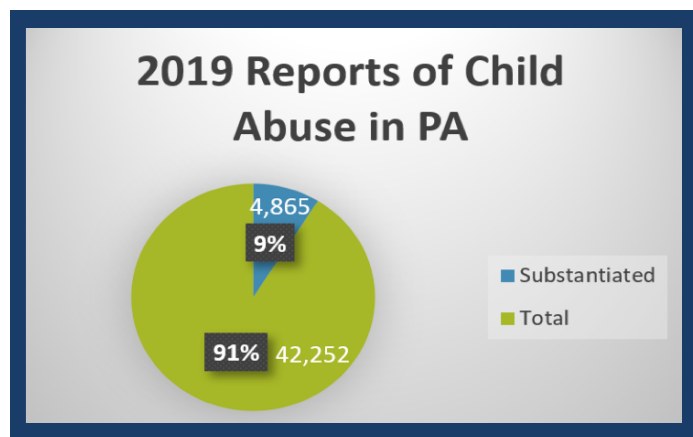


One of the most significant changes was expanding the requirement for child abuse background checks. Under the previous law, individuals had to have child abuse clearances if they were expected to have “direct contact with children,” which was defined as having children under their “care, supervision, guidance or control.”¹ The 2014 amendments broadened that definition to include anyone who can be expected to have “routine interaction” with children, whether or not they have any direct control of or care for those children. Employers are also left to decide for themselves whether they are covered, and many, like Kalia’s home health care employer, err on the side of caution and require child abuse clearances, even if it is very unlikely the job will involve routine interaction with children.

These expanded background checks have had significant consequences for low-income workers and their families. As discussed below, many of the types of jobs available to and occupied by low-wage workers include contact with children—childcare, jobs in schools (including cafeteria workers, crossing guards, school bus drivers, janitorial staff), jobs in hospitals, and home health care jobs. As such, placement on the child abuse registry disproportionately impacts low-wage workers, people of color, especially Black and brown women, and the families they are trying to support.

The ease at which people can be placed on the child abuse registry is also troubling. When the child abuse hotline or a county child welfare agency receives a call about suspected child abuse or neglect, it is required by law to investigate the allegation within 24 hours. Case workers are expected to interview the alleged perpetrator and any witnesses, examine and speak with the subject child (assuming the child is old enough to speak), and review any relevant evidence and documents. After their investigation, the case worker makes a determination about whether there was substantial evidence of child abuse and, if so, “indicates” the report, placing the accused on the registry.

According to the 2019 Pennsylvania Child Protective Services Report,² there were 42,252 total reports of child abuse of which 4,865 were substantiated. Out of the 44,287 reporters that submitted these reports, 37,647 were mandated reporters (school employee, employee of a social service agency, health care facility, peace officer/law enforcement, child care employee, health care practitioner, employee or volunteer of a child’s program/activity/service, foster parent, etc.) and 6,640 were permissive reporters. Approximately 60% of the reports were made by school (12,990 reports) and social service agency (8,803 reports) employees. Only 5.2% of the reports made by school employees and 14.2% of the reports made by social service agencies were substantiated.



1. <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.063..HTM>

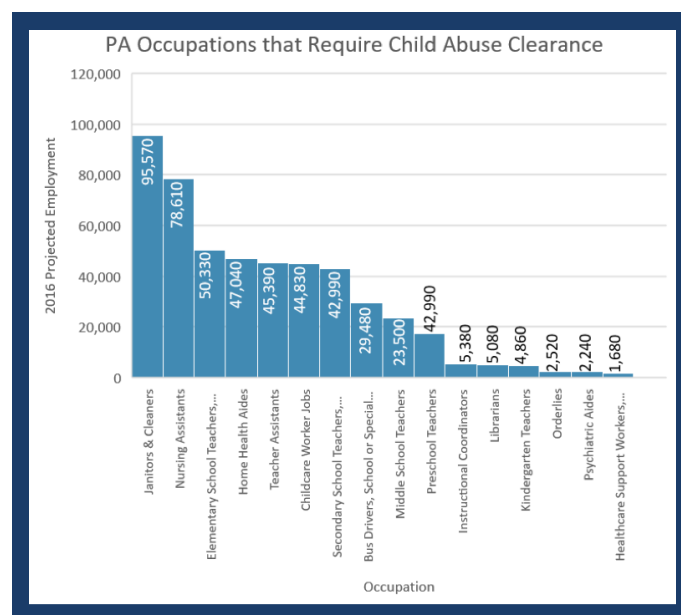
2. <https://www.dhs.pa.gov/docs/Publications/Documents/2019%20child%20prev.pdf>

Moreover, while the “child abuse registry” calls to mind the most extreme examples of child sexual abuse and severe maltreatment, the reality is much more complex. Sexual abuse cases constituted fewer than half of “substantiated” cases statewide in 2019, and the rates of substantiated reports for sexual abuse have declined in the past five years. In that same period, almost twice as many people were put on the registry for neglect, a category that captures a wide range of situations including missed doctor appointments and families having a hard time caring for complex medical needs of children. “Neglect” is also a category that invites bias and judgment, as families who are struggling face surveillance and scrutiny from child welfare agencies.

All too often, indicated reports are based on faulty or incomplete investigations, or on the caseworkers’ misapplication of evidence or misunderstood statutory definitions. In many cases, racial, cultural, or economic differences create an additional bias that factors into a caseworker’s determination of whether child abuse or neglect occurred. Furthermore, there is no hearing or opportunity to present evidence to a neutral party. The “investigator” is also the “judge and jury.” A caseworker checks off a box, and an individual is placed on the child abuse registry, effectively for life unless the individual successfully appeals within a short deadline. While a 2014 amendment requires that agency solicitors review a worker's child abuse determination, this has not measurably reduced erroneous child abuse determinations. Given the significant shortcomings of the child abuse registry, its use as an employment screening tool is all the more suspect.

Impact of Child Abuse Registry on Low-Wage Workers

In 2019, there were 368,649 child abuse clearances run in Pennsylvania, and 34,466 of those background checks were for individuals who are on the child abuse registry. The jobs that are most impacted by these child abuse clearances are low-wage jobs, such as those in daycares and home health care.



These fields are also disproportionately made up of workers who are low-income women of color. Nationally, 46.64% of the female workforce is employed in service and caregiving fields.³ In Pennsylvania, women make up 38.8% of the employees in the education and health services sector compared to their male counterparts who account for 12.6% of the work force.⁴ Within this population, 24.2% of the employees are white and 31.7% are Black. While these fields tend to be low-paying and rife with worker exploitation, they are also high growth fields in which there are jobs available. For example, home health care is the largest industry in Pennsylvania—a state with one of the highest elderly populations in the country.⁵ As the baby boomers continue to age, the demand for health care workers will only increase, making it an essential field for low-income workers.⁶ Many of these jobs are also jobs that are still available even during the COVID-19 pandemic, and will likely be some of the most resilient jobs that remain available even as we face recession and long-term unemployment. The impact of child abuse records on the ability of low-income workers to find work in fields like health care and child care is therefore of critical importance.

Take the case of CLS client Kristina who was placed on the child abuse registry after missing a handful of doctor's appointments for her medically fragile son. Her son was not harmed, and Kristina, an overwhelmed teen mother, recognized that she needed help. Kristina restored her relationship with her own mother. With the help of her family, Kristina was able to graduate from high school and her son was thriving in her care. Yet she was barred from working in childcare and health care, the very fields her case managers and school officials kept trying to place her in given her experience providing care to her own medically fragile child. Sadly, Kristina had been experiencing housing instability at the time she was issued a letter stating that she had been placed on the registry. Therefore, she was not able to file a timely appeal to get off the registry. Only many years later, after countless lost jobs and income, did Kristina access the legal help she needed to get off the registry.

A growing number of women like Kristina are the heads of their households. In 40% of households with children under age 18, mothers are either the sole or primary source of income for the family, up from 11% in 1960.⁷ Moreover, nearly 84% of single parent homes are headed by women.⁸ Women-headed households are already more likely to struggle financially. More than two thirds of female-headed single-parent households have incomes below 200% of the federal poverty guidelines.⁹ Single parent families headed by women are also the most likely to live in deep poverty surviving on \$2.00 per day or less.¹⁰

3. Marlene Kim, *Women Paid Low Wages: Who They Are and Where They Work*, U.S. DEPT LAB., BUREAU LAB. STAT. 26, 28 (2000), <http://www.bls.gov/opub/mlr/2000/09/art3full.pdf>.

4. <https://www.bls.gov/opub/geographic-profile/>

5. TRIPP UMBACH, PA. HOMECARE ASS'N, *IMPACT OF THE HOMECARE AND HOSPICE INDUSTRY ON PENNSYLVANIA'S ECONOMY* 3, 6 (2013), <http://ccedcpa.com/wp/wpcontent/uploads/2013-pa-home-care-state-of-the-industry-report.pdf>; see also Emily Previti, *Pennsylvania's Population Keeps Aging, WHY?* (June 28, 2014), <https://why.org/articles/pennsylvanias-population-keeps-aging/> (explaining that Pennsylvania has the fourth highest senior population in the country, and it is growing at the fastest rate).

6. TRIPP UMBACH, *supra* note 2, at 4. Personal care and home health care jobs are expected to grow by an additional seventy percent over the next seven years, the highest growth rate for any occupation in the United States. *Id.*

7. Wendy Wang et al., *Breadwinner Moms*, PEW RES. CTR. (May 29, 2013), <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>.

8. JONATHAN VESPA ET AL., *AMERICA'S FAMILIES AND LIVING ARRANGEMENTS: 2012, POPULATION CHARACTERISTICS* 14 tbl.5. (2013), <https://www.census.gov/prod/2013pubs/p20-570.pdf>.

9. *Id.*

10. KATHRYN J. EDIN & H. LUKE SHAEFER, *\$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA* note 35, at xvii. (2015).



Because children often remain in, or are returned to, the care of parents when parents are placed on the child abuse registry, the financial stability of families and the ability of parents to access employment should be of paramount importance to the child welfare system. “When women are shut out of the workforce, children are far more likely to live in poverty.” Krohn *supra* at 251.¹¹ According to Kids Count Data Center, in 2018 435,000 children in Pennsylvania were living in poverty.¹² The National Academies of Sciences, Engineering, and Medicine found that compared to children in economically stable families, children who are living in poverty are more likely to experience poor physical and mental health, lower educational attainment, greater job insecurity, and engage in more risky behaviors and delinquency.¹³

Blocking off the ability of parents and caregivers to access employment in high-growth fields only serves to hurt the very children the child abuse registry is supposed to protect in the first place. The child abuse registry thus exacerbates child poverty and places vulnerable families in even more precarious circumstances. Especially in this current time of extreme vulnerability for low-income families as they struggle to survive the COVID-19 pandemic, reform of the child abuse registry system is urgently needed.

Policy Reform Agenda

Given the problematic procedures that result in placement on the child abuse registry and their disproportionate impact on low-income families, we suggest a number of amendments to the CPSL that would help address both due process and equity concerns, with the ongoing provide necessary safeguards for the children that the statute is meant to protect. First and foremost, given what we know about the drastic consequences that placement on the child abuse registry has for low-income people and people of color, we believe that this is a moment in which to re-envision our approaches to child safety. We note that other states have begun to do so. The State of Georgia, for example, recently abolished its registry after determining that placement on the registry was fraught with some of the same procedural shortcomings and disastrous consequences as the Pennsylvania registry and that there are more effective and equitable ways to protect children. In the meantime, we propose some reforms that would address some of Childline’s failures:

Enhanced procedures for placing people on the registry:

The Commonwealth Court of Pennsylvania has recognized that the placement on the registry before the individual has a hearing may violate the Pennsylvania Constitution. The legislature should amend the CPSL to mandate that child welfare agencies request a hearing within a short period of time after making a finding of child abuse and prohibit placement on the registry until the hearing and any subsequent appeals have

11. Jesse Krohn & Jamie Gullen, *Mothers in the Margins: Addressing the Consequences of Criminal Records for Young Mothers of Color*, 46 U. Balt. L. Rev. 237, 245–46 (2017)

12. <https://datacenter.kidscount.org/data/tables/43-children-in-poverty-100-percent-poverty?loc=1&loct=2%23detailed/2/40/false/870,573,869,36,868/any/321,322#detailed/2/2-53/false/37,871,870,573,869,36,868,867,133,38/any/321,322>

13. National Academies of Sciences, Engineering, and Medicine; Division of Behavioral and Social Sciences and Education; Committee on National Statistics; Board on Children, Youth, and Families; Committee on Building an Agenda to Reduce the Number of Children in Poverty by Half in 10 Years; Le Menestrel S, Duncan G, editors. *A Roadmap to Reducing Child Poverty*. Washington (DC): National Academies Press (US); 2019 Feb 28. *Consequences of Child Poverty*. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK547371/>



either been exhausted or waived. Hearings shall be held before an administrative judge in accordance with the Pennsylvania rules of evidence. Furthermore, given the enormity of rights at stake, indigent individuals shall be appointed counsel to represent them at the hearings.

Changes to the structure of the registry:

Currently, the child abuse registry treats all alleged perpetrators the same, without any regard to the severity or nature of the acts accused of. All the myriad types of abuse and neglect are lumped onto the same registry and reported out in child abuse clearances in the same way and for the same period of time (the perpetrator's entire life). Yet, someone who misses a few of her child's doctor's appointments is not distinguished in any way from someone who sexually abuses a child and will be barred from the same jobs. Compare this to the criminal justice system, where there are different degrees of crimes and different sentences imposed depending on the culpability of the person accused and the discretion of the judges. The failure of the CPSL to distinguish between acts and individuals and to create lifelong barriers for all is nonsensical, at best. We recommend the following changes to the child abuse registry:

- The registry should consist of different tiers that reflect both the nature and severity of the alleged abuse or neglect and the culpability of the perpetrator (in other words, the person who actually committed the abuse should be on a different tier than one who is found to have failed to protect the child from the abuse). Time periods for remaining on the registry shall be capped for each tier.
- If sufficient evidence of child abuse is found by the administrative judge after a hearing, that administrative judge shall determine the appropriate registry tier after doing an individualized assessment and considering a number of factors, including, but not limited to: the circumstances and severity of the incident, the culpability of the perpetrator, the perpetrator's employment, and whether the perpetrator poses a continued risk to children.
- All individuals on the registry should be afforded a meaningful way to be removed from it for good cause shown or after a certain number of years have passed.

Limit use of registry as employment screening tool:

There are no studies demonstrating that individuals accused of child abuse or neglect pose a risk to those that they encounter in a place of employment. Indeed, it is difficult to believe that a parent who once inadvertently failed to treat a child's injury adequately or engaged in physical discipline of a recalcitrant teenage child is unable to effectively and safely perform the duties as a cafeteria worker or school crossing guard. To the contrary, imposing lifelong employment barriers places their children in even greater long-term jeopardy. As such, placement on the child abuse registry is effectively merely a punitive measure, and not designed to protect children.

Under current law, all individuals applying for any job in which they are likely to have "contact with children" is required to provide a clearance from the registry. In our experience, the term "contact with children" as defined in the CPSL is applied in an overbroad manner, covering even those jobs in which the employee is unlikely to be alone or unsupervised with children. We proposed that the CPSL be amended to narrow the definition of "contact with children" as well as the categories of



jobs that would require clearances. We also suggest that only conduct that bears a reasonable relationship to the ability to perform such jobs be used in the employment screening process.

Require and provide mechanisms for conducting a racial impact analysis of the registry and addressing racial bias:

As discussed in this paper, placement on the registry has a disproportionate impact on low-income individuals. As far as we are aware, no data exists regarding the race and/or ethnicity of individuals indicated for child abuse. Such data should be collected as a matter of course in order to determine whether people of color are disproportionately impacted by the registry.

The Commonwealth should also take concrete steps to address structural race, class and gender bias in the investigation of child abuse and neglect reports. Investigators and other fact-finders should be trained on implicit bias and provided with specific criteria designed to mitigate such bias and eliminate disparities.

Conclusion

While the goal of protecting children from abuse is an important one, the child abuse registry has gone too far in serving as an employment screening tool that locks out hard-working people from a wide array of jobs and prevents parents and caregivers from being able to financially support their children. It does so without sufficient process, and often in cases where the devastating consequence of being labeled a child abuser for life is unwarranted. As we look toward economic recovery from the COVID-19 pandemic, it is more urgent than ever to reform the child abuse registry system in Pennsylvania to ensure that low-wage workers are not unnecessarily excluded from desperately needed employment.

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