



National
Family Violence
Law Center

THE GEORGE WASHINGTON UNIVERSITY

Testimony in SUPPORT of Senate Bill 78 “Kayden’s Law” with suggested amendments

November 11, 2021

To: Pennsylvania House Judiciary Committee and Family Law Subcommittee Chairs and Members

From: Danielle Pollack, Policy Manager and Joan Meier, Founding Director and Professor of Clinical Law, National Family Violence Law Center at GW¹

Dear Esteemed Chairs and Members,

We, the undersigned, are writing to let you know why SB78 is critically important to the protection of Pennsylvania’s children from preventable death and abuse. Our private custody courts are not adequately considering risk to children from people who have demonstrated violent abusive behaviors in the family, and they too often fail to put proper safeguards in place for children. SB78 Kayden’s Law guides courts to pay closer attention to risks to children, which will help prevent abuse, and sometimes deaths, of children at the hands of a dangerous party who uses custody litigation as part of their pattern of abuse.

Kayden’s Story is Emblematic

In Pennsylvania, seven-year-old Kayden Mancuso was brutally beaten and suffocated to death by her biological father during an unsupervised court-ordered custody visit in August 2018. This was a predictable and preventable child killing. The risk signs, including the father’s pattern of threatening behaviors and past violent and criminal acts against others, were presented to the Bucks County family court. An expert even warned that his access should be supervised. Yet the court ordered this mandated contact between the child and her violent father. The family court minimized the safety concerns Kayden’s mother had raised, including a **Protection from Abuse (PFA) order against him for threatening to kill the family as well as simple assault charges and convictions**. As a result, she was forced to send her frightened daughter to be alone with the father for his “parenting rights,” thereby providing him the opportunity to act on his plan to kill the child. He left a note on their child’s body saying she (Kayden’s mother) got

¹ This testimony is provided in our individual capacity, and not on behalf of George Washington University. National Family Violence Law Center, 2021 <https://www.law.gwu.edu/national-family-violence-law-center>

what she deserved. The killing of children to exact vengeance on a partner who has separated, is a common theme in these cases.

Kayden's preventable killing is sadly not an isolated incident. Nationally, researchers have identified over 800 children across the U.S. to have suffered this horrific fate at the hands of a divorcing or separating parent or caregiver since 2008, and at least **27** of them were Pennsylvania children (see graphic). **Nationwide, over 100 of these were cases in which a court failed to take seriously the dangers reported by a safe parent, as in Kayden's case.**ⁱ We do not have specific data about re-abuse of children ordered into unsupervised care of an abusive parent, but we hear about this frequently from protective parents.

Why SB 78 Kayden's Law is Needed

There is no reason that children should be forced into the care of a dangerous parent *even when a safe caregiver is happy to care for them.*

SB 78 provides courts with more guidance in assessing the totality of risk toward a child when there is a history of abusive behavior. Currently, custody courts too often tell protective parents things like "just because he hurt you or others, doesn't mean he will hurt the child." Not infrequently these children return from their time with an abuser afraid, injured and/or traumatized.

Who Is Abusing and Killing Children?

It is empirically known, both in Pennsylvania and nationally, that most child abuse is perpetrated in the family and by a parent. Of the **73 Pennsylvania children killed in 2020** (a 43% increase over 2019), the Pennsylvania Department of Human Services reports in their new fatality/near fatality review that: "parents continue to be the persons most responsible for abuse of their children" and that these children most often died from a "violent act" in 2020.ⁱⁱ Frequently in these families there is a safe caregiver trying desperately get the systems to hear their concerns, asking the system to keep the child safely with them and away from the abusing party, but these pleas go unheard. While we do not yet know the number of these children who were subjects of private custody litigation as those records are private, we can deduce that the majority involved family abuse and that our laws and systems meant to protect children in families are currently inadequate.

What SB 78 Does To Prevent Child Abuse in Custody Decision-Making

Both the dependency (state v private party) and the private custody courts (private party v private party) are frequently reviewing cases involving domestic abuse and risk to children. In **70% of contested custody cases between private parties** there is some form of domestic violence.ⁱⁱⁱ Abuse cases are not isolated to the dependency system.

Relying on what researchers have known for decades about the **overlap of intimate partner violence, child abuse, and criminality**, SB 78 guides courts to focus their custody decision-making on child safety in light of this overlap. Multiple studies show that intimate partner

violence and child abuse overlap in the same families at rates of 30 to 60 percent, and that a child's risk of abuse increases after a perpetrator of intimate partner violence separates from their domestic partner, even when the perpetrator had not previously directly abused the child. This is the period when private child custody litigation most often begins. Children who have witnessed intimate partner violence suffer trauma and are approximately four times more likely to experience direct child maltreatment than children who have not witnessed intimate partner violence.^{iv}

Yet private custody courts too frequently fail to recognize signs of risk and understand how abusers operate, instead **routinely prioritizing parent access rights over children's safety**.

What Kayden's Law Does

SB78 "Kayden's Law" does five important things to better protect children:

1. Restrains family courts from granting unsupervised parenting time to those who pose a present threat to children, are shown to be abusive or threatening, yet petitioning for custody. It requires a more stringent review of those who have a documented history of abusive behaviors toward children and others, and it requires courts to include in custody orders restrictions or safeguards as reasonably necessary to protect at-risk children.
2. Requires private custody courts will carry out a de novo review on abuse if a parent has been found by the child welfare system to have **physically or sexually abused a child**. This was included in response to concerns that child welfare findings are unreliable and potentially discriminatory. **It ensures** that the custody court will hear the facts leading to the "indicated" status and will not be bound by the agency's finding. Pennsylvania law **already** requires that private custody litigants notify the custody court if they have had child welfare involvement or an indicated status for harming a child. The hearing thus adds to the due process rights of parents investigated by the child welfare system.
3. Recommends that Pennsylvania courts train all family court judges and court personnel annually on the dynamics of domestic violence, child abuse, and child sexual abuse within families to increase decision-makers' ability to appropriately assess recommendations and sort through the facts of these cases.
4. Restricts courts from expecting domestic violence victims to be "friendly parents" w/ their or their children's abusers in order to show they are a good parent deserving of custody.
5. Adds a limited number of new and pertinent criminal offenses which were not previously part of custody courts' consideration, including recklessly endangering another person, the trafficking of individuals, and cruelty to animals.

Protection Orders: A Crucial Sign of Risk to Children, Issued Infrequently Relative to Abuse Perpetrated

Protection orders are generally sought by victims as an act of desperation after extensive harms, and contrary to popular belief, the data shows they are obtained in a small percent of cases. Using National Violent Death Reporting System (NVDRS) data from 18 states, researchers examined 175 cases of homicide-suicide **involving 235 child homicide victims** in an effort to better understand the complex situational factors of these events. Findings indicate that 98% of homicide-suicides with child victims are perpetrated by adults (mostly parents) and propelled by the perpetrators' intimate partner problems, mental health problems, and criminal/legal problems. **In only 8% of these cases was a protective order filed or obtained**, yet in 61.1% there was serious conflict or abuse (intimate partner violence, divorce, arguments, custody problems). In 40% there was evidence of premeditation (disclosed homicidal intent, suicidal intent, wrote notes).^v

Victims of intimate partner violence often feel compelled to seek help when the safety and well-being of their children appear threatened. A study by the American Bar Association found that victims of domestic violence rarely seek restraining orders as a form of early intervention but more often pursue them as an act of desperation after they have experienced extensive problems. Few victims sought protection orders immediately; a quarter had **endured the abuse for more than 5 years** before ever seeking a protection order.^{vi} A report co-sponsored by National Institute of Justice and the Centers for Disease Control and Prevention presented findings from the National Violence Against Women (NVAW) Survey on the extent, nature, and consequences of intimate partner violence in the United States. It found of 8000 women surveyed that **only 17.1 percent** of women who were physically assaulted by an intimate obtained a restraining order against their assailant after their most recent victimization.^{vii}

Protection from Abuse orders, whether entered by agreement or with a finding, are a crucial piece of information for the custody court to have before them when determining risk to a child and appropriate safeguarding. PFAs are not easy to acquire and victims generally seek them out when risk is very high. Senators sought to address concerns raised under Section 5328 (a) by separating how PFAs entered by agreement will be handled compared to those with a judicial finding (2.2). We would welcome suggestions on how this language may be further refined on behalf of protective parents and children.

At a recent Pennsylvania Bar event, an individual opposing this reform in SB 78 declared: "adding this additional factor [of PFAs] to the custody analysis will further slow judges who need to make these determinations as significant additional evidence will now be required to be heard in a significant number of [custody] cases. Impeding the judicial economy of the family courts is never in the best interest of children."

While certainly judicial economy is important, in fact the number of PFAs issued in Pennsylvania is relatively small, on average 200 per county per year according to AOPC data, and not all of those have children involved or involve custody litigation. One retired judge took it upon herself

to research Philadelphia County custody cases in 2021 and found that of 347 cases only 14% had some form of PFA involvement.

Child Welfare and Private Custody

There has been a disturbing amount of misunderstanding and misinformation disseminated about the provision pertaining to child welfare findings of child abuse. An opponent of the bill misrepresented this provision at a recent Pennsylvania Bar event, writing that: “under Kayden’s Law **any** prior finding of abuse by child protective services (no matter how old) will presumptively take custodial rights away from a parent”. This is an extreme mis-statement in several respects.

First, existing law **already requires** private custody litigants submit to the custody court any involvement or indicated report they have from the state’s child welfare system. An indicated report is a child abuse report made under the Child Protective Services Law if an investigation by the county agency or the Department determines that **substantial evidence** of alleged child abuse 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. **SB 78 Kayden’s Law is not adding this requirement. It already exists.**

Counter to the claim above, SB 78 actually **restricts** courts’ freedom to adopt or rely on child welfare findings of abuse. SB 78 now requires that a private custody court may rely on an *indicated report by a child welfare agency **only for physical or sexual abuse (not any)*** of a child **only after the court holds a de novo review** of the circumstances leading to the indicated report. The rebuttable presumption (against unsupervised access) is only triggered if the court makes a finding of abuse after hearing the facts. The provision in SB 78 protects parents in the child welfare system by adding an opportunity currently not in place – a full and fair hearing on the facts, **without deference** to the agency’s finding. This expanded due process in SB78 is afforded to all litigants, does not include review of neglect cases, and thereby alleviates some of the concerns related to systemic biases in the child welfare system.

Lack of Professional Supervised Visitation Services

Under (e.2) if a court finds by a preponderance of the evidence that a party has abused a child or household member and that there is an ongoing risk of abuse of the child, there shall be a rebuttable presumption that the court shall only allow professional supervised physical custody between the child and the party who is an abuser. This will impact a very small percentage of private custody litigants, but ensures children’s safety from a known danger while allowing a way for the parent to have contact with a child if they desire. We hope – and have been given reason to believe - that increased funding will be deployed to expand the availability of safe visitation services. As an alternative to professional supervised visitation, an affidavit of accountability (as exists in the PFA statute) for non-professional supervision could be added to improve accountability for those who do not have access to professional services.

SUGGESTION FOR AMENDMENTS

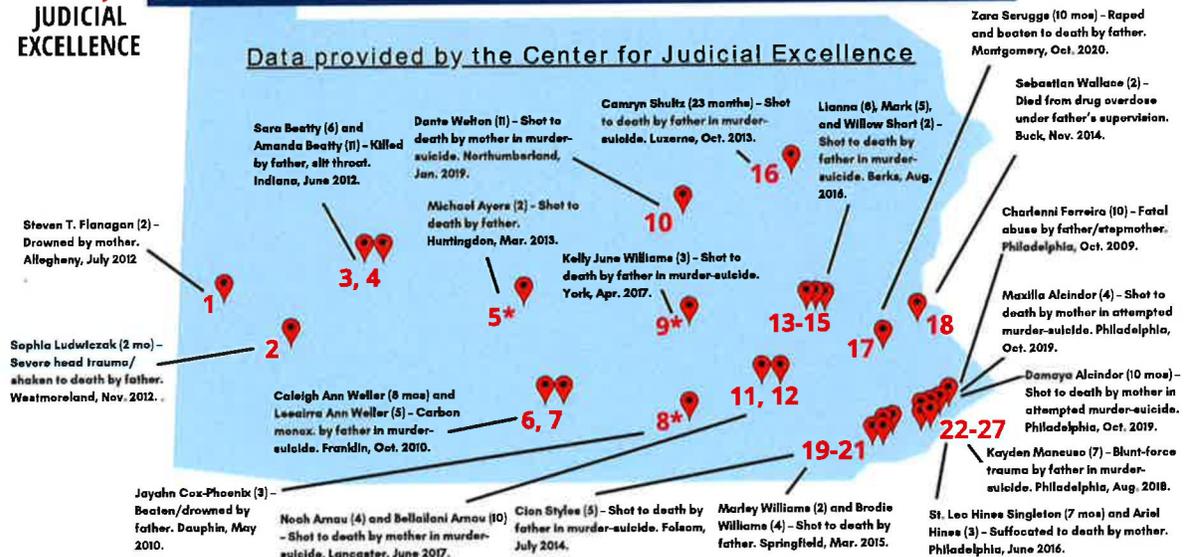
Under Section 3 of § 5323 (e) Safety Conditions, we recommend that rather than requiring that the court “include in the custody order the reason for **imposing** the safety conditions, restrictions or safeguards and an explanation why the safety conditions, restrictions or safeguards are in the best interest of the child or the abused party”, that this is instead required whenever the court is **lifting or easing** any safety provisions put in place. Otherwise, the implication is that safety conditions require greater justification than lack of safety conditions. This undermines child safety.

Pennsylvania Children Abused and Murdered by a Parent Litigating Custody

Like Kayden, Madison and Zachary were murdered only a few months ago in Erie, Pennsylvania by their father who was litigating custody. Their mother had raised safety concerns to the custody court, but she still had to share unsupervised custody with him. He shot the children in their sleep and lit them on fire.^{viii} They were killed at ages 10 and 13.



27 Children Have Been Killed by Separating/Divorcing Parents in Pennsylvania Since 2008



Illustrating the need for more stringent safety measures in our custody statute, as if Kayden’s, Madison’s, and Zachary’s murders were not enough, the above image shows other Pennsylvania children abused or murdered by an abusive parent litigating custody who was granted unsafe custody access by the courts despite safety concerns being raised. It is important that lawmakers understand the seriousness and systemic nature of this problem in our courts. Kayden’s case is not a “one off” error, as some opponents of child safety custody reform argue, nor are these situations “unavoidable” tragedies. They are actually systemically facilitated tragedies.

Kelly June Williams was shot to death by her father in York County. What did the court know about the father's violent abusive behavior? Kelly's mother had filed for several Protection from Abuse (PFA) orders but was only granted one. The private custody court was aware of this. She had filed for full custody to keep Kelly safe and child welfare had been involved - yet the dangerous father was still granted unsafe custody access.^{ix} He killed her at age three.

Michael Ayers was shot to death by his father in Huntingdon County despite his protective mother filing for custody. The mother presented her safety concerns to the court. She had a PFA against the father, just as Kayden's mother had against Kayden's father while litigating custody.^x Though Michael's father was a threatening adjudicated abuser, he was granted *non-professional supervised* visitation, which means supervised by his family member. He murdered the child during his court-ordered access, ending Michael's life at age two.

Jayahn Cox Pheonix was beaten and drowned to death by his dangerous father in Dauphin County. There had been child welfare involvement in his case and his mother had filed for custody to protect him, pleading to the court for help to keep the child safely with her. But instead Jayahn, in the custody of his father, was dead at age three at the hands of his father.^{xi}

In these and many other cases the custody court was shown the clear indicators of risk but failed to protect the child from their prolonged abuse or murder by their father.

Some Specific Judicial Responses to These Issues :

1. One Pennsylvania family court judge told a (now adult) child victim named Grace, who was hospitalized from being beaten in the head by her father with a cast iron pan: "You're going back to him, you spoiled little brat."^{xii}
2. Another judge in Delaware county just ordered a child victim out of the custody of his safe protective mother, Heather, and into the full custody of his abusive father who was en route to jail for perpetrating domestic abuse against her. The custody court was aware of this fact when they ordered the custody switch to him, which coincidentally happened shortly after the mother reached out to legislators in desperation, seeking help for her son, whose life she feels is in imminent danger. The mother and child are now in hiding. The father's charge and conviction was for **simple assault**, a criminal offense which SB 78 requires custody courts consider when awarding custody, and which some oppose including in the list of crimes. He was also charged with terroristic threats with the intent to terrorize another – the mother. During the attack the record shows he uttered "I will kill you" while grabbing her by the throat, dragging her to the floor, smashing her head on a metal railing, and kicking her over and over. She was hospitalized. He broke her nose in this incident, which occurred in front of her children who are now ordered into his full custody, as the result of a contempt finding based on her failing to force an afraid child into his court-ordered custody time. I believe this mother has submitted testimony to this committee if you would like to see the full record. Sadly, her story is not uncommon.

3. Weeks ago, yet another judge, this time in Monroe County, ordered a 5-year old girl into the full custody of a father. Previous to this, the father had been charged with **simple assault** and was on probation for strangling the child's mother. Child welfare had confirmed his partner violence and physical abuse of the children. The children were disclosing abuse by the father. The mother was in the address confidentiality program because the father was such an extreme risk to her, yet the court nevertheless ordered her to send her young children to him every other week. She feared the abuser had coerced the younger child into revealing her location while on a court ordered custody visit. Two weeks later she was stabbed to death at her confidential address. (An investigation is underway, and a friend of the father has been arrested). Her older child had become suicidal when court ordered to "reunification therapy" with the abusive father previous to her killing. He is now in hiding, following his mother's killing, but the father is petitioning for full custody, having already been granted the younger child within hours of the mother's death.

In Conclusion

The overwhelming majority (90%) of custody cases resolve through out of court settlements. Only 10% of parents litigate custody, and the rates of violence in those litigating families are much higher than an average family experiencing dissolution.^{xiii} We support a child's essential right to have contact with a **safe** parent, and under SB 78 that right is protected and is restricted only if the restriction is necessary to keep the child safe. **It is unfair, irresponsible, and dangerous to value a parent's right to spend unrestricted time with a child over the child's right to be safe in a parent's care.**

The aggregate effect of SB 78's protections is to invite courts to slow down, carefully evaluate cases where abuse is probable or likely, and then "show their work" regarding how they concluded a parent was safe or unsafe. We certainly concur that funding, training, services, and additional supervision resources are necessary – but the answer to lack of resources is not to put the burden on children by subjecting them to obvious risks.

We believe that *not one* child needs to be killed on the Commonwealth's watch, when it is preventable. SB78 takes important practical steps toward this shared goal for our most vulnerable citizens. After having passed in the Senate with strong bi-partisan support (46-4), we urge the House to advance and adopt SB 78 Kayden's Law.

Thank you for your thoughtful consideration.

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ⁱ Center for Judicial Excellence, Preventable Child Homicides. Available at <https://centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/>

ⁱⁱ Pennsylvania Department of Human Services, Child Protective Services Child Fatality/Near Fatality Annual Report, 2020. Available at https://www.dhs.pa.gov/docs/Publications/Documents/Child%20Abuse%20Reports/2020%20Child%20Protective%20Services%20Report_FINAL.pdf

ⁱⁱⁱ Jaffe, P., Zerwer & Poisson, *Access Denied: The Barriers of Violence & Poverty for Abused Women and their Children After Separation* 1 (citing four studies, all of which found 70-75% of cases in litigation involved allegations of domestic violence).

^{iv} Osofsky, J.D. Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention. *Clin Child Fam Psychol Rev* 6, 161–170 (2003) <https://doi.org/10.1023/A:1024958332093> ; U.S. Department of Health and Human Services Administration for Children and Families Administration on Children, Youth and Families Children's Bureau Office on Child Abuse and Neglect, 2003 <https://www.childwelfare.gov/pubPDFs/domesticviolence.pdf> ; Hamby, S., Finkelhor, D., Turner, H., & Ormrod, R. (2010). The overlap of witnessing partner violence with child maltreatment and other victimizations in a nationally representative survey of youth. *Child Abuse & Neglect*, 34(10), 734-741. <https://doi.org/10.1016/j.chiabu.2010.03.001> ; Jaffe, P.G., Campbell, M., Olszowy, L., & Hamilton, L.H. (2014). Paternal filicide in the context of domestic violence: challenges in risk assessment and risk management for community and justice professionals. *Child Abuse Review*, 23, 142-153. <https://onlinelibrary.wiley.com/doi/abs/10.1002/car.2315> ; U.S. Department of Health & Human Services Administration for Children and Families Administration on Children, Youth and Families Children's Bureau. (2018). <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2018.pdf> ; U.S. Department of Justice, Office of Justice Programs, *Children Exposed to Violence*, 2020. <https://www.ojp.gov/program/programs/cev>

^v Holland KM, Brown SV, Hall JE, Logan JE. *Circumstances Preceding Homicide-Suicides Involving Child Victims: A Qualitative Analysis*. *J Interpers Violence*. 2018 Feb;33(3):379-401. doi: 10.1177/0886260515605124. Epub 2015 Sep 17. PMID: 26385898; PMCID: PMC4795978. <https://pubmed.ncbi.nlm.nih.gov/26385898/>

^{vi} American Bar Association, *Legal Interventions in Family Violence: Research Findings and Policy Implications*, Research Report, Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1998, NCJ 171666 <https://www.ojp.gov/pdffiles/171666.pdf>

^{vii} Tjaden P, Thoennes N. *Extent, nature, and consequences of intimate partner violence (NCJ-181867)* U.S. Department of Justice; Washington, DC: 2000 <https://www.ojp.gov/ncjrs/virtual-library/abstracts/extent-nature-and-consequences-intimate-partner-violence-findings>

^{viii} Lambe, J. Law and Crime, June 30, 2021. *Father Fatally Shot His Two Sleeping Children Before Setting House Ablaze and Turning Gun on Himself: Reports*. Available at

<https://lawandcrime.com/crime/father-fatally-shot-his-two-sleeping-children-before-setting-house-ablaze-and-turning-gun-on-himself-reports/>

^{ix} <https://www.yorkdispatch.com/story/news/local/2017/11/17/state-york-cyf-made-mistakes-before-3-year-old-girl-killed-murder-suicide/874589001/>

^x <https://www.altoonamirror.com/news/local-news/2013/03/police-dad-kills-self-son/>

^{xi} [https://www.pennlive.com/midstate/2010/09/swatara township boys death ru 1.html](https://www.pennlive.com/midstate/2010/09/swatara_township_boys_death_ru_1.html)

^{xii} Strong, Kim. York Daily Record (Oct 7, 2021). *Pennsylvania Child Abuse Deaths Increased by 43% in 2020*. <https://www.ydr.com/story/news/2021/10/07/pennsylvania-child-abuse-deaths-increased-43-percent-2020/6038616001/>

^{xiii} Ollendick, White & White, *The Oxford Handbook of Clinical Child and Adolescent Psychology*, 499 (2018).