

Testimony of Deputy District Attorney Sharon Giamporcaro in Support of Proposed Amendments to the PA Public School Code of 1949 on Bullying

Good morning Chairman Clymer, Chairman Roebuck, and other members of the Committee. Thank you for the opportunity to testify here today. My name is Sharon Giamporcaro. I am a Deputy District Attorney in the Montgomery County District Attorney's Office and also the Chief of the Juvenile Division. I am here on behalf of District Attorney Risa Vetri Ferman to offer testimony in support of House Bill 2464, which amends Pennsylvania's Public School Code of 1949 on the topic of bullying.

Pennsylvania's first legislation addressing bullying was passed in 2008 as an amendment to the Public School Code of 1949. This law was an important initial step in combating the problem of bullying, because it required school districts to institute anti-bullying policies. However, the current Public School Code of 1949 does not adequately address the serious and complex topic of bullying. Although well meaning, present law provides little direction to schools in their development of anti-bullying policies. Student safety is contingent upon the strength of these policies. School entities should be required to have certain minimum requirements for effective anti-bullying policies, such as reporting protocols, prompt investigation procedures, safety strategies and intervention measures designed to target both victims and bullies. The present state law also does not provide a sufficient definition of prohibited conduct that would constitute bullying. With the advent of technology, cyberbullying conduct is prevalent and can be accomplished through various electronic communication methods. State laws must be innovative enough to keep pace with technology so that school entities will be able to fulfill their mission of student safety.

House Bill 2464 properly augments the Public School Code of 1949, by concisely setting forth the critical ingredients that schools must incorporate into their anti-bullying policies, and by expanding the definition of prohibited conduct to keep pace with technological advances. Key accountability provisions, ongoing oversight features and built-in safeguards to ensure student safety, make this bill an exceptional piece of legislation.

Since bullying can take many forms, House Bill 2464 has expanded the previous definition of prohibited conduct to include harassment, intimidation, bullying and cyberbullying. These terms are given practical definitions, thereby removing any potential confusion as whether or not specific conduct falls within the realm of prohibited acts. In particular, the bill defines "electronic

communication” in a manner that encompasses all electronic devices or modalities for communication purposes, whether or not that communication occurred on school property or through the use of school equipment. As a veteran prosecutor in Juvenile Court, I can attest to the fact that numerous types of bullying conduct are often addressed during delinquency proceedings, and many times the conduct originated from a digital device. These are complicated cases for prosecution, many times involving reluctant witnesses due to fear of retaliation. House Bill 2464 raises awareness of this problem by mandating that a school’s anti-bullying policy include a statement prohibiting the retaliation or false accusation against a target, witness, or anyone with reliable information regarding a bullying incident.

In order to facilitate the reporting of bullying incidents and proper immediate intervention by school authorities, House Bill 2464 directs that designated school staff, identified by job title, be responsible for all tasks related to the management of a bullying incident; receiving bullying reports, investigating incidents, notifying the parent/guardian of victims and bullies, alerting law enforcement, and ensuring proper implementation of the anti-bullying policy. Likewise, this legislation mandates that procedures be instituted for; notification to parent/guardian of both victim and offender, prompt investigation, notification to law enforcement and documentation of all incidents and notifications. From a law enforcement perspective, these types of established procedures serve to enhance the ability of all stakeholders to promptly investigate and intervene when bullying incidents are made known.

Managing a bullying incident effectively entails many levels of intervention. House Bill 2464 calls for disciplinary protocols, remedial action plans, strategies for providing counseling, referral services, guidance, academic intervention and protection to all students, both targets and perpetrators. School anti-bullying policies would be incorporated into the curriculum, available on publicly accessible internet websites and posted at prominent locations within each school building. Mandated annual training for administrators, school staff and volunteers, along with educational programs for students and parents will help prevent, identify and respond to reported bullying incidents.

One of the most unique features in this proposed bill is a provision including the formulation of bullying prevention task forces, programs and other initiatives involving all stakeholders as deemed appropriate by school entities. Montgomery County already has a countywide Task Force dedicated to bullying and cyberbullying. Members include law enforcement, school

administrators, social workers, parents, representatives from the District Attorney's Office, Attorney General's Office, Juvenile Probation, the Office of Children and Youth, mental health professionals and community volunteers. The purpose of this Task Force is to develop recommendations addressing all bullying issues based upon best practices associated with preventing, responding and ultimately eliminating bullying and cyberbullying. The Montgomery County Bullying/Cyberbullying Task Force operates as a critical resource for all stakeholders, including parents and kids. Having input from the various participants has been invaluable.

Ongoing oversight is an integral part of this proposed legislation, along with a system of checks and balances designed to ensure compliance and assess the bullying incidents throughout our Commonwealth. School officials and the Department of Education will have to conduct periodic reviews, and schools will have to report all instances of bullying to the state. The Department of Education will be required to develop a model policy, training materials, a list of programs addressing bullying prevention and establish a central repository for the collection and analysis of data.

For all of the foregoing reasons, House Bill 2464 is the ideal instrument to effectuate positive change across the state, by combatting bullying in all of its forms and fortifying protection to all students. This proposed new law is succinct and will undoubtedly foster the public school mission for student safety.

Thus far, I have outlined for this Committee the salient features of House Bill 2464, demonstrating its superiority as a useful and effective instrument of legislation. As a Deputy District Attorney though, it is also incumbent upon me to review this legislation from a legal standpoint and a law enforcement perspective. In the pursuit for perfection, I am proposing three minor revisions for consideration as enhancement provisions to this worthwhile bill, as follows:

1. House Bill 2464 calls for "immediate" notification to the parents/guardian of the perpetrator of bullying incidents.
 - Lines 22-26 (page 3 of 9); requires "immediate" notification to the parents/guardian of both the victim and perpetrator concerning harassment, intimidation, bullying or cyberbullying conduct.

From a law enforcement perspective, immediate notification to the parents/guardian of the perpetrator could jeopardize the safety of the victim and potentially compromise the initial investigation by law enforcement. Such notification should only occur after consultation with investigating law enforcement authorities.

Suggested revision for lines 22 – 26, (page 3 of 9):

(vii) A procedure for providing notification as follows:

- a. **Immediate notification to the parents or guardian of a victim of harassment, intimidation, bullying or cyberbullying.**
- b. **Notification to the parents or guardian of a perpetrator after consultation with the investigating law enforcement authorities, in order to ensure victim safety and to permit law enforcement authorities the opportunity to conduct an investigation.**

2. The wording in Section 1 (a) (1) (viii) related to the application of the school’s anti-bullying policy to electronic communications, whether or not the act originated on school property or with school equipment, should include the disruption or interference with a student’s education as an additional alternative triggering option. *(The current Public School Code permits a school’s anti-bullying policy to encompass acts outside the school setting if those acts have the effect of doing any one of the following: (i) substantially interfering with a student’s education, (ii) creating a threatening environment; or (iii) substantially disrupting the orderly operation of the school.)*

Suggested revisions:

Lines 27-30 and 1-7 (page 3 of 9).

(viii) A statement that the policy shall apply to an electronic communication, whether or not the act originated on school property or with school equipment, so long as:

- (A) A reasonable person should know, under the circumstances, that the act will have the effect of harming a student or damaging the student’s property or placing a student in reasonable fear of harm to his or her person or damage to his or her property: and has the effect of isolating or demeaning any student or group of students in such a way as to cause substantial disruption in, or substantial interference with, **either a student’s education or** the orderly operation of the school.

*(See also line 23, page 3 of 9, and change the word “or” to “**of**”).*

3. Section 1 (d) related to a school's policy defining bullying in such a way as to encompass acts that occur outside a school setting, refers to subsections that have previously been deleted by brackets "[(e) (1) and (3)]", thereby creating confusion for the reader. Since this section addresses the same topic as in Section 1 (a) (1) (viii), the suggested revision would simply insert here, the same language as in Section 1 (a) (1) (viii) for consistency purposes as follows:

Suggested revisions for lines 27-30, page 6 of 9.

(d) In its policy related to bullying adopted or maintained under subsection (a), a school entity shall not be prohibited from defining bullying in such a way as to encompass acts that occur outside a school setting if:

(i) a reasonable person should know, under the circumstances, that the act will have the effect of harming a student or damaging the student's property or placing a student in reasonable fear of harm to his or her person or damage to his or her property; and has the effect of isolating or demeaning any student or group of students in such a way as to cause substantial disruption in, or substantial interference with, either a student's education or the orderly operation of the school.

These three recommendations will serve to protect the safety of the victim and the integrity of a school's anti-bullying policy. Victim safety should always be a priority in the management of bullying incidents. Requiring school administrators to consult law enforcement authorities *before* notifying the parent/guardian of a perpetrator ensures the protection of the victim. Additionally, this recommendation will assist law enforcement to complete their initial investigation by gathering witness statements and evidence. The other two recommendations expand the definition of bullying to include the disruption or interference with a "student's education", which will actually make it easier for schools to effectively intervene when bullying occurs. Instead of having to prove that a bullying incident effects the "orderly operation of the school", the revisions will permit school entities to simply show that the bullying conduct interfered with "a student's education", which is easier to demonstrate.

Members of the Committee, thank you for the opportunity to provide input on this important piece of legislation. House Bill 2464 with the incorporation of the suggested revisions will deliver the type of roadmap school administrators need, in order to effectively protect victims, raise public awareness, prevent, identify and reduce all instances and types of bullying conduct. I strongly urge you to advance our united goal for student safety by unanimously passing this legislation.