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Auditor General DePasquale: Reforms to PA's Child Abuse Appeal Process Needed to Help Protect Children, Ensure Fairness

Issues third 'State of the Child' report to improve protection for at-risk children

HARRISBURG – Auditor General Eugene DePasquale today called for reforms to Pennsylvania's child abuse appeals process, saying the current system puts children at risk of being retraumatized by their accused abusers.

"Children should be permitted to testify by video for their own safety and mental health," DePasquale said. "Allowing abusers to directly confront emotionally fragile children in a closed hearing room is a cruel practice that should have ended decades ago."

DePasquale released a special report examining the workings of the Bureau of Hearings and Appeals (BHA), an administrative entity within the Pennsylvania Department of Human Services. It makes decisions about hundreds of issues such as adoption subsidy denial appeals, elder abuse appeals and child abuse appeals.

"The bureau may seem like an obscure entity, but it wields immense power over the lives of Pennsylvanians," DePasquale said. "One of the most vital tasks it handles is the appeals of individuals who have been deemed by county children and youth agencies to have abused a child."

About one-third of those deemed abusers — approximately 1,900 people — appeal their cases each year. Statistics show that BHA judges side with accused abusers more often than with county children and youth agencies; in 2019, the judges sided with accused abusers about 90 percent of the time. People who lose, or never appeal, are listed for life on the state's ChildLine and Abuse Registry, which is searched during background checks for certain types of jobs and volunteer work.

"During the appeal hearing process, some children are forced to sit face-to-face with their accused abuser and recount the abuse they suffered," DePasquale said. "This terrifying experience puts children at risk of being retraumatized, which can have lifelong consequences."

DePasquale's report notes that the American Bar Association (ABA) recommends that children should not have to sit in a room and, in front of their abuser, recount the abuse they endured. In fact, the ABA has recommended since July 1985 that law enforcement, social services and prosecutors work together to ensure a victim is interviewed as few times as possible — preferably only once — to prevent retraumatization.

The report adds that the American Academy of Pediatrics (AAP) recommends that courts "do whatever is necessary, within the framework of existing state laws and resources, to prevent psychological harm to the child victim/witness as a result of participating in the judicial process."

In 2003, Pennsylvania voters approved an amendment to the state Constitution that allows children to testify via video.

“I think our experience with remote learning during the pandemic has proven that children really don’t have to be present in the hearing room and might be safer elsewhere,” DePasquale said.

The report makes seven recommendations:

1. The Department of Human Services must better train its administrative law judges on child development and how to appropriately question abused/traumatized children as witnesses. Child-abuse-expungement appeal hearings need to be focused on not retraumatizing children who have potentially already suffered mental, emotional, physical or sexual abuse. This includes allowing testimony via videoconference and other measures as often as possible and as allowed under Pennsylvania law and suggested by national legal and pediatric experts to protect children’s mental health.
2. The General Assembly — particularly the Pennsylvania Senate and House of Representatives Children and Youth Committees — should consider legislation to protect the rights of all children being questioned about abuse in all hearings before the courts, as well as during administrative agency hearings before the BHA. See Senate Bill 980, P.N. 1439, which proposes to assign children testifying at the BHA with designated child advocates and would provide for alternative recording of a child’s testimony if testifying in front of the defendant or in an open hearing will cause emotional distress.
3. The General Assembly — particularly the Pennsylvania Senate and House of Representatives Children and Youth Committees — should consider closely reviewing (possibly through a panel of child advocates and child experts) the current statutory standard for determining if a child is unavailable as a witness to assess whether the standard is appropriate for ensuring that children are not placed under emotional distress and possibly retraumatized in an open hearing/court.
4. The Department of Human Services and the General Assembly should consider working with the nonprofit Pennsylvania Court Appointed Special Advocates (CASA) Association to develop a program for volunteers to support children required to provide testimony before BHA.
5. The Department of Human Services and the General Assembly should work closely with the newly appointed Child Advocate Nicole Yancy and the new Council on Reform for the protection of vulnerable populations to ensure they have the opportunity to provide input on the proposed CASA legislation.²⁹
6. The Department of Human Services should explore ways of creating a new administrative agency tribunal called the Bureau of Review for Vulnerable Populations separate and apart from BHA. This Bureau would directly focus on protecting Pennsylvania’s most vulnerable populations, including children and elders and related abuse reports, rather than having these reports be among approximately 100 issues currently handled by BHA, which is unwieldy and ineffective.
7. The Department of Human Services should retool its processes to meet the demands of the current COVID-19 crisis to ensure the safety and welfare of children across the commonwealth.

DePasquale previously released two other reports aimed at protecting at-risk children. His 2017 “[State of the Child](#)” special report detailed the strengths and challenges of Pennsylvania’s child-welfare system; in 2018 he released his “[State of the Child Action Plan](#).”

Review the “[Fixing PA’s Child Abuse Courts](#)” special report and learn more about the Department of the Auditor General online at www.PaAuditor.gov.

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