



TESTIMONY RE: SB 78  
BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON FAMILY LAW  
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Thank you for the opportunity to speak with you today about SB 78, otherwise known as Kayden's Law. My name is Deanna Dyer and I am a survivor of gender-based violence, a domestic violence advocate, and an attorney with sixteen years invested in the movement to end gender-based violence. I currently serve as the Policy Director at the Pennsylvania Coalition Against Domestic Violence, which is the state-level domestic violence advocacy organization in Pennsylvania.

The Pennsylvania Coalition Against Domestic Violence (PCADV) is a member-based organization comprised of 59 local domestic violence service providers who offer a variety of services across all 67 counties of the Commonwealth, including crisis counseling, safety planning, and emergency housing and safe shelter. PCADV also supports 17 Civil Legal Representation programs that provide legal representation to victims in family law and custody cases, as well as housing, immigration, and other civil legal matters. Litigation can play a vital role in helping a domestic violence victim obtain safety, heal, and move forward. Although some victims utilize the judicial system to seek safety through the Protection from Abuse Act, many others seek safety through other types of judicial relief, such as an adjustment of immigration status, spousal or child support, or commonly, through a child custody order.

For a parent, and especially for a domestic violence victim who is a *protective* parent, the death of their child is their absolute worst nightmare. The circumstances surrounding the death of Kayden Mancuso are especially tragic and difficult to process. We admire Kayden's mom and protective parent, Kathryn Sherlock, for her incredible resilience, strength, and brave advocacy.

Far too often, legal systems make already dangerous situations worse by failing to recognize the complex dynamics of domestic violence. While research indicates domestic violence is a leading risk factor for the likelihood of child abuse and neglect to occur, it also indicates that one of the most important protective factors is a child's relationship with a safe parent.<sup>1</sup> Protective factors, such as a child's relationship with a safe parent, are conditions that can increase well-being and health outcomes as well as mitigate or lessen risk to families and children. In order to keep children safe, courts must understand the crucial connection between domestic violence victim safety and positive outcomes for children.

The lack of judicial understanding of this crucial connection leads to a dangerous reality: family court is often weaponized by abusers as a powerful tactic to continue asserting power and control over a victim. Frivolous and abusive litigation is a persistent and serious issue for victims of domestic violence. Perpetrators of abuse commonly misuse court proceedings to control, intimidate, or harass a victim, furthering the abuse. Child custody orders allow abusers to limit victims' options for where they live and are employed, control victims' schedules, and force them to have continuing contact with their abuser. We have a collective responsibility to ensure that Judges, GALs, and other custody

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<sup>1</sup> Chu, A. T., Pineda, A. S., DePrince, A. P., & Freyd, J. J. (2011). Vulnerability and protective factors for child abuse and maltreatment. In J. W. White, M. P. Koss, & A. E. Kazdin (Eds.), *Violence against women and children, Vol. 1. Mapping the terrain* (pp. 55–75). American Psychological Association. <https://doi.org/10.1037/12307-003>

decision makers understand the complexities of domestic violence and its impact on child safety when domestic violence victims come to family court seeking safety for themselves and their children.

Custody reform is necessary and PCADV understands that SB 78 is intended to be that reform. Unfortunately, as currently drafted, the bill does the opposite of its intent and if enacted, it will instead have a detrimental impact on the well-being of victims of domestic violence and their children involved in custody disputes.

**I. Protection from Abuse Orders (PFAs) - either by consent or pursuant to an evidentiary hearing- should not be independent factors in custody determinations**

PCADV feels strongly that courts should not use the existence of a PFA order, whether pursuant to an evidentiary hearing (factor 2.2) or by agreement (factor 2.4), as an independent factor of consideration in a custody determination. First, the inclusion of consensual PFA orders will quell agreements thereby reducing victim safety. These agreements are often more individualized than an order granted by a judge, thus offering a victim more flexibility and safety. PCADV is concerned if the defendant knows they must re-litigate the underlying facts of the case at a future custody proceeding, there will be much less incentive for an agreement. Additionally, this will cause re-traumatization to victims and their children as they are forced to relive and relitigate each fact underlining their PFA order.

Moreover, the provision takes the decision of whether or not to raise these facts away from the victim. As the custody statute stands now, a victim who has obtained a PFA order by agreement may choose whether or not to testify regarding that PFA order. SB 78 eliminates that choice and would force victims to testify about them. PCADV firmly believes this decision should remain with the victim.

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Requiring courts to consider the underlying facts of PFA orders entered by agreement also adds a significant burden to an already over-burdened family court system. The language applies to any agreed-upon order regardless of when it was agreed upon or if it is still in effect which encompasses a substantial number of cases. Court data indicates that over half of all PFA petitions that end in a final order are resolved by agreement. In 2019, of the 13,755 final orders issued across the Commonwealth, 7,163 were by agreement without admission and 6,592 were after a hearing.

In addition, the inclusion of PFA orders as independent factors leaves behind the majority of abuse victims who are not in possession of such an order, leaving judges to believe that without evidence of a PFA order, abuse must not have occurred. Due to lack of adequate judicial training as well as increased sophistication of many abusers, judges are increasingly entering mutual PFA orders, whereby the victim and also their abuser are both protected and restrained from one another; factors 2.2 and 2.4 provide no guidance to judges to navigate this increasingly present scenario.

Finally, evidence of a PFA, whether entered pursuant to an evidentiary hearing or an agreement, is already admissible evidence in a custody hearing to establish the existence of abuse, and the existence of abuse is already a factor - given weighted consideration - in determining custody under current law. The real issue in Pennsylvania is not the admission of PFAs, either with or without findings of abuse, as evidence establishing abuse occurred, but rather, lack of judicial training and education to equip judges with the knowledge needed to assign appropriate weight to that admitted evidence of abuse as to its impact on child safety.

## **II. Training programs should include statewide coalitions as subject matter experts**

The largest issue jeopardizing the safety of domestic violence victims and their children in family courts is a lack of judicial training and education on the dynamics of domestic and sexual

violence and its nexus to child abuse. Research shows the presence of domestic violence is one of the biggest indicators of child abuse: there is a 30 to 60 percent overlap of child maltreatment and domestic violence.<sup>2</sup> As I previously stated, research also indicates that one of the most important protective factors to lessen the likelihood of children being abused or neglected is a child's relationship with a safe parent.<sup>3</sup> Further, the top policy recommendation offered by scholars on vulnerable and protective factors for child abuse is:

continued training . . . for professionals who interact with children and families . . . to recognize and assess maltreatment based on cutting-edge research on vulnerability and protective factors . . . Because the literature on vulnerability and protective factors has been anything but static, trainings must be updated as research continues to identify vulnerability and protective factors as well as complex interactions among those factors. Training professionals to identify children who are at risk of abuse or who have been abused must, therefore, capture the complex relationship between risk factors.<sup>4</sup>

Consistent with research and our experience and expertise working with victims of domestic violence and their children, PCADV urges the legislature to include language in SB 78 that requires judicial consultation with the federally-designated state-level experts on domestic violence and sexual assault when developing curriculum to educate the judiciary on these issues.

**III. SB 78 should include a mechanism to establish funding for social programs cited, including battering intervention and harm prevention programs and professional supervised visitation**

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<sup>2</sup> Edleson, J. L. (1999). Children's witnessing of adult domestic violence. *Journal of Interpersonal Violence*, 14, 839-870.

<sup>3</sup> Chu, A. T., Pineda, A. S., DePrince, A. P., & Freyd, J. J. (2011). Vulnerability and protective factors for child abuse and maltreatment. In J. W. White, M. P. Koss, & A. E. Kazdin (Eds.), *Violence against women and children, Vol. 1. Mapping the terrain* (pp. 55-75). American Psychological Association. <https://doi.org/10.1037/12307-003>

<sup>4</sup> Id.

SB 78 creates unfunded mandates by requiring the use of social service programs such as battering intervention and harm prevention programs and supervised visitation centers that are vastly underfunded and entirely unavailable in many regions of the Commonwealth. It is uncontested that utilization of these programs positively impacts safety for domestic violence victims and their children; each program in PCADV's membership of domestic violence service providers throughout the Commonwealth would love to offer these services, but limited funding means only a small handful can actually afford to do so. One of our member programs providing professional supervised visitation, Centre Safe in Centre County, requires approximately \$170,000/year to maintain its Child Access Center, which includes two full-time and four part-time staff positions as well as facility costs. Even in a community with rare access to those resources, the Child Access Center is operating on a waiting list and is searching for additional funding to hire another full-time staff person. Additionally, as the Child Access Center and other programs continue to grow and develop their services to better meet the needs of families, they will experience additional increased needs for funding.

The lack of funding for and availability of these programs dovetails into another area of continued concern: the explicit requirement that "the court shall be presumed to only allow professional supervised physical custody." The combined effect is a legal presumption forcing the use of under-resourced and often wholly unavailable supervised visitation centers, leading to a reality where many parents, especially those of low or moderate incomes, will be completely suspended from contact with their children.

#### **IV. Rebuttable presumption of supervised physical custody should be omitted**

PCADV understands the intent behind the provision of SB 78 that creates a statutory presumption requiring the court to only order supervised physical custody when it finds a party has

abused the child or any household member. We fully support that intent. And in an ideal world, this solution would make sense. But realistically, data shows this presumption requiring supervised physical custody will unintentionally cause catastrophic harm to victims of domestic violence and their children, especially those who are the most marginalized and already experience the most barriers to obtaining safety: protective mothers who live below the poverty line and are Black, indigenous and people of color (BIPOC).

Ample data indicates the child welfare system is fraught with bias and disproportionate negative outcomes for this demographic of mothers and their children. "Families below the poverty line are three times more likely to be substantiated for child maltreatment. Economic disparities and historical systemic disadvantages have fueled disproportionate child welfare system involvement among families of color."<sup>5</sup> Here in Pennsylvania, "[t]wo-thirds of youth referred to DHS' secure youth treatment centers are Black . . . [and] Black children represent 35 percent of Pennsylvania's foster care population, despite accounting for just 13 percent of children in Pennsylvania."<sup>6</sup>

Yet again, the lack of training and understanding of the complex dynamics of domestic violence and its effect on child safety results in systems, including the child welfare and criminal legal systems, too often mischaracterizing victims as abusers, especially protective mothers who are BIPOC. For instance, data indicates the crime of "allowing" abuse to occur is disproportionately charged against mothers who are domestic violence victims. Analyzing one set of data found that women are criminalized and punished for the actions of their male partners at a rate 48.5 percent higher than men

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<sup>5</sup> Addressing Economic Hardship Key to Preventing Child Welfare System Involvement (2021). [online] Available at: <https://www.chapinhall.org/wp-content/uploads/Economic-and-Concrete-Supports.pdf> [Accessed November 9, 2021].

<sup>6</sup> Pennsylvania Department of Human Services, Racial Equity Report (2021). [online] Available at: <https://www.paproviders.org/wp-content/uploads/2021/01/2021-DHS-Racial-Equity-Report.pdf> [Accessed November 9, 2021].

are punished for the actions of their female partners.<sup>7</sup> These numbers reflect the inevitability that this provision will result in restrictive supervised physical custody between a disproportionate amount of low-income BIPOC domestic violence victims and protective mothers and their children. This is particularly concerning considering that we know the loss of a caring parent is an Adverse Childhood Experience that is correlated with many negative mental health, medical, social, and economic outcomes through adulthood. We know this is not the intent of this provision, yet its implementation could harm the very children and families the bill seeks to help. As such, we recommend omitting the bill's presumption of supervised physical custody.

#### **V. Offense of simple assault should not be considered in custody determinations**

Finally, PCADV opposes adding the misdemeanor crime of simple assault to the expanded list of crimes that a court must consider in custody determinations. Just like in the child welfare system, the criminal legal system tragically mischaracterizes victims of domestic violence as abusers far too often. The prevalence of this miscarriage of justice led to the founding of The National Clearinghouse for the Defense of Battered Women in 1987. Between 2015 and 2019 alone, the Clearinghouse received over 3,300 requests for assistance from domestic violence victims charged with crimes and/or their defense teams. Most frequently, these cases involved women who were charged with crimes, including assault, after defending themselves from their abusive partners.

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<sup>7</sup> Raw data of convictions obtained by Reveal through a public records request filed with the Oklahoma Department of Corrections on Jan. 19, 2016. Raw data is available at <https://revealnews.org/article/let-down-and-locked-up-why-oklahomas-female-incarceration-is-so-high/> [Accessed November 9, 2021].

Moreover, will exacerbate the effects of racial bias in Pennsylvania's court systems, where Black people are incarcerated at 7.3 times the rate of white people, and Latinx people are incarcerated at 2.8 times the rate of white people.<sup>8</sup> Given the legal system's criminalization of victims of domestic violence and its imbedded racial bias, adding simple assault to the custody statute will result in disproportionate harm to BIPOC victims of domestic violence.

## **VI. Conclusion**

PCADV is grateful for this opportunity to provide feedback on such an essential piece of legislation. This is a topic that demands diligent attention. We look forward to continuing to work with the bill sponsors, committee members, and other stakeholders on refining the language to steward a bill that is truly protective of domestic violence victims and their children and holds abusers accountable.

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<sup>8</sup> Incarceration Trends in Pennsylvania (2019). [online] Available at: <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-pennsylvania.pdf> [Accessed November 9, 2021].