



**September 23<sup>rd</sup>** – Tomorrow the Pennsylvania Senate will begin to amend and advance elements of its “sweeping” child protection package introduced earlier this year.

Child abuse fatalities and near-fatalities provide a specific lens by which to assess the degree to which current state law(s) effectively promote prevention, safety and well-being. They also provide case-specific illustrations about the importance of advancing improvements, for the collective community of children, related to:

- ✚ Defining “child abuse” and responses to prior referrals related to “inappropriate discipline”;
- ✚ Reporting suspected child abuse, sharing information across disciplines
- ✚ Consistency so that every child has access to “needed medical or surgical care;”and
- ✚ Determining who can be a perpetrator

### **A mounting toll of serious and lethal child abuse in Pennsylvania**

Between 2008 and 2012 at least 403 infants and children officially died or experienced a near-fatality due to child abuse injuries.<sup>1</sup> Eighty-three percent involved a child who was 3 years of age or younger and nearly 50 percent lived in a family known to or previously involved with the child welfare system.

The tender age of the children is quite troubling.

Equally troubling, the toll is greater than 403.

Another 38 Pennsylvania children died by circumstances that have the appearance of child abuse, based on media reports and other data and the fatality led to criminal charges against an adult (Table 1). However, to date these fatalities have not been included in Pennsylvania’s child abuse data. In addition as required by Act 33 of 2008, child welfare officials investigated another 86 suspected child abuse near-fatalities – approximately a quarter of which involved a child living in a family known or previously known to the child welfare system. While these 86 near-fatalities triggered some degree of investigation, they apparently were not substantiated as child abuse even as in some of the cases there were criminal charges filed. As defined in Pennsylvania law, near-fatalities are incidents where a child has been determined by a physician to be in serious or critical condition as a result of child abuse injuries.

And the toll is growing. In the first quarter of 2013 (January 1st – March 31st) – 19 Pennsylvania children died or nearly died as a result of child abuse injuries. Ninety-five percent of the children were three years of age or younger and more than 60 percent were in a family known or previously known to the child welfare system.

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<sup>1</sup> This figure is based on compilation of fatalities and near-fatalities in the year in which the incident occurred. Meanwhile, the annual child abuse reports prepared by the Department of Public Welfare include this data based on the year in which the incident was substantiated so there is some variation in the overall number.

### **Prior referral for “inappropriate discipline”**

In January 2012, the Protect Our Children Committee (POCC) shared a series of Principles with the Task Force on Child Protection and policy makers to assure that Pennsylvania moved to adopt child protection policies that were child-centered. Among our Principles: *“Pennsylvania’s definition of child abuse should be child-centered emphasizing the safety, well-being and permanency of a child in recognition that the definition influences when and how reports are made, investigations are undertaken and whether a vulnerable child has a pathway to needed interventions.”*

The debate about where to next on “discipline” has been among the areas we’ve had to reinforce our principle that the definition of child abuse be “child-centered” and emphasize “safety and well-being.”

Pennsylvania’s Child Protective Services Law (CPSL) already recognizes a parent(s) right to utilize discipline, including corporal punishment, stating, “This chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children.” Lawmakers are committed to retaining this provision in law, as is POCC. With this parental prerogative for reasonable discipline retained, it is important that efforts to secure comprehensive child protection reforms not become distracted by a debate about “spanking” and “discipline.”

We’ve spent significant energy educating policymakers about the significant limitations in current Pennsylvania law that sets the bar high before an action against a child is considered “abuse” versus say “discipline.”

Fatalities and near-fatalities (and the tender age of the children impacted) help to illustrate the need for improvements.

Below are examples of Pennsylvania infants and children who died or experienced a near-fatality with **this sentinel event occurring after the family was already the subject of at least one prior referral related to “inappropriate discipline.”**

- In 2010, a **2-month-old infant died in Northampton County** from “blunt force trauma” to her head. A year earlier, her father was substantiated as a perpetrator of child abuse and he pleaded guilty to simple assault for a “spanking” he gave to his 3-month-old daughter.
- A **Crawford County one-year-old** died from a traumatic head injury. The family was the subject of a referral to children and youth services “several months” before the fatality. Prior to that most recent referral, there was a prior report involving “inappropriate discipline.”
- A **Montgomery County 2-year-old died** in 2008 due to abusive head trauma. Three months before the child’s death his family was referred to children and youth services, in part, due to “inappropriate discipline.” The mother was referred for “parenting services” and the case was closed a month later.
- A **2-month-old Dauphin County infant** died after she was suffocated in 2009. There was a prior report (2007) involving the child’s mother related to “inappropriate discipline.”
- In 2010, **two Erie children (4 and 7 years of age)** died in a murder-suicide. They were killed by their father. In 2009, they were the subject of a report to child welfare officials related to “inappropriate discipline.”
- A **Cumberland County 4-week-old** died in 2011 after experiencing blunt force trauma that caused injuries to the ribs and brain. There were two prior referrals involving the family, including one related to “inappropriate discipline by the mother with the older sibling.”

- In 2011, a **Blair County 1-year-old** living in a family with 4 prior referrals before the child's near-fatality, including a referral in November 2010 related to "inappropriate discipline" involving the child victim's older sibling.
- A **Bucks County 3-year-old's** near-fatality involved injuries related to her head, back and extremities. There were 3 prior referrals involving the child's family, including a month before the near-fatality. That referral involved allegations of "inappropriate discipline" by the father's paramour.
- In 2012, it was a **5-year-old child from Bucks County** experiencing a near-fatality. Within the year of the child's near-fatality there was a report of "inappropriate discipline" being utilized by the mother on the victim child.

### **Reporting suspected child abuse, sharing information across disciplines**

The fatality and near-fatality reports prove the importance of the community being on the lookout for possible child abuse. They also underscore the necessity of persons legally required to report suspected child abuse being trained and then following through with making a report.

There are ample examples of what might be seen as missed calls or, in fact, where a legally required report never was made including:

- ✚ Before a 1-year-old Lehigh County child nearly-died in 2012, documents related to the near-fatality noted that "A witness who was interviewed stated they had seen the perpetrator abusing the child." Medical examination of the child, at the time of the near-fatality, reviewed he "had several healing fractures."
- ✚ In July 2012, a Lehigh County 1-year-old, who had injuries to his head, back and scrotum some of which required surgical intervention, nearly-died. Days before the near-fatality, day care workers asked the mother about "finger marks" on the child's head and chest. No report of suspected child abuse was filed.
- ✚ A young child nearly died in 2010 in Delaware County It was noted that the hospital that initially treated the child did not make a referral to children and youth services. DPW also noted, "It is of concern that the initial hospital that treated [REDACTED] did not report this to children and youth." It was recommended that there be communication with the hospital emergency department and that training about mandated reporting be offered.
- ✚ In 2012, a 2-month-old child died in Luzerne County. The review after the fatality indicated earlier red flags about the child's well-being, including related to weight gain and missed medical appointments. The panel discussed the "possible need for more education to be provided to medical staff regarding mandated reporting. At the very least, it was felt that this particular incident of failure to report be brought to the attention of the hospital administration."
- ✚ In 2012, a 3-month-old child died in Philadelphia due to suffocation. The reviews after the child's fatality note a visit the child had to an emergency room several months before the fatality. DPW wrote in its Act 33 report: "Ongoing training needs to be done with hospitals and medical providers about the responsibilities of mandated reporting. This child was seen at the Emergency Room two months prior to his death with facial injuries. Hindsight causes us to raise the question of whether this death could have been prevented if a report had been made earlier."

Information sharing and communication – across systems and disciplines – is a potent ingredient to improving (or hindering) a child's safety and wellbeing. For example, a 5-year-old Northampton County boy was certified as a near-fatality for injuries related to "medical neglect" and an untreated dental abscess. Prior to this near-fatality, the child was on the radar of child welfare officials,

but they closed the case “without informing the child's medical providers that they should contact the agency if the family fails to follow through with child's medical treatment.” And in Jefferson County, a 3-year-old child died and it wasn't until after the death that the “home school district” relayed information that would have provided child welfare officials with information about the “family dynamics” to most effectively assess the safety and well-being of the children.

Fatality and near-fatality reports also remind that the response to reports and the way the law may tie the hands of local workers can't be overlooked. Consider, for example, a 1-year-old child nearly-died in Bucks County in 2012. The local near-fatality review team and DPW noted that “Concerned neighbors made many calls to the BCCYSSA and to the area police department regarding this family before the near drowning of the victim child.”

### **Consistency in assuring a child's access to “needed medical or surgical care**

Pennsylvania law permits a parent, guardian or person responsible for the welfare of a child to deny the child “needed medical or surgical care” if that denial occurs in response to “seriously held religious beliefs.”

In 2009, a 2-year-old Philadelphia boy died from complications of bacterial pneumonia. Earlier this year, that child's sibling – an 8-month-old brother – died. The parents, who under current state civil law could not be named as perpetrators of child abuse in 2009 or 2013, were on probation at the time of their second son's death.

By contrast, a 6-year-old Montgomery County child nearly-died in 2012. The child had previously been diagnosed with Kawasaki Disease and his parents, according to a DPW report, “were attempting to treat the child's condition through natural methods, and were failing to take the child to scheduled medical appointments. When the child was finally seen by a doctor, he was severely malnourished and could not extend his arms and legs due to muscle contractions. The child was diagnosed with an enlarged liver and failure to thrive. Medical professionals determined the child would likely have died if he was not hospitalized when he was.” The parents were named as perpetrators of child abuse for “medical neglect” and they have been criminally charged.

POCC supports an outright elimination of current 23 Pa.C.S. § 6303 (b)(3). However, should this section be retained in some fashion, we believe it critical that all efforts be made to assure that the language is much more protective than current law and affirms that mandatory reporting provisions are still required. We have offered the following recommended language:

*(v) Practice of religious beliefs.--If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents or guardian, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be a victim of child abuse for that reason alone. However, nothing in this section shall*

*(1) Exempt a mandated reporter from a duty to report suspected child abuse as required by Section 6311 (relating to persons required to report suspected child abuse);*

*(2) Preclude the county agency from obtaining a medical examination for the child by a certified medical practitioner as part of the investigation;*

*(3) Exclude a family from being engaged for general protective services, where appropriate with all correspondence related to the report or services accepted by the family bearing no reference to “child abuse” instead acknowledging the religious basis for the child's condition;*

*(3) Prohibit the court from ordering needed medical or surgical examination or care or from directing a county agency to closely monitor the child, in consultation with a certified medical practitioner.*

*(4) Be applicable if the failure to provide needed medical or surgical care results in a child's fatality or near-fatality.*

### **Who can be a perpetrator and perpetrator undetermined**

Included below is a chart of 38 child fatalities, which occurred between 2008 and 2012. In each of these fatalities, the death was ruled a homicide or criminal charges were filed. However, the fatality is not recorded as a substantiated case of child abuse in state reports. Among the reasons some of these fatalities apparently were not determined to be “child abuse” relates to how Pennsylvania law currently defines who can be a perpetrator of child abuse. Additionally, beyond these 38 fatalities others can be found that reveal the challenges linked to state law stipulating child abuse can only be substantiated if a perpetrator has been fully determined (e.g., a child is injured and multiple parties had access to the child at the time the injuries were inflicted and the various potential perpetrators blame the other party).

**Child fatalities (2008-2012) – criminal charges or death ruled homicide, child abuse status unknown**

<b>County</b>	<b>Age</b>	<b>DOD</b>	<b>Cause of Death</b>	<b>Person(s) Charged Criminally</b>	<b>Criminal Proceeding Outcome (data from Common Pleas Court Docket Sheets)</b>
Allegheny	1 M	9/18/08	Asphyxiation	Grandmother	February 2011 (plea involuntary manslaughter)
Allegheny	14 Y	10/14/08	Blunt Force Trauma	Mother's paramour	July 2010 (negotiated guilty plea, 2 counts murder of 1 <sup>st</sup> degree and related offenses)
Allegheny	9 Y	10/18/08	Gunshot	Father	July 2010 (guilty plea, involuntary manslaughter & endangering the welfare of children)
Allegheny	2 Y <sup>2</sup>	12/2/09	Blunt Force Trauma	Mother's paramour	November 2010 (guilty plea, endangering the welfare of children)
Allegheny	5 Y	11/26/10	Gunshot	Father	Not guilty
Allegheny	7 Y <sup>3</sup>	6/30/11	Fire, smoke inhalation	Mother	March 2012 (negotiated guilty plea, involuntary manslaughter and endangering the welfare of children)
Allegheny	4 Y <sup>4</sup>	6/30/11	Fire, smoke inhalation	Mother	March 2012 (negotiated guilty plea, involuntary manslaughter and endangering the welfare of children)
Allegheny	3 Y <sup>5</sup>	8/9/11	Gunshot	Non-household member, relative of mother's paramour	January 2012 (guilty plea, involuntary manslaughter and recklessly endangering another person)
Allegheny	2 Y	7/6/12	Drowning in bathtub	Mother	Trial pending

<sup>2</sup> Officials from the Allegheny County Department of Human Services indicated via a July 2012 email that they had changed the status of the report and notified the Department of Public Welfare of the change “once the criminal Conviction was obtained.” This status change occurred in February 2011.

<sup>3</sup> Officials from the Allegheny County Department of Human Services indicated via a July 2012 email that they had changed the status of the report and notified the Department of Public Welfare of the change “once the criminal Conviction was obtained.”

<sup>4</sup> Officials from the Allegheny County Department of Human Services indicated via a July 2012 email that they had changed the status of the report and notified the Department of Public Welfare of the change “once the criminal conviction was obtained.”

<sup>5</sup> The person criminally charged did not meet the definition of “perpetrator” under Pennsylvania’s Child Protective Services Law (CPSL) because he was not the child’s parent, the paramour of the parent, a direct caregiver or a resident in the child’s home.

<b>County</b>	<b>Age</b>	<b>DOD</b>	<b>Cause of Death</b>	<b>Person(s) Charged Criminally</b>	<b>Criminal Proceeding Outcome</b> <i>(data from Common Pleas Court Docket Sheets)</i>
Allegheny	1 M	8/15/12	Sudden Infant Death Syndrome	Mother and Father	June 2013 Mother – not guilty (conceal death of child)  January 2013 Father (negotiated guilty plea, conceal death of child and conspiracy to conceal)
Allegheny	2 D <sup>6</sup>	2/16/2012	Injuries from being bitten by a dog	Mother	July 2012 Guilty plea, endangering the welfare of children and dog attack
Beaver	3 Y	11/3/12	Abusive head trauma	Mother's paramour	Trial pending (order in June 2013 for Beaver County to produce files)
Bucks	8 M	7/2 or 7/3/12	Not determined, heroin in child's bloodstream	Father and Mother	February 2013 Father (guilty plea, endangering the welfare of children, recklessly endangering another person, drug offense)  March 2013 Mother (guilty plea, endangering the welfare of children, recklessly endangering another person, drug offense)
Dauphin	3 M	9/30/09		Child care provider	Unknown
Dauphin	10 D	1/22/10	Coroner ruled the child's death was a homicide due to traumatic brain injury	Unknown if criminal charges filed	Unknown
Dauphin	2 M	12/31/11	Traumatic brain injury	Father	Trial pending (criminal homicide, aggravated assault and endangering the welfare of children held for trial)
Erie	3 M	6/16/08	Shaken baby, abusive head trauma	Father and mother	April 2009 Father – (guilty, murder of 3 <sup>rd</sup> degree, aggravated assault, endangering the welfare of children and related offenses)  October 2008 Mother – (guilty plea endangering the welfare of children)
Erie	1 Y	April 2011	Nutritional neglect	Mother and mother's paramour	March 2012 Mother – (guilty, 1 <sup>st</sup> degree murder, conceal death of child,

<sup>6</sup> From the [Act 33 report](#) posted by the Department of Public Welfare on its website, it appears that Allegheny assigned the report a “pending” criminal proceeding status in June 2012 and then changed that status to founded upon sentencing of the mother in January 2013.

County	Age	DOD	Cause of Death	Person(s) Charged Criminally	Criminal Proceeding Outcome ( <a href="#">data from Common Pleas Court Docket Sheets</a> )
					endangering the welfare of children and related offenses)  May 2012 Mother's paramour – (guilty plea, abuse of corpse and tampering with evidence)
Fayette	2 Y	6/8/08	Drowning	Foster Mother	Charges of endangering the welfare of children, recklessly endangering another withdrawn
Fayette	7 W	12/4/10	Failure to maintain airway	Home care nurse	Trial pending (charge of endangering welfare of children)
Indiana	1 Y <sup>7</sup>	3/5/12	Medical neglect	Mother's paramour and Mother	January 2013 Mother's paramour (guilty plea, involuntary manslaughter)  Mother (plea, misdemeanor endangering the welfare of children)
Lackawanna	9 Y <sup>8</sup>	7/21/09	Fire	Mother's ex-paramour (resident of household until right before child's death)	January 2013 Guilty, multiple counts of murder of 1 <sup>st</sup> degree, arson and related charges
Lackawanna	10 Y <sup>9</sup>	7/21/09	Fire	Mother's ex-paramour (resident of household until right before child's death)	January 2013 Guilty, multiple counts of murder of 1 <sup>st</sup> degree, arson and related charges
Lancaster	4 M	10/24/09	Blunt Force Trauma	Mother's paramour and mother	January 2013 Mother – (no contest, endangering the welfare of children and criminal conspiracy)  Mother's paramour - (no contest, endangering the welfare of children and criminal conspiracy)
Lancaster	5 M <sup>10</sup>	4/12/11	Suffocation,	Father	August 2013

<sup>7</sup> In November 2012, the Department of Public Welfare released a report summarizing substantiated child abuse cases in the first quarter of 2012. This child was included in that report. However, at some point the child was removed from that report and was not included in the 2012 Annual Child Abuse Report. There has been no response to a May 22, 2013 request to DPW asking for clarification on the matter. In September 2013, DPW posted its Act 33 report for this child's fatality.

<sup>8</sup> The person criminally charged did not meet the definition of "perpetrator" under Pennsylvania's Child Protective Services Law (CPSL) because he was the ex-paramour of the mother.

<sup>9</sup> The person criminally charged did not meet the definition of "perpetrator" under Pennsylvania's Child Protective Services Law (CPSL) because he was the ex-paramour of the mother.

<sup>10</sup> The 2012 Annual Child Abuse report includes two child fatalities for Lancaster County, including a 1-year-old female who died on April 4, 2011. This fatality is described as initially believed to be an accident, but after "a yearlong police investigation, the father confessed to causing the child's death." A Right to Know request for Act 33 reports related to this unnamed child were denied because there "was only one death in April 2011." The RTK response

County	Age	DOD	Cause of Death	Person(s) Charged Criminally	Criminal Proceeding Outcome <i>(data from Common Pleas Court Docket Sheets)</i>
			also broken rib and bruising		Guilty plea but mentally ill, murder of the 3 <sup>rd</sup> degree
Lancaster <sup>11</sup>	1 Y	11/30/11 (sustained injuries in 2010)	Homicide, skull fracture, bleeding on the brain	Father	August 2013 Negotiated guilty plea, murder of the 3 <sup>rd</sup> degree
Lawrence	6 W	11/30/12	The forensic pathologist said the baby had two large skull fractures	Father	July 2013 Guilty plea, involuntary manslaughter
Lehigh	8 Y	1/18/10	Gunshot	Father	December 2010 Negotiated guilty plea, involuntary manslaughter (drug charges and endangering the welfare of children charge withdrawn)
Lehigh	1 Y <sup>12</sup>	10/6/12	Gunshot	Mother	February 2013 Negotiated guilty plea, involuntary manslaughter
Lehigh	5 Y	11/30/12	Severe brain bleed" and other injuries bruising to his head, arms and stomach	Mother	July 2013 Negotiated guilty plea, murder of the 3 <sup>rd</sup> degree (later motion to withdraw guilty plea)
Montgomery	1 M	2/5/10	Cerebral hemorrhage	Father	November 2010 Guilty plea, Murder of the 3 <sup>rd</sup> degree
Perry	7 M	1/28/11	Blunt Force Trauma	Father and Mother	April 2012 Father, guilty plea to involuntary manslaughter and endangering the welfare of children  Mother – guilty plea, involuntary manslaughter and recklessly endangering another person
Philadelphia	1 Y	7/16/08	Blunt force trauma – car	Father	February 2010 Guilty, murder of the 3 <sup>rd</sup> degree
Philadelphia	2 Y <sup>13</sup>	1/24/09	Bacterial	Father and	December 2010

indicated that the “only” child death in April 2011 was that of AHM. The Annual Report, in describing the April 4, 2011 fatality, notes that the report was “substantiated in September 2012.” It also states that the father admitted “that he laid on top of the child and suffocated her.” The Annual Report also indicates the father provided his confession while in prison “for theft charges.” Media reports cite the confession occurred while he was incarcerated on “unrelated assault charges.” Media reports about the death of AHM cited police reports where the father said he was frustrated by her crying “so I intentionally laid on top of her to stop her from crying. I guess I laid on top of her too hard.” It appears that the child listed in the Annual Report as a 1-year-old female said to have died on April 4, 2011 could very well be AHM even as the age of the child and date of death are different.

<sup>11</sup> Note the child died in Lancaster County, but the child was injured in Philadelphia so the criminal court proceedings occurred in Philadelphia.

<sup>12</sup> Based on the Act 33 report issued by the Department of Public Welfare, it appears that the report was not substantiated as child abuse based on this reference: “Although the victim child’s mother was (redacted) in relation to the death of the victim child, the LCCYS determined the death was (redacted) and therefore the case was (redacted).”

County	Age	DOD	Cause of Death	Person(s) Charged Criminally	Criminal Proceeding Outcome <i>(data from Common Pleas Court Docket Sheets)</i>
			pneumonia	mother	Parents – convicted of involuntary manslaughter and endangering the welfare of children
Philadelphia	1 Y	1/4/2010	Certified as a homicide by the Medical Examiner	Mother	Unknown (Act 33 report indicates the mother was incarcerated)
Philadelphia	5 Y	12/1/12		Mother and mother's paramour	Pending Mother and Mother's paramour – charges of murder, endangering the welfare of children and other charges held for court
Somerset	1 Y	8/5/11	Smothering and neck injuries	Mother and mother's paramour	April 2012 Mother – guilty plea, recklessly endangering another person  Mother's paramour – Trial still pending (mother set to testify against him in exchange for testimony against the paramour)
Westmoreland	11 Y	9/3/10	Gunshot	Caregiver (step-father of the children in the home the victim child was visiting) was charged in 2011	October 2012 No contest, endangering the welfare of children

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<sup>13</sup> Pennsylvania's Child Protective Services Law excludes as child abuse cases where the child's parents, guardian or person responsible for the child's welfare has not provided the child with "needed medical or surgical care because of seriously held religious beliefs" and such beliefs are "consistent with those of a bona fide religion."