

**SENATE OF THE UNITED STATES**

**Health, Education, Labor, and Pensions (HELP) Committee**

**Subcommittee on Children & Families**

**“Breaking the Silence on Child Abuse:  
Protection, Prevention, Intervention, and Deterrence”**

**December 13, 2011**

---

**Submitted Record Testimony**

**of**

**Frank P. Cervone, Esq.  
Executive Director**

**Support Center for Child Advocates**

**[www.advokid.org](http://www.advokid.org)**

Chairwoman Mikulski, Ranking Member Burr, Senator Casey and other members of the Committee, thank you for this opportunity to testify today. Senator Casey, I appreciate you calling for this hearing, and for your continued leadership to ensure that children are protected, connected to health care, and have access to high-quality childcare and education opportunities, in Pennsylvania and across the Nation. Thank you, Senator.

The Support Center for Child Advocates (*Child Advocates*) is Philadelphia's lawyer pro bono program for abused and neglected children. For 35 years, we have offered the skills and dedication of lawyer-social worker teams, and we represent more than 850 children each year. While our direct service work is Philadelphia-focused, we work with partners across the Commonwealth of Pennsylvania and the nation on the development of effective policy and practice for vulnerable children. We attempt to offer a balanced, candid and constructive assessment of what our children need and how we are all doing for our kids.

I am assisted in this presentation by the work of Cathleen Palm and our colleagues in the Protect Our Children Committee (POCC), Pennsylvania's statewide coalition of advocates, physicians and service providers joined together in coordinated strategies to prevent child abuse and achieve targeted child welfare reforms that are child-centered. POCC was co-founded in 2003 by the Pennsylvania Coalition Against Rape (PCAR) which is the oldest anti-sexual violence coalition in the country.

At *Child Advocates*, we work to change the story for children. I would like to provide the Committee with observations and insights of what we have seen in child abuse and child welfare work in Pennsylvania and other jurisdictions over the past 20 years. During my testimony I will:

- Attempt to place recent events into a context, reflecting the reality that many more children are physically and sexually abused but that they garner little attention from policymakers or from the people who should be watching out for them;
- Share the experiences of children who have been abused, about the reasons they do not come forward, and why caregivers – so-called “mandated reporters” and others – often fail to fulfill their legal and moral duties of protection; and
- Suggest some changes to current laws relating to child abuse reporting, investigation and service, to assist you and other lawmakers in this important task of reform that might make our world safer for kids.

The Penn State and Syracuse cases have gathered much attention to the world of child abuse, but this is not just a Penn State or Syracuse story. Sadly, it seems we needed these scandals, even these bad actors, to bring the discussion forward.

We welcome the Speak Up to Protect Every Abused Child Act (the “Speak Up Act”) of 2011 introduced by Senator Casey. This legislation helps shift child protection strategies from one where children are required to protect themselves from abuse and sexual victimization. It highlights and transfers to adults the responsibility to protect children. It calls for training of

mandated reporters, and information for all caregivers. It calls for better knowledge and data-informed policies. It represents a solid starting point to a critical debate.

## **Child Abuse and Secrets**

We know that families sometimes keep secrets. Last week in our office we opened two cases representing child victims in the prosecution of their alleged abusers: one an 11-year-old girl, sexually abused by her father for years, and her mother not believing her; the other, a boy of 10, sexually abused by his mother's boyfriend, and now the mother is failing to bring the child to court for interviews and prosecution of the abuser.

Consider, as well, all the youths reported about in the Penn State case, and what is common in the cases: where were the adults in their lives, over all the years that the youths were carrying their sad secrets? For too many we are left wondering what was missing in their lives, in wholesome adults whom they might have trusted, in knowledgeable adults who might have noticed the warning signs? Surely there were signs, in the behaviors of the kids, perhaps even in the behaviors of the adults.

While it is hard to know the extent of underreporting, we know that many cases come forward with a long history of secrecy and non-disclosure. The days or years that pass suggest that someone knew, that someone should have known. For all of the failings of human beings and our policies, there is one central theme to this story receiving too little attention. Lives were changed, children were protected, because a couple of Moms listened to and believed their children and now are standing by them in what will be a gut-wrenching court process. There can be no better child protection tool than ensuring every child is connected to adults who have pledged to nurture, listen to, and speak up for a child.

Why don't victims of abuse come forward?

Violations of trust are the hardest to endure. The abusers are trusted persons, an aunt or uncle, a pastor or parent or coach, and violations of that trust are tremendously confusing. The child's defenses are compromised, in the beginning by grooming behaviors, and in the end by threats of embarrassment and harm. In our work we hear all the time, that the child or adult felt reluctance to disclose, and then suffered the pain of keeping the secret.

Why don't people intervene? This is the question we are all asking in the cases gaining our attention. But again, the story, and understanding it, belongs to all of us.

Why are we adults reluctant to report?

Undoubtedly we have all experienced the feelings of indifference or isolation about some opportunity to intervene: "it's not my job" ... "someone ELSE will respond". Or we think: "If I step in here, it'll be worse for the child." To which I say: how can it get worse? We fool ourselves if we think that stopping a crime is not the best solution.

I once had a 12-year-old client, who was at once so close and loyal to her abusive mother that she sometimes hindered our efforts for protection, and at the same time deeply concerned about her young siblings. One day she sat down next to me on a sidewalk step and said, “You have to get us out of here.” Yes, the kids want the abuse to stop.

Feelings of loyalty to an institution or person also get in the way of reporting. Aversion to “scandal” becomes the dominant theme. The survival and health of the institution becomes paramount.

Finally, people respond in strange ways to the culture of power. It is well known that domestic violence cases are all about power and control, so the reluctance of the child or adult victim to report abuse in the face of a threat seems easy for us to acknowledge. But one must imagine how hard it is to take on the sports stars at a big sports-dominated university, or the powerful judge before whom you must practice, or the Uncle in the family who is everyone’s favorite. In families, small towns and big institutions, there is often a heavy price to pay for speaking out. We must help both victims and reporters come forward, making it safe and fruitful to do so.

### **Accountability and Transparency: Children’s Ombudsman**

We recommend that each children and youth agency have its own complaint-resolution device, and that each state have a Children’s Ombudsman. Today about half the states have some form of independent complaint- investigation mechanism. We must recognize that children and youth agencies live in a landscape that is traditionally unexamined and unknown.

Why is accountability important? One must acknowledge that child welfare services are little known and often forgotten to most of the public at large. It is said that “child abuse lives in the shadows of our lives.” The same can be said of the systems and services that are provided to children and families needing them: they live without account. Certainly there are systemic oversights, like the regulatory schema, the licensure process and the budgeting process. But when the child welfare system acts in a manner that is questionable or suspect or even abusive, citizens and consumers presently have little recourse outside the system that is arguably aggrieving them. Individuals need a place to turn. The public at large needs assurance that this is a system a system worthy of our confidence.

The authority to investigate is the key: the Children’s Ombudsman can investigate problems, complaints and other issues that come to its attention. This combines the classical individual complaint-resolution mechanism of many ombudsman functions, with the important capacity for systemic advocacy. Each year, across the land, we hear more than occasional reports of problems of county or state child welfare agencies not communicating with their local prosecutors, or the failures to provide notice to parents when changing a case goal, or countless other issues which laws, litigations and tragedies would eventually highlight.

Consider the following real story from a few years back that illustrates the need for a Children's Ombudsman. I took the call myself:

I received a phone call from a lawyer, who learned of a sister-of-a-friend with a Children and Youth problem in a small town, in a rural PA county. That prior Saturday night, a mid-twenties single mother was house-sitting for a friend. In the middle of the night, her three-year-boy whom I will call Richie, left his bed, opened two latched doors, and wandered into the street. Next morning, mother frantically searched for Richie. Thankfully, he had been found by a passing motorist, who called police. But because he was a stranger to this town, he was placed in protective service of foster care. The mother felt pressured to sign a "Voluntary Placement Agreement" or lose the child in court; this gave the agency 30 days to act ... and it planned to use most of them!

In most communities, this child would have been home the next day. But ten days later, he was still in care. Only with some outside calls from our office did the child even have one visit in those ten days with his mother. There were never any signs of child abuse. Neither mother nor child had any prior history with the C&Y agency in her home county. Yet no family members were contacted to serve as placement resources. The worker did not even meet with her supervisor until Thursday to shape a reunification plan.

Conversations such as occurred between the worker and mother are rarely witnessed, so we cannot be certain of all that transpired. I can attest that this very upset and entirely innocent mother felt railroaded, disregarded and abused. In more than half the states, there is no place for Richie's mother to call. And in Pennsylvania, unlike Rhode Island or Michigan, the story of the system's failure to protect the infant boy would never, COULD NEVER be told. There is no office in Pennsylvania to conduct such an investigation and no authority to publish such a report.

In my own experience however, as a professional community, we remain uncomfortable with the burdens of accountability and transparency. We recommend that the Children's Ombudsman have discretion to make public its investigative reports and its annual report.

Five years ago I served on Mayor John Street's Child Welfare Review Panel, which was appointed following publication of some notorious deaths of children who had been served by the Philadelphia child and youth agency. Consistent with state rules, each fatality had been studied; the Panel found the study process to be sound and thorough, their recommendations honest and challenging. BUT THEY WENT NOWHERE. These were lives unrequited, their deaths unredeemed. Without that leadership meltdown and a tremendous investment of public will, the many deficiencies in that system would never have seen the light of day. That dead-end secrecy is the all-too-common reality of child welfare work across the Commonwealth and around the nation.

We should note that what gave rise to that crisis was not the child deaths per se, tragic as they were, but that their deaths had been forgotten. To its credit, the local children and youth agency

and city government rose to the occasion, creating mechanisms to become self-corrective. But the response was so large, so thorough, and so well-funded, that it is unlikely to happen ever again! We should make clear that there is much that is good about our system, its people and its practice. The Ombudsman will not erode confidence; rather it will build confidence that these are systems we can trust, that mandated reporters and the public should feel assured will respond appropriately to reports of suspected child abuse.

If you believe that the child welfare system is self-correcting, that it is sufficiently safeguarded with regulations and the oversight of the licensure process, that its good people are good enough, then perhaps there is no need for a Children's Ombudsman. The experiences of countless families and children tell a different story. You will hear that confidentiality is needed to protect children and families; my concern is that secrecy protects bad systems and bad practice.

Accountability and transparency make for good government; they will also make for safer kids and a better system to serve them.

### **The Duty to Report**

Every state has a mandatory reporting statute. I have been lecturing and teaching on the subject for many years. While the laws on reporting are relatively straightforward and teachable, many folks find them technical and confusing. A remarkably large number of mandated reporters – people who come into contact with children in their work – have never even been to a training program on the requirements of these laws.

Last year, the Protect Our Children Committee conducted a survey of mandated reporters in Pennsylvania. Fourteen hundred (1,400) professionals responded, and their comments and questions provided a powerful reminder that effective and ongoing training is essential. And yet our state, which has required mandatory reporting of child abuse since 1975 and which permits prosecution for the failure to report, has no training requirement for mandated reporters.

The survey revealed that nearly 40% of those responding had never been trained or had received a training before significant changes in the law took effect in 2007. Often the trainings are not connected to professional licensure or continuing education requirements. Across the nation, we should be assured that our caregivers and professionals know their duty and the pathway for response.

We recommend that Congress strengthen the mandatory reporting provisions in the Child Abuse Prevention and Treatment Act (CAPTA) so that states ensure mandated reporters receive training. It might also promote the cooperation, not just on investigation, but also reporting of abuse. Senate Bill 1877 includes a nice emphasis and designated resources to encourage states to execute educational campaigns and much needed training.

The Speak Up legislation requires a “study of the efforts of states relating to state laws for mandatory reporting.” We suggest that such a research study is needed NOW to determine

whether certain state approaches have resulted in better protections and outcomes for children. The federal review could also help to determine the *floor* states should meet in who should report, what must be reported (e.g., suspected or known), how such reports are to be made, and penalties for failure to report.

The Speak Up legislation would require states to mandate the reporting of “suspected or known incidents of child abuse and neglect” by every adult, which would require a significant policy shift in many states and may not effectively respond to the distinction between knowing or witnessing acts of abuse versus having a suspicion that abuse may be occurring. I recommend that we learn from the states that have such legislation, comparing the rates of reporting and substantiation and the sources of the reports. In general we know that most reports of suspected abuse today come from mandated reporters, and that those reports have higher substantiation rates and thus are at least arguably more reliable.

All states have provision for civil immunity for good faith reporting of suspected child abuse. However institutions such as hospitals (and probably some individuals) have been sued under federal civil rights provisions for violations of confidentiality rights, for making reports of abuse. Legal work to assert the immunity and get a person relieved of such suits can be costly and time-consuming. Increasing the number of mandated reporters is likely to increase this kind of litigation. To fully promote good-faith reporting, the provisions for immunity from liability should be iron-clad, and the law should provide a pathway for expeditious dismissal of such claims.

Congress and the states should ensure that penalties for failure to report are sufficient to encourage reporting. When the failure to report results in a summary offense akin to a traffic citation, the penalty falls short of the crime.

A minority of states, including Pennsylvania, allow reporting up the chain of responsibility or chain of command. That is, workers in organizations can legitimately tell their superiors, not child welfare or law enforcement officials, in order to satisfy the duty to report child abuse. These provisions have come under intense scrutiny in the wake of the Penn State scandal with many suggesting that this approach is fundamentally flawed, but on what basis is that being determined? Is it possible that such an approach results in both a cleaner and safer approach for children by having a well-identified and more thoroughly trained professional make the report, so long as the superior does not delay the report or conduct their own investigation?

For example, instead of the school janitor or teacher’s aide making the report, an institution might designate the counseling or social work department to make reports to authorities when they receive a report from a staff member. The duty to report by this designated person must then be immediate and followed up with a written form to authorities. It might be that the needed change is linked to the initial reporter being provided, in writing, assurance that the report was in fact filed. It might also require that institutional practice not deny or penalize the initial employee for notifying both the designated internal person and the appropriate authorities directly.

## **The Capacity to Respond**

Increasing the number of reports of suspected abuse, without increasing resources or the system's capacity to respond, may be facially noble, but may be dangerous to the kids who really need the system's attention. Kids will get removed in an abundance of caution – that's what we all do. But removal to foster care is not always beneficial or even benign. The child can be traumatized. School is often interrupted. The investigation can get it wrong. Findings about being a child abuser have all sorts of implications for future employment of that child's parent. For all these reasons, it is incumbent that the system get it right. Need we be reminded that our jails are filled with adults who used to be kids in the foster care and juvenile justice systems! We are not doing so well by our kids! Part of the solution to the problem of child abuse lies in improving the capacity of the system to respond well to the cases it now gets.

Are state hotlines and child welfare systems up to the task?

In many states, the majority of reports about suspected child abuse – regardless the perpetrator of the alleged abuse – are directed to the state's child abuse hotline. In Pennsylvania we know it as ChildLine.

On average Pennsylvania's ChildLine receives about 2,300 calls per week. In the days immediately following the initial arrest of Mr. Sandusky, the hotline answered more than 4,800 calls. The volume of calls remains at an elevated level, but not as dramatic as those initial post arrest days.

Last year ChildLine answered more than 121,000 calls, but the staffing and technology issues contributed to a nearly 9 percent rate of missed calls.

Raising awareness and the subsequent recognition and reporting of child abuse are critical elements of how we protect children. But if the calls to report abuse go unanswered, investigations are not conducted, service delivery and therapy are delayed or unavailable, we will have won the battle but lost the war.

I want to flag two components of capacity that relate directly to services on the street in our work. First, Teresa Huizar of the National Children's Alliance will address the need for skillful multidisciplinary investigation and forensic interviewing that is state-of-the-art in sex abuse investigations. I would add that these mechanisms are almost non-existent in physical abuse cases in many jurisdictions, including my own, solely because of a lack of resources. If prosecutions fail for lack of good evidence that would have been available if only we had the tools, know that the perpetrator is likely to be at it again.

Second, we urge Congress to raise the cap now imposed on the release of funds held in trust in the Crime Victims Fund, to provide needed services and supports to victims of crime and their families. These funds were and are collected from criminal defendants, and should be used to meet the needs of victims.

The Victims of Crime Act (VOCA) Program was established by the Victims of Crime Act of 1984 and is administered by the federal Office for Victims of Crime. Its purpose is to assist victims of crime to cope with the physical, emotional and criminal justice issues associated with crime. VOCA-funded victim services agencies provide courtroom support, accompaniment to medical appointments, networking and referrals for treatment services, and other supportive services to victims of crimes. A portion of federal VOCA funds are also made available to state-based victim assistance programs, which provide cash payments to victims to pay (or reimburse out-of-pocket) for direct costs associated with crimes, such as medical examinations, counseling and other treatment costs, travel costs to court, funeral expenses, etc. For example, in FY10, Pennsylvania's Victim Compensation Assistance Program (VCAP) received and disbursed \$4.9 Million, or 28% of its total revenue, from VOCA trust funds, and VOCA trust funds contributed 50% of the total state expenditure for victim services, or \$14 Million.

The federal Crime Victims Fund is a trust account dedicated solely to supporting services for all crime victims. In fact, the VOCA statute requires states to give priority to funding services for victims of child abuse. The Crime Victims Fund comes from money already collected from federal criminal fines, forfeitures and other penalties and does not add to the nation's debt or deficit. Since 2000, Congress has placed a limit or "cap" on the amount of money that can be released from the federal Crime Victims Fund on an annual basis. Although (as of December 2010) the Fund now has more than \$7 billion in it and is continuing to grow, for the past several years Congress has capped the annual Fund distribution at \$705 million. The VOCA cap must be raised because these funds are desperately needed now, for services and cash support. The economy has forced funding cuts by other funders making it impossible to maintain services to victims when they most needed let alone meet address the need for increased services. We urge you to eliminate the cap or significant increase the annual distribution to the states of these desperately needed funds for direct services to victims including children

Any solution for this country's children must include a reality check about the capacity of the system to respond to the cases it now gets. Last week Allegheny County, Pennsylvania's second largest county, enacted a 21 percent increase in property taxes to blunt a reduction in federal and state funding that when combined with the loss of local funding, would have extracted \$22 million from family support centers and direct services for abused children. This was a fearsome moment, a crisis perhaps only momentarily averted in this age of cost-cutting.

A word about differential response: when it comes to interventions about child abuse and differential responses, we should be clear that too little distinction can be problematic: if the only tool you have is a hammer, every problem looks like a nail!

Some families are healthy and safe enough to merit voluntary, supportive services. In our work, many families and many children can be served just as well, if not better, with services in the home, informed by meaningful assessments, and supported by extended-family involvement, Family Group Decision-Making, and other preventative services. Other children need a far more intensive, even intrusive approach. One of the hard tasks of child welfare work is distinguish the

case that needs the hammer, from the one that needs the helping hand. Differential responses are valuable and needed but they also are often only as effective as the assessments that study the risks, and the resources that might permit a child to safely remain in the home. Unfortunately advocates and pediatricians in Pennsylvania are seeing some serious cases of physical abuse go by without intervention. We know there is a real pattern, but we do not know whether the problem extends beyond our state, or to what degree our particular Pennsylvania specific-approach to differential response or how we define child abuse is a contributing factor. Pennsylvania is a statistical outlier in the investigation and determination of child abuse, i.e., it investigates child abuse 8.3 per 1,000 children versus 40.3 per 1,000 children nationally, and then determines a child is a victim of child abuse 1.4 per 1,000 children versus 9.3 per 1,000 nationally. It is a distinction that for years has been widely known impacting, to some degree, our ability to draw down CAPTA and Children's Justice Act funding, but it has never really been fully explored or explained from a research-based perspective. The recent reauthorization of CAPTA elevated the commitment to differential responses to reports of child abuse. The emerging work on evaluating and improving the quality of a differential response must be an even greater priority. With study as I have touched upon, we can learn from our differences, but we must have the courage to ask about them.

Other children need a far more intensive, even intrusive approach. One of the hard tasks of child welfare work is distinguish the case that needs the hammer, from the one that needs the helping hand. This is known as "differential response". Differential responses are valuable and needed but they also are often only as effective as the assessments and resources that might permit a child to safely remain in the home. Unfortunately advocates and pediatricians in Pennsylvania are seeing some serious cases of physical abuse go by without intervention. We cannot yet know if this is a real pattern, and we do not know whether the problem extends beyond our state.

The recent reauthorization of CAPTA elevated attention to and commitment for differential responses to reports of child abuse. The emerging work on evaluating and improving the quality of a differential response must be an even greater priority.

### **Victimization, Treatment and Prevention**

We must ensure that when reports are filed, victims get the protection, therapy, services and support they need. We must be clear and resolved, that healing will come. We must also get the message out to victims who have not yet disclosed: If you have been abused, tell someone ... get help!

We should be thinking about PREVENTION in all of our interventions and activities: connecting every child to a nurturing and trusted adult who guards their safety and well-being, encouraging parents to empower children to speak up if they are being hurt, teaching caregivers about duty to report and how to recognize signs; and ensuring there are comprehensive quality services when victims come forward for treatment so that their pain does not turn sour.

Some of today's victims will become abusers themselves, not to mention drinkers, angry family members, spouses who cannot trust, their harm eating away at their ability to be healthy and safe. We can be a healthier community tomorrow if the victims of yesterday and today get help.

In other words, the adverse experience of child abuse has long-term and costly consequences for the child but also all for society. Each of us bears and is asked to contribute to these costly consequences, in the form of treating addiction, chronic and costly health conditions, increased rates of incarceration and school failure.

### **Defining Child Abuse**

Finally, Senator Casey's legislation opens a door of understanding and invites serious discussion about who should be considered a perpetrator of child abuse.

The legislation seeks to amend the definition of child abuse to include "any deliberate act, on the part of an individual other than a parent or caretaker, that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm to a child."

Like many states, under Pennsylvania law there are limitations on those persons who can be considered a "perpetrator" of child abuse. A parent, a paramour of a parent, an individual (over the age of 14) living in the same home as the child, or a person responsible for the welfare of a child can be considered a perpetrator.

A baseball coach, member of the clergy, family member not living in the child's home are among those who might not be considered a perpetrator of child abuse under state law. I have had dozens of conversations in recent weeks with knowledgeable professionals, about which if any of the Penn State officials were mandated reporters and whether Mr. Sandusky is even covered by the law. We need to eliminate that kind of confusion. The Speak Up bill will make our laws more clear and help us get to the crimes we need to stop.

---

In summary, we recommend:

- Strengthen the mandatory reporting provisions in CAPTA, so that we protect the kids that really need us.
- Proceed deliberately, informed by real data and supported by genuine resources, to define who should be considered a perpetrator of child abuse, how we differentiate cases and services, and how to expand the community's obligation to keep its kids safe.
- Demand transparency and accountability through creation of the independent state-level Child Advocate or Ombudsperson, and get reliable data that measures not just numbers but outcomes.

- Act with urgency to support services to victims, by increasing the availability of forensic interviewing and release of the Crime Victims Trust Funds.

We are at a curious moment: the attention of the nation is finally set upon child protection, as it should be. It seems attractive to be as protective of children as we possibly can be, yet it would be prudent to be aware of unintended consequences. We can be a healthier community tomorrow if the victims of yesterday and today get help. Sadly, some of today's victims will become abusers themselves, not to mention drinkers, angry family members, spouses who cannot trust, their harm eating away at their ability to be healthy and safe. We must get the message out to victims who have not yet disclosed: if you have been abused, tell someone ... get help! Healing will come. We CAN change the story. Let's do it right.

\* \* \* \* \*

For more information:  
Frank P. Cervone, Executive Director  
Support Center for Child Advocates  
1900 Cherry Street  
Philadelphia, PA 19103  
t: 267-546-9202 f: 267-546-9201  
e: [fcervone@advokid.org](mailto:fcervone@advokid.org) [www.advokid.org](http://www.advokid.org)

C:\Users\fcervone\c\_WP\TESTIMON\Senate Subcomm 2011 12 13\FPC Testimony\_oral\_rev.docx