
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 433 Session of
2013

INTRODUCED BY AUMENT, WATSON, GINGRICH, MALONEY, MOUL, STEPHENS,
YOUNGBLOOD, SCHLOSSBERG, HICKERNELL, MUNDY, ROCK, KORTZ,
SACCONE, MAJOR, CUTLER, KAUFFMAN, O'NEILL, BAKER, SWANGER,
COHEN, MILLER, FLECK, C. HARRIS, CLYMER, MILNE AND
BENNINGHOFF, FEBRUARY 8, 2013

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, FEBRUARY 8, 2013

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child protective services, further
3 providing for disposition of founded and indicated reports,
4 for amendment or expunction of information and for
5 investigation of reports.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 6338(a) of Title 23 of the Pennsylvania
9 Consolidated Statutes is amended to read:

10 § 6338. Disposition of founded and indicated reports.

11 (a) General rule.--When a report of suspected child abuse or
12 a report under Subchapter C.1 (relating to students in public
13 and private schools) is determined by the appropriate county
14 agency to be a founded report or an indicated report, the
15 information concerning that report of suspected child abuse
16 shall be expunged immediately from the pending complaint file,
17 and an appropriate entry shall be made in the Statewide central
18 register. [Notice of the determination must be given to the

1 subjects of the report, other than the abused child, and to the
2 parent or guardian of the affected child or student along with
3 an explanation of the implications of the determination. Notice
4 given to perpetrators of child abuse and to school employees who
5 are subjects of indicated reports for school employees or
6 founded reports for school employees shall include notice that
7 their ability to obtain employment in a child-care facility or
8 program or a public or private school may be adversely affected
9 by entry of the report in the Statewide central register. The
10 notice shall also inform the recipient of his right, within 45
11 days after being notified of the status of the report, to appeal
12 an indicated report, and his right to a hearing if the request
13 is denied.] Notice of the determination that a report is a
14 founded or indicated report shall be made as provided in section
15 6368(c.2) (relating to investigation of reports).

16 * * *

17 Section 2. Section 6341(c) of Title 23 is amended and the
18 section is amended by adding subsections to read:

19 § 6341. Amendment or expunction of information.

20 * * *

21 (b.1) Hearing.--The appeal hearing authorized under
22 subsection (b) shall be scheduled according to the following
23 procedures:

24 (1) Within ten days of receipt of an appeal pursuant to
25 this section, the department shall schedule a hearing on the
26 merits of the appeal.

27 (2) The department shall make reasonable efforts to
28 coordinate the hearing date with both the appellee and
29 appellant.

30 (3) Proceedings before the Bureau of Hearings and

1 Appeals shall commence within 45 days of the date the
2 scheduling order is entered. Proceedings and hearings shall
3 be scheduled to be heard on consecutive days whenever
4 possible but, if not on consecutive days, then the proceeding
5 or hearing shall be concluded not later than 30 days from
6 commencement.

7 (4) The investigative agency shall bear the burden of
8 proving by substantial evidence that the report should remain
9 categorized as an indicated report.

10 (5) Evidence that a child has suffered child abuse of
11 such a nature as would ordinarily not be sustained or exist
12 except by reason of the act or failure to act of the alleged
13 perpetrator shall be prima facie evidence of child abuse by
14 either or both of the parents or any other person responsible
15 for the child's welfare. Once the investigative agency has
16 established that prima facie evidence of child abuse exists,
17 the burden shall shift to the appellee to establish that the
18 appellee was not the individual responsible for the welfare
19 of the child or that the child was not the victim of child
20 abuse by a perpetrator.

21 (b.2) Testimony by closed-circuit television.--At the
22 request of the investigative agency, the administrative law
23 judge or hearing officer shall order that the testimony of the
24 child victim or child material witness be taken under oath or
25 affirmation in a room other than the hearing room and televised
26 by closed-circuit equipment to be viewed by the tribunal. Only
27 the attorneys for the appellant and appellee, the court
28 reporter, the administrative law judge or hearing officer,
29 persons necessary to operate the equipment and any person whose
30 presence would contribute to the welfare and well-being of the

1 child may be present in the room with the child during his
2 testimony. The administrative law judge or hearing officer shall
3 permit the appellee to observe and hear the testimony of the
4 child but shall ensure that the child cannot hear or see the
5 appellee. The administrative law judge or hearing officer shall
6 make certain that the appellee has adequate opportunity to
7 communicate with counsel for the purposes of providing an
8 effective examination.

9 (b.3) Admissibility of certain statements.--An out-of-court
10 statement not otherwise admissible by statute or rule of
11 evidence is admissible in evidence in a proceeding under this
12 section if the following apply:

13 (1) The statement was made by a child under the age of
14 ten years or by a child ten years of age or older who is
15 intellectually disabled.

16 (2) The statement alleges, explains, denies or describes
17 any of the following:

18 (i) An act of sexual penetration or contact
19 performed with or on the child.

20 (ii) An act of sexual penetration or contact with or
21 on another child observed by the child making the
22 statement.

23 (iii) An act involving bodily injury or serious
24 physical neglect of the child by another.

25 (iv) An act involving bodily injury or serious
26 physical neglect of another child observed by the child
27 making the statement.

28 (3) The administrative law judge or hearing officer
29 finds that the time, content and circumstances of the
30 statement and the reliability of the person to whom the

1 statement is made provide sufficient indicia of reliability.

2 (4) The proponent of the statement notifies other
3 parties of an intent to offer the statement and the
4 particulars of the statement sufficiently in advance of the
5 proceeding at which the proponent intends to offer the
6 statement into evidence, to provide the parties with a fair
7 opportunity to meet the statement.

8 For purposes of this subsection, an out-of-court statement
9 includes a video, audio or other recorded statement.

10 (b.4) Prompt decision.--The administrative law judge or
11 hearing officer's decision shall be entered, filed and served
12 upon the parties within 15 days of the date upon which the
13 proceeding or hearing is concluded unless, within that time, the
14 tribunal extends the date for the decision by order entered of
15 record showing good cause for the extension. In no event shall
16 an extension delay the entry of the decision more than 30 days
17 after the conclusion of the proceeding or hearing.

18 (c) [Review of refusal of request.--If the secretary refuses
19 the request under subsection (a) (2) or does not act within a
20 reasonable time, but in no event later than 30 days after
21 receipt of the request, the perpetrator or school employee shall
22 have the right to a hearing before the secretary or a designated
23 agent of the secretary to determine whether the summary of the
24 indicated report in the Statewide central register should be
25 amended or expunged on the grounds that it is inaccurate or that
26 it is being maintained in a manner inconsistent with this
27 chapter. The perpetrator or school employee shall have 45 days
28 from the date of the letter giving notice of the decision to
29 deny the request in which to request a hearing. The appropriate
30 county agency and appropriate law enforcement officials shall be

1 given notice of the hearing. The burden of proof in the hearing
2 shall be on the appropriate county agency. The department shall
3 assist the county agency as necessary.] Reconsideration and
4 appeal.--Parties to a proceeding or hearing held under this
5 section have 15 calendar days from the mailing date of the final
6 order of the Bureau of Hearings and Appeals to request the
7 secretary to reconsider the decision or appeal to Commonwealth
8 Court. Parties to a proceeding or hearing held under this
9 section have 30 calendar days from the mailing date of the final
10 order of the Bureau of Hearings and Appeals to perfect an appeal
11 to the Commonwealth Court. The filing for reconsideration shall
12 not toll the 30 days provided.

13 (c.1) Notice of decision.--Notice of the decision shall be
14 made to the central register, the appropriate county agency, any
15 appropriate law enforcement officials and all subjects of the
16 report.

17 * * *

18 Section 3. Section 6368 of Title 23 is amended by adding
19 subsections to read:

20 § 6368. Investigation of reports.

21 * * *

22 (c.1) Review of indicated reports.--A final determination
23 that a report of suspected child abuse is indicated shall be
24 made by the county agency solicitor and the county administrator
25 or the designee of the administrator.

26 (c.2) Notice of final determination.--Within 24 business
27 hours of the conclusion of the child abuse investigation, the
28 investigator shall send notice of the final determination to the
29 subjects of the report and the mandated reporter if a report was
30 made under section 6313 (relating to reporting procedure). The

1 notice shall include the following information:

2 (1) The status of the report.

3 (2) The perpetrator's right to request the secretary to
4 amend the report.

5 (3) The right of the subjects of the report to services
6 from the county agency.

7 (4) The effect of the report upon future employment
8 opportunities involving children.

9 (5) The fact that the name of the perpetrator, the
10 nature of the abuse and the final status of the report will
11 be entered in the Statewide central register.

12 (6) The perpetrator's right to file an appeal of an
13 indicated finding of abuse pursuant to section 6341 (relating
14 to amendment or expunction of information) within 45 days of
15 the conclusion of the investigation that determined the
16 report to be indicated.

17 (7) The perpetrator's right to a fair hearing on the
18 merits on an appeal of an indicated report filed pursuant to
19 section 6341.

20 (8) The burden on the investigative agency to prove its
21 case by substantial evidence in an appeal of an indicated
22 report.

23 (c.3) Reasonable efforts to provide notice.--If the
24 investigative agency is unable to provide notice as required in
25 subsection (c.2), it shall notify the department in writing of
26 the efforts made. If the department concludes that due diligence
27 was made to provide notice, no further efforts to provide notice
28 shall be required.

29 * * *

30 Section 4. This act shall take effect in 60 days.