

## Issues Related to CPS Record Expungement from Statewide Information Systems

The Omnibus Amendment to Pennsylvania Domestic Relations Code (23 PA.C.S.; P.L. 375, No. 54<sup>1</sup>), enacted in June 2018, amended county-level procedures for expunction of general protective service (GPS) and child protective service (CPS) records. Under the approved statute **“A county agency may maintain information regarding protective services reports that have been expunged in the Statewide database for access by the county agency to assist in future risk and safety assessments and research.”** However, the amendment did not modify criteria for expunction of records from statewide data, and does not *require* counties to maintain this information or allow for cross-county sharing of information for these purposes.

Expunction policies generally seek to protect accused perpetrators of unsubstantiated abuse and neglect cases because public access to those records via a central registry can hinder their employment, volunteer, or adoption opportunities. However, there is a critical distinction between a central registry that can be used for child abuse clearances and maintenance of non-public records by agencies for risk assessment, research, and quality assurance. Further, no General Protective Services (GPS) records or unsubstantiated CPS records are included in the central registry.

Pennsylvania’s approach to expungement of unsubstantiated or invalid CPS and GPS cases involves the destruction of all state-level digital records—a blunter approach than a number of other states<sup>2,3,4</sup> or as required by federal law<sup>5</sup>. Recognizing the justification for central registry expunction, the current approach poses significant issues for other child welfare concerns. A primary concern is this approach hinders efforts to protect children from maltreatment, as well as efforts to identify children at risk of future abuse. Furthermore, caution is warranted in distinguishing between substantiated and unsubstantiated cases; both are associated with similar degrees of harm to child health and development<sup>6</sup> and pose similar risks for re-report and future victimization. A more balanced approach to protecting data would protect information so that it is ***only accessible for purposes that protect children***, including ***future CPS investigations or GPS assessments, quality assurance activities, and research that can strengthen maltreatment prevention and detection.***

### Concerns about Eradicating or Expunging Case Files

1. ***The child welfare system is not able to utilize its statewide information system to monitor or assess child and family risk and safety.*** The current approach limits capacity to use these data to assist in conducting state-level analysis of child risk and safety. Individual counties are able to retain data for these purposes, but these data are not shared across counties, limiting their utility when children and families re-locate to new counties. Recent analysis of case records pertaining to child sexual abuse and exploitation reports also revealed that expungement of CPS and GPS records resulted in numerous instances of the same allegations being investigated multiple times because the records pertaining to earlier investigations of those allegations had been expunged<sup>7</sup>. ***A statewide perspective would strengthen capacity for system-wide monitoring of risk and safety outcomes, while minimizing duplication of prior investigatory efforts.***
2. ***The expungement process presumes that unsubstantiated or invalid case findings are not informative of child and family safety and risk concerns.*** Risk of future maltreatment or CPS recidivism is similar regardless of whether reports are substantiated or not<sup>8</sup>; therefore, there are many circumstances in which prior case files can assist in future investigations. Prior records can help caseworkers assess means for reducing familial risk, protect their own safety, identify potential adoptive families if risks cannot be mediated, and locate missing children. Vital information from prior investigations would not be available if the records are completely expunged prior to recidivism.
3. ***Expungement from statewide records limits the capacity for state-level evaluation of the effectiveness of public resources supporting child welfare services.*** Many families who are investigated for child maltreatment are referred to services designed to reduce risk and improve the safety of children – regardless of whether the case is substantiated or validated.<sup>9</sup> Rigorous evaluation of programs and services requires longitudinal data that can be used to examine rates of re-report to CPS and GPS over extended periods of time in order to document their effectiveness and make informed decisions about funding services and improving programs that could prevent future maltreatment and related challenges (e.g., educational failure, poor health,

homelessness).<sup>10,11</sup> In addition, the current approach limits the ability to examine program and service outcomes longitudinally at a state system level – an approach that would allow the state to better understand factors that impact service effectiveness and target effective resources across the state system.

4. ***Less will be learned about how to prevent child maltreatment overall.*** Just because a child maltreatment case has not been substantiated does not mean that there was no risk or harm incurred by children involved. Risk associated with CPS/GPS referrals (e.g., poorer academic performance, juvenile delinquency, risky sexual behavior, substance use, and other developmental and behavioral health outcomes) is similar regardless of whether the case is substantiated.<sup>12,13,14</sup> Data on prior investigations supports effective prevention efforts – for instance, we are only beginning to understand circumstances that lead to child sex trafficking, and data on prior CPS/GPS involvement is critical information for this endeavor.

#### **Recommendations:**

1. ***The statewide data system should be subject to the same expunction requirements that are currently applied to counties.*** We recognize the importance of protecting the privacy of individuals involved in unsubstantiated or invalid reports. The 2018 legislative amendment to county-level expunction practices recognizes, however, that there are compelling reasons to retain these records for specific purpose to assist in future risk and safety assessments and for research purposes. Though this amendment did not alter requirements for statewide data systems, we believe that the same compelling reasons exist with these data. Furthermore, it is possible to protect the privacy of information contained in these unsubstantiated CPS or invalid GPS reports, because the Child Welfare Information System already securely stores information that is not part of the central registry (which maintains records pertaining to substantiated perpetrators on CPS reports only). By clearly distinguishing between information that can be stored in the statewide CWIS (or subsequent case information system) and information that is to be included in a central registry for the purpose of child abuse clearances, the privacy of Pennsylvania’s citizens is protected. Access to data in the statewide system would be restricted to state-approved purposes and personnel (e.g., caseworkers, administrators, approved researchers). To do so, **state policy should be amended to maintain CPS and GPS records for approved purposes in statewide data systems while continuing to conceal confidential records from the public domain** (e.g., background checks via the central registry). Comparable statute language from Ohio provides an example of this approach<sup>3,4</sup>. These recommendations comply with federal law<sup>5</sup> and are consistent with the National Commission on Evidence-Based Policymaking’s recommendations to modernize data systems to protect information so that it may guide the use of public resources.<sup>15</sup>
2. ***The state should permit utilization of non-expunged records to conduct policy and programmatic or services research to inform child welfare services effectiveness at preventing maltreatment or its adverse consequences.*** With changes to expunction policy, the state will have the capacity to leverage these data to conduct important research and evaluation activities to inform public efforts at prevention and treatment associated with CPS and GPS services. With proper safeguards in place (e.g., appropriate MOUs, rigorous data security safeguards and policies, designations to work with sensitive data), university partners can provide additional capacity for rigorous research to inform the public good. Pennsylvania State University, for example, has been designated as a covered entity for purposes of working with sensitive health care data and has facilities designated as compliant with National Institute of Standards and Technology Special Publication 800-171 (NIST 800-171) pursuant to working with sensitive data.

## Reference Materials

1. Domestic Relations Code (23 PA.C.S.), Omnibus Amendments Act, P.L. 375, No. 54. Retrieved from <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=54>
2. Child Welfare Information Gateway (2014). *Review and expunction of central registries and reporting records*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.
3. Personal Information Systems, Oh. Revised Code Chapter 1347. Retrieved from <http://codes.ohio.gov/orc/1347>
4. Ohio Department of Job and Family Services (n.d.). Child Protective Services. Retrieved from <https://jfs.ohio.gov/ocf/childprotectiveservices.stm>

“Ohio’s Central Registry on Child Abuse and Neglect is a **confidential database** that contains allegations of reports of child abuse and neglect and the parties involved... Information contained in the Central Registry is highly confidential and **may be released only under strict guidelines** set forth in federal and state rules and law... Central Registry information [cannot be released to employers and] may be released only to: (1) the subject of the information, (2) an agency processing foster/adoption applications, or (3) a CSA investigating a report of child abuse and/or neglect.”
5. The Child Abuse Prevention and Treatment Act (CAPTA). 42 U.S.C.A. § 5106a(b)(2)(B)(xii) (2010).

“(xii) provisions requiring, and procedures in place that facilitate the **prompt expungement** of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that **nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files** to assist in future risk and safety assessment;”
6. Drake B. (1996). Unraveling "unsubstantiated". *Child Maltreatment*, 1, 261-271.
7. Font, S.A., Miyamoto, S., & Pinto, C. (2020). *Child Sexual Abuse and Exploitation in Pennsylvania*. PA: Center for Rural Pennsylvania. Available at: <https://www.rural.palegislature.us/documents/reports/Child-Sexual-Abuse-and-Exploitation-2020.pdf>
8. Kohl, P. L., Jonson-Reid, M., & Drake, B. (2009). Time to leave substantiation behind: Findings from a national probability study. *Child maltreatment*, 14(1), 17-26.
9. DePasquale, E. (2017). *State of the child: A look at the strengths and challenges of Pennsylvania’s child-welfare system and the safety of at-risk children*. Philadelphia, PA: Auditor General’s Office.
10. National Research Council. (2014). *New directions in child abuse and neglect research*. National Academies Press.
11. Child Trends. (February, 2017). *Supporting Youth in Foster Care: Research-Based Policy Recommendations for Executive and Legislative Officials in 2017*. Policy Brief. Bethesda, MD.
12. Hussey JM, Marshall JM, English DJ, et al. (2005). Defining maltreatment according to substantiation: distinction without a difference? *Child Abuse & Neglect*, 29, 479-374.
13. Leiter J, Myers KA, Zingraff MT. (1994). Substantiated and unsubstantiated cases of child maltreatment: Do their consequences differ? *Social Work Research*, 18, 67-82.
14. Kugler, K. C., Guastaferrro, K., Shenk, C. E., Beal, S. J., Zadzora, K. M., & Noll, J. G. (2019). The effect of substantiated and unsubstantiated investigations of child maltreatment and subsequent adolescent health. *Child abuse & neglect*, 87, 112-119.
15. Commission on Evidence-Based Policymaking (September, 2017). *The promise of evidence-based policymaking*. Washington DC: Commission on Evidence-Based Policymaking. Retrieved from <https://www.cep.gov/content/dam/cep/report/cep-final-report.pdf>