

**Child Death, Near Death, & Stillbirth Commission
Child Protection Accountability Commission**

**JOINT COMMITTEE ON THE
INVESTIGATION AND PROSECUTION
OF CHILD ABUSE**

FINAL REPORT

May 17, 2013

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Preface

The Joint Committee on the Investigation and Prosecution of Child Abuse (the "Joint Committee") was formed on December 2, 2011 by the Child Protection Accountability Commission ("CPAC") and the Child Death, Near Death and Stillbirth Commission ("CDNDSC"), (collectively, the "Commissions"). The Joint Committee was charged by the Commissions to:

Research and develop statutes, policies, procedures and/or trainings to reflect best practices for better protecting children from abuse by optimizing the opportunities to appropriately punish perpetrators of abuse crimes against children.

The Joint Committee met on seven occasions between February of 2012 and March 1, 2013. The Joint Committee received presentations from the Delaware Department of Justice (the "Department of Justice"), and information from the Delaware State Police ("DSP"), the New Castle County Police ("NCCPD"), the Wilmington Police Department ("WPD"), local police agencies, the Commissions, other States, the Office of Child Advocate, and other sources. Among other information, the Joint Committee received presentations on the specific charging patterns of prosecutors and police, criminal law, conviction rates, and recurring problems encountered in the investigation and prosecution phases. Minutes were prepared to document the substance of each meeting of the Joint Committee. In completing our work and preparing the recommendations contained herein, we were mindful at all times of the specific charge of the Commissions.

The work of the Joint Committee has involved self examination that does not come easily to most. Nonetheless, the members of the Joint Committee have each served admirably. While the discussion was at times contentious, each member of the Joint Committee was ultimately able to set aside parochial considerations in the interest of identifying and addressing specific system-wide shortcomings, with the intent to enhance the protection of our children. In this regard, each member of the Joint Committee obviously came to the table in good faith, and with the goal of improving the system by which perpetrators of criminal child abuse are ultimately brought to justice.

As our examination of these subjects progressed, it became apparent that the efforts of the Joint Committee are in many respects just a beginning. The empirical evidence necessary for an informed analysis of many of the issues raised in the anecdotal reports presented to the Joint Committee is simply not available. This is due not to oversight but rather to the absence of data gathering technology and resources. System wide change, including (for example) the enactment of last year's House Substitute 1 for House Bill 371, which provides for system-wide child abuse case tracking, should do much to address this problem.

Meanwhile, through examination and detailed review of the evidence presented, the Joint Committee was nonetheless able to identify key areas for improvement that can readily be addressed through organization, resource allocation, policy, training and legislation. We present our findings here, in summary form. We would refer the reader to our minutes, for further detail.

We wish to thank the many individuals who served as Joint Committee Members as well as those who shared their experiences with us. The information and perspectives provided have been invaluable.

We also wish to extend our sincere gratitude to the Office of the Child Advocate and the CDNDSC, for preparing minutes of our Committee meetings, for assisting with this report, and for keeping us organized, focused and always moving forward toward our goal.

Respectfully submitted,

Hon. Patricia Blevins, President Pro Tempore, Delaware State Senate

C. Malcolm Cochran IV, Chair, Delaware Child Protection Accountability Commission.

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Executive Summary

On May 10, 2010, Linda L. Ammons, J.D., Associate Provost and Dean of the Widener University School of Law, released her report, entitled *Independent Review of the Earl Brian Bradley Case* (the "Ammons Report"). Commissioned by Governor Jack Markell, the Ammons Report examined in depth the manner in which the allegations of criminal child abuse were investigated in that case. Dean Ammons further reviewed, in detail, the decisions that were made at various points not to initiate criminal proceedings. The Ammons Report conveys a sense of opportunities lost. These are couched primarily as system shortcomings.

The Ammons Report concludes with a number of critical findings and recommendations that bear with particular force on the manner in which criminal child abuse is investigated and prosecuted in Delaware. For example, at page 31 she concludes, "given the facts that were known . . . it is difficult to reconcile why it took five years for the Department of Justice to indict Bradley." She later cautions against "unfairly criticizing the Delaware Department of Justice's decision not to prosecute Dr. Bradley based on the information known to prosecutors in 2005 and again in January 2009." Ammons Report at 32. Nonetheless, among the recommendations included in the Ammons Report are "mandatory specialized training regarding child sexual assault cases for Deputy Attorney Generals when they join the criminal division, or for those . . . assigned child sexual exploitation cases." *Id.* at 40. Similarly, Dean Ammons recommended evaluating "whether Deputy Attorney's General are too risk-averse in taking hard cases and provide meaningful support from superiors in order to make charging decisions." *Id.* at 41.

At about the same time the Ammons Report was released, an 8 week old child was physically abused and admitted to the intensive care unit at the Alfred I. duPont Hospital for children. The infant was found to have suffered multiple fractures of her ribs, leg, foot and hand. She had suffered a bruised right lung. It was reported in the media that she had been burned on her left foot and that what appeared to be the letters "F" and "U" were scratched into her side. The child's parents, who acknowledged being her primary care givers, denied any knowledge of what had caused the injuries, but failed to get necessary medical care for the child. O'Sullivan, S. "Parents of Injured Newborn Admit Guilt", The News Journal, Oct. 11, 2011.

In the end the parents admitted not to "violent felony" charges (more likely to bring jail time) but to felony endangering the welfare of a child and conspiracy, which are classified as "nonviolent" offenses under Delaware's criminal code. With no direct evidence of who caused the harm (neither parent was talking and no one else came forward) the Department of Justice, in a plea agreement, recommended a sentence of probation for each charge. Ultimately, the court imposed a short period of incarceration followed by probation. Fortunately (and as a result of the felony convictions) the civil child welfare system was able to protect the child over the long term.

Meanwhile, the Commissions have continued to review system analysis reports on Delaware's child abuse deaths and near deaths. Questions have been raised by Commissioners, "CAN" Panel members and others regarding criminal system outcomes in a number of these cases, some of which have presented similar fact patterns. The reports also revealed a need for more specialized training in these most difficult criminal investigations, and for increased collaboration. Members of the panels involved in the review of the cases, along with

representatives of other child welfare agencies, expressed frustration to members of the Commissions that more was not being done.

These factors prompted the Commissions to form the Joint Committee. In summary, it has been the task of the Joint Committee to examine the way in which criminal child abuse cases are investigated and prosecuted in Delaware, and to make recommendations for improvement. To that end, the Joint Committee spent a year taking and reviewing oral and written information regarding the successes and challenges of the system by which criminal child abuse is investigated and prosecuted in Delaware.

The Joint Committee identified various system challenges. It was determined at the outset that the prosecution of criminal child abuse is a highly specialized field, in which substantial expertise is required in various areas, including (i) the law, (ii) investigation practices and techniques, and (iii) forensic science. Effective investigation and prosecution of criminal child abuse requires the development or recruitment of experts in each of these areas. The experts must work in a coordinated fashion, as a team, to achieve proper outcomes. Resources in these areas, however, are not now effectively organized or coordinated. Access to the resources and expertise necessary for effective investigation and prosecution also is not uniform throughout the State. Specifically, smaller, more resource constrained jurisdictions are sometimes left without ready access to the necessary, special expertise required for the proper development of the record that is essential to effective prosecution.

Second, the Joint Committee came to the view that there is not a uniform understanding (or use) of current "best practices" in the investigation and prosecution of child abuse in Delaware. In part, this is a function of training. But other factors contribute to this problem as well, including lack of coordination, resource constraints, caseloads, turnover of personnel, and ready access to information.

Third, the Joint Committee spent substantial time focused on the adequacy of Delaware's criminal statutes as they relate to the prosecution of caregivers who, with criminal neglect, enable the death or near death of a child. Specifically, the "two caregivers nobody's talking" scenario has been a recurring obstacle. The view was expressed that Delaware's new criminal child abuse statute (the "Child Abuse Statute") may not facilitate effective prosecution of those who enable child abuse in this scenario--even in the presence of significant physical injury that could only have been inflicted by an adult--unless there has been (or would have been) a physical manifestation of pain. But pre-verbal children may not manifest pain, particularly in cases of abusive head trauma (or "shaken baby syndrome"). Or the manifestation of pain (crying) may be confused with something else (hunger). Members of the Joint Committee were left with the sense that the statutes are not yet adequate.

Finally, information presented to the Joint Committee suggests that the Department of Justice faces significant organizational challenges in the prosecution of child abuse. These likely derive from resource constraints. Thus, as this Report was being prepared, the News Journal published an article in which it was reported that Delaware's 48 prosecutors who handle felonies work at an annual rate that is more than 77 percent higher than the national average. Barrish, C. *Wilmington's Violent Crime Pushes Delaware to Sixth Highest in US*. The News Journal, Feb. 17, 2013. Based on information received from the Department of Justice, in 2011 Delaware's

felony prosecutors each handled an annual average of 167 cases, as compared to a national average of 94 cases, per annum. *Id.* The unusually large, per prosecutor caseload implies substantial pressure to move cases through the system, and suggests that opportunities for proper case preparation in these (often) highly complex matters may be limited.

Further, the Department of Justice (despite prior, unmet funding requests) has no internal case tracking system that would allow for the maintenance (and production) of reliable data regarding the caseloads of its prosecutors and support staff. The Department of Justice was thus unable to provide the Joint Committee with statistical information regarding the size of the criminal child abuse caseloads being managed by each of its lawyers (in addition to other cases each may be handling), or on case outcomes. In the absence of reliable statistical evidence on caseloads and outcomes it is difficult to ensure proper assignment of staff or other, appropriate resource allocation (or to make the case for added resources), but anecdotal evidence suggests the need is great.

Thus in New Castle County there is only one designated child abuse prosecutor who handles the prosecution of more serious criminal child abuse, but does not handle child sexual abuse cases.¹ Less serious cases are distributed among other lawyers who handle child abuse cases in addition to other criminal matters.² The one Deputy Attorney General doing criminal child abuse "intakes" in New Castle County handled more than 200 child abuse case intakes in 2011, and more than 450 in 2012 not including cases involving sexual abuse of a child. Yet these "intakes" require intensive review of the evidence collected in order to make charging decisions, including scene investigation, interviews with law enforcement, review of medical records and follow up with experts (among other tasks). These numbers appear, on the surface, overwhelming for one lawyer to handle in addition to other duties. Notably, while the number of Department of Justice intakes more than doubled over the period 2011-2012, convictions for endangering the welfare of a child ("EWC")--the most frequently charged "child abuse" crime--were reportedly down over the period by an estimated 10 percent, raising questions regarding the impact of the recent spike in the volume of criminal referrals on the "intake" process, the litigation phase, or both.

In Kent and Sussex Counties there is no designated child abuse prosecutor, although serious cases involving physical abuse are assigned to a Criminal Division Deputy Attorney General (in each county) who has developed expertise in the field. Deputies who prosecute these cases sometimes struggle to attend Children's Advocacy Center forensic interviews and multidisciplinary team meetings due to limited resources and related time constraints

The Department of Justice has further identified challenges faced in the prosecution of child abuse, including the inability to prove the requisite "state of mind" of a defendant; crime scene and evidence preservation issues; lack of training, juror attitudes, and overly lenient sentences.

¹ Cases involving allegations of child sexual abuse are assigned to a "sex crimes" unit of the Criminal Division, which prosecutes sex crimes committed against both adults and children. Prosecutors in this unit are not designated as child sex crime specialists, but rather handle caseloads that include both adult and child victims.

² The term "serious" or "more serious" cases of child abuse is used in various places in this Report. The Joint Committee unanimously agrees that *all* child abuse is serious. Rather, the term as used in this Report is generally intended to signify those cases involving "serious physical injury" (a defined term in the Delaware Criminal Code), death or sexual abuse.

* * *

In this report we review in summary fashion the proceedings before the Joint Committee, the information collected, many of the positions taken, the challenges faced and the Joint Committee's recommendations. In response to the many challenges noted in this report, the Joint Committee makes the following recommendations, which are discussed in greater detail at pages 23 through 28, *infra*:

1. A special victims unit with statewide jurisdiction should be established within the Department of Justice. Deputies in this unit should handle all felony level, criminal child abuse cases including those involving serious physical injury, death or sexual abuse of a child. Implementation of this recommendation need not involve reassignment of Deputies or cases from other units (such as, for example, the Sex Crimes Unit), but would encourage and enhance ongoing efforts to recruit and develop felony child abuse specialists, who may bring special expertise developed as members of other units and who would concurrently belong to this unit. These may (and should) include Criminal Division prosecutors experienced in prosecuting homicides and the most serious assaults, as well as experienced Family Division prosecutors. The special victims unit (and the culture) should encourage the development of felony child abuse specialists through cross collaboration, regardless of the current divisional structure.
2. A team of criminal investigators with expertise in the investigation of child abuse should be established within the Department of Justice. The investigations team should work directly with the special victims unit described in Recommendation 1 in the investigation and prosecution of felony level, criminal child abuse. Referral to the investigations team should be mandatory in all such cases, statewide. The investigations team should have authority to seek the assistance of police agencies with appropriate expertise, when necessary to support resource constrained, local police jurisdictions in the investigation phase, although local police should be permitted to partner in the investigation.
3. Consideration should be given to the enactment of a criminal statute that allows for the effective prosecution of caregivers who, with criminal negligence, enable the sexual abuse, serious physical injury or death of a child. In addition, the felony level "Endangering the Welfare of a Child" statute is currently a "non-violent" lower classification felony. Given the manner in which it is used, consideration should be given to changing the statute to a higher level felony, in order to provide more appropriate sentencing options for serious cases.
4. The Delaware Sentencing Accountability Commission ("SENTAC") should review the adequacy of Delaware's sentencing guidelines as they pertain to criminal child abuse cases involving serious injury, including (but not limited to) guidelines applicable to the crime of Endangering the Welfare of a Child, where violence or physical injury are involved.

5. Best practice guidelines should be developed and published for the investigation of child abuse cases involving sexual abuse, serious physical injury or death. Regular training and demonstrative tools must be provided to investigators and prosecutors involved in the investigation and prosecution of such cases. Regular training must include developments in the law, as well as the latest advances in investigative and forensic techniques. Statutory and certification requirements for training in both law enforcement and the Department of Justice should be reviewed, and updated as necessary. Consideration should be given to expanding the examination and certification requirements for detectives to include curriculum on child abuse and neglect. It is further recommended that Delaware send a multi-disciplinary team to the International Conference on Abusive Head Trauma, biennially.
6. A Deputy Attorney General specializing in the prosecution of felony level child abuse should be assigned to the appropriate CDNDSC review panel(s), in order to facilitate the review and analysis of issues relating to criminal investigation and prosecution in such cases. This position would be in addition to the current Family Division Director, who serves at the Commission level.
7. A comprehensive case management system must be promptly acquired and implemented within the Department of Justice. The system must be capable of producing current information regarding the status of any individual case, and must be capable of producing reports on case outcomes. The system must also allow the Department of Justice to track the caseloads of its Deputies and staff, so that informed resource allocation decisions can be made, and must ensure cross-referencing of all cases within the DOJ which share similar interested parties.
8. Evidence submitted to the Joint Committee indicates that the Department of Justice is facing significant resource constraints that must be addressed. Among other things, the evidence suggests that the recent emphasis on mandatory reporting has contributed to an almost two fold increase in the number of child abuse complaints received by the State, apparently resulting in a substantial increase in the volume of criminal referrals. There is evidence that prosecutors are carrying caseloads substantially in excess of the national average. An analysis of Department of Justice child abuse caseloads and outcomes must be conducted, with particular attention paid to the caseload volume currently being managed by each, individual prosecutor. CPAC should support appropriate Department of Justice budgetary requests for additional resources, to include the recruitment, addition and development of felony level prosecutors with expertise in the prosecution of felony level child abuse cases.

Background and Committee Purpose

The protection of our children is a basic and compelling obligation that no agency should be expected to handle alone. The 1997 death of a four year old boy named Bryan Martin demonstrated the need for multidisciplinary collaboration and accountability in Delaware's child protection system. Following Bryan's death, Delaware enacted the Child Abuse Prevention Act of 1997 (16 *Del. C.*, Ch. 9), which made significant changes in the way in which Delaware investigates child abuse and neglect. The Child Abuse Prevention Act also made changes that required Delaware to foster a child protection community of cooperation, accountability, and multidisciplinary collaboration. Part of the strategy in that regard was the establishment of a forum for interdisciplinary dialogue and reform. That forum is the Child Protection Accountability Commission.

In Delaware a number of different entities, working together, are charged with establishing, maintaining and monitoring the health, safety and well-being of the state's abused, neglected and dependent children. The Department of Services for Children, Youth and Their Families ("DSCYF"), the Department of Justice, Family Court, the Office of the Child Advocate, law enforcement, the medical community, educators, child care providers and others work together to shoulder the responsibility of ensuring child safety and well-being.

CPAC's overall statutory mission is to monitor Delaware's child protection system to ensure the health, safety, and well-being of Delaware's abused, neglected, and dependent children. 16 *Del. C.* § 912(b).

The statutory duties of CPAC are as follows (16 *Del. C.* § 912(b)):

1. Examine and evaluate the policies, procedures, and effectiveness of the child protective system and make recommendations for changes therein, focusing specifically on the respective roles in the child protective system of the Division of Family Services, the Division of Child Mental Health Services, the Department of Justice, the Family Court, the medical community, and law enforcement agencies;
2. Recommend changes in the policies and procedures for investigating and overseeing the welfare of abused, neglected, and dependent children;
3. Advocate for legislation and make legislative recommendations to the Governor and General Assembly;
4. Access, develop, and provide quality training to staff of the Division of Family Services, Deputy Attorneys General, Family Court, law enforcement officers, the medical community, educators, day care providers, and others on child protection issues; and
5. Review and make recommendations concerning the well-being of Delaware's abused, neglected, and dependent children including, but not limited to, issues relating to foster care, adoption, mental health services, victim services, education, rehabilitation, substance abuse, and independent living.

Additionally, CPAC has been designated by DSCYF, in its state plan under the federal Child Abuse Prevention and Treatment Act (CAPTA), to serve as Delaware's Citizen Review Panel. Amended in 1996, CAPTA requires that CPAC, in its role as citizen review panel, examine the policies, procedures and practices of state and local agencies and, where appropriate, specific cases to evaluate the extent to which state and local child protection system agencies are effectively discharging their child protection responsibilities.

The overall mission of the CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 *Del. C.* ch. 3. The CDNDSC reviews the deaths of all children in Delaware under the age of 18, and all "near deaths" of abused and/or neglected children, to identify system shortcomings and to provide meaningful recommendations in an effort to prevent similar tragedies in the future. CDNDSC provides its recommendations to the Governor, the Delaware General Assembly, and CPAC.

The CDNDSC's statute was amended in 2002, to add an expedited review process for child death due to abuse and neglect. Deaths involving abuse and/or neglect are reviewed within six months of a referral to the Commission, notwithstanding unresolved criminal charges. In 2004, the statute was amended a second time to require the Commission to investigate and review expeditiously all cases involving the death or near death of an abused and/or neglected child, and to report any system-wide recommendations to the Governor and General Assembly within 20 days of the expedited review. In addition, the chair of the Child Protection Accountability Commission (CPAC) was added as a member of CDNDSC. By legislation, the two Commissions are required to meet at least annually to discuss recommendations and system improvements. They currently meet jointly, twice each year.

In addition to the joint meetings, the Commissions each hold meetings at least quarterly to facilitate multidisciplinary dialogue among the various state agencies and other system partners. In these individual and joint meetings, policy review, problem-identification and decision-making occur. Numerous committees and joint committees have been formed to manage and address the emerging issues, trends and problems identified at the individual and joint meetings of the Commissions. The committees meet between meetings of the Commissions, and throughout the year as may be required. The Commissions and their committees then work together with their system partners to bring about necessary system reforms.

As described in the Executive Summary of this Report, the Joint Committee was formed by the Commissions on December 2, 2011. The Joint Committee was formed as a result of concerns raised regarding the investigation and prosecution of criminal child abuse in the Ammons Report, and in response to published reports of more difficult cases in which outcomes were viewed as less than optimal by members of the Commissions and others. These included matters arising in the context of the CDNDSC Child Abuse and Neglect ("CAN") panels, cases reported publicly in CAPTA Reports published by CPAC, and cases that have been the subject of media reports. Various Joint Committee members (including representatives of the Office of Child Advocate, the DSCYF, Law Enforcement and DOJ) have reported other concerns with criminal system outcomes, arising from cases that have not been the subject of public reports.

To that end, the Joint Committee has spent more than a year reviewing information elicited from child welfare system partners and others regarding successes and challenges faced in the

investigation and prosecution of criminal child abuse in Delaware. This is the Joint Committee's Final Report.

The Joint Committee's Review of Delaware's Criminal Justice System for Child Abuse Cases

One of the primary goals of the Joint Committee was to develop an understanding of the challenges faced by those involved in the investigation and prosecution of criminal child abuse, what the caseload volume is, what the conviction rates are, how cases are otherwise resolved, and how the cases are tracked. The Joint Committee determined that this basic information, coupled with recommendations from the Department of Justice and law enforcement would help to identify needed system reforms that would assist in obtaining optimal outcomes in this area. What follows are summaries of the Joint Committee's meetings, where these matters were discussed. The reader is referred to the minutes of the meetings (and the written materials presented) for more complete descriptions of the presentations and discussions. The Joint Committee's findings and recommendations follow the summary of its meetings, beginning on page 23 of this report.

A. The Meeting of February 15, 2012

The Joint Committee began its work on February 15, 2012. After reviewing its charge and appointing its co-chairs, the Joint Committee considered what data might be useful in its review. The Joint Committee was informed that CDNDSC has compiled data regarding cases falling within its jurisdiction sufficient to track (i) injuries sustained, (ii) initial criminal charges filed, and (iii) ultimate disposition of the criminal charge(s). The Joint Committee was advised, however, that there is no agency within law enforcement that tracks criminal child abuse cases and outcomes. Further, the Joint Committee was advised that the statistics that exist are likely incomplete, for a variety of reasons including the failure to track investigation outcomes where the original charge is reduced, or where the prosecution was re-opened under other charges. The Joint Committee was also informed that "coding" of child abuse cases is not uniform statewide. No cases are coded as "child abuse" or "near death" but rather even serious child abuse cases are often coded as "miscellaneous" because the officer may not have guidance regarding more appropriate codes.

The net result is a lack of statistical data, on a state wide basis, sufficient to allow for system wide oversight. In general, Delaware is unable to track in a comprehensive way, what crimes are charged, and what conviction rates or other outcomes are achieved in criminal child abuse cases. Further, while the Department of Justice ultimately did produce statistical data regarding outcomes (discussed *infra*), the Joint Committee was expressly advised that the data was neither complete nor entirely reliable.

It was ultimately agreed that an analysis would be undertaken of 95 criminal cases for which data was being collected by CDNDSC.³ Other topics listed for discussion during the initial meeting of the Joint Committee included the "two caregiver nobody talking" scenario, the Oklahoma "enabling child abuse" statute, and the development and implementation of "best practices" models for both the investigation and prosecution phases.

³ A 96th case was subsequently added.

B. The Meeting of April 27, 2012

At its meeting of April 27, 2012 the Joint Committee focused on challenges faced by the Department of Justice.

The Joint Committee received a detailed presentation from the State Prosecutor and the head of the Department of Justice Domestic Violence and Elder Abuse Unit. Among other things, it was explained that the current process oriented goals of the Department of Justice include:

- Training first responders to identify abuse and neglect;
- Utilizing a multidisciplinary approach to investigations;
- Developing inter and intra-agency protocols to enhance child abuse and child death investigations;
- Reviewing the findings of child death review teams and related committees; and
- Considering legislation to address potential systemic gaps.

The Joint Committee was further advised that the joint investigation priorities of Department of Justice and law enforcement include:

- Providing or securing medical assistance for the child;
- Securing the scene;
- Preserving the evidence;
- Identifying and interviewing the child, if appropriate;
- Identifying and interviewing witnesses and potential perpetrators early and often;
- Gathering and documentation of all information and observations within a report; and
- Establishing a timeline of events.

The manner in which the Department of Justice and investigative agencies are organized was discussed. In New Castle County, the Department of Justice Family Division consists of four units: (i) Child Support, (ii) Child Protection, (iii) Domestic Violence and Child Abuse, (iv) Juvenile Delinquency and Truancy. In New Castle County, the Domestic Violence Unit within the Family Division prosecutes all cases of child physical abuse. In that unit, there is a designated Child Abuse Deputy who primarily handles all serious child physical abuse cases.

However, if there is a homicide, the Child Abuse Deputy or the Unit Head is usually partnered with a Deputy from the Criminal Division. The Unit Head of Domestic Violence in New Castle County also handles serious child physical abuse cases.

Child physical abuse cases in Kent and Sussex Counties are handled according to complexity and severity. Misdemeanor child physical abuse cases are handled within the Family Division's Domestic Violence Unit, by Deputies who do not specialize solely in child abuse but handle child abuse cases as part of a broader, criminal caseload. Felony child physical abuse cases are handled in Kent and Sussex Counties in the Criminal Division by a Deputy (in each County) who has expressed an interest in handling these matters in addition to his or her regular Criminal Division caseload.

Statewide, child sexual abuse cases are handled in the Sex Crimes Unit within the Criminal Division. This Unit handles sex crimes against both adults and children.

The Department of Justice represented to the Joint Committee that Deputies statewide are on call twenty four hours a day, seven days a week for serious child physical abuse cases. The assigned Deputy and/or his or her supervisor will go to the scene to assist law enforcement in the investigation when necessary. Duties of a Deputy in handling these child physical abuse cases include but are not limited to appearance at scene, hospital and/or medical examiner's office, consultations with law enforcement, review of medical records and witness statements, acquisition and consultation with experts, and preparation for trial if an arrest is made. Only one staff person (who has other duties) is available to provide support to the Deputies for these duties.

The Department of Justice has no automated case management system. Recommendations for such a system have been made for a number of years. Funding was recently approved and the Department of Justice expects its system to be up and running in one year to eighteen months. As such, despite repeated requests by the Joint Committee, statistics showing Deputy caseloads and conviction rates for child abuse cases were largely unavailable, although at the Joint Committee's December 2012 meeting the Department of Justice was able to produce certain average numbers compiled via a manual count, for New Castle County (as reviewed, *infra*).

Also during the meeting of April 27, 2012, the State Prosecutor delivered a slide presentation that reviewed in detail the crimes most frequently charged in the prosecution of criminal child abuse. Among the more significant challenges faced by prosecutors is proof of "*mens rea*" or the "state of mind" of the alleged offender. Discussion was held with the State Prosecutor regarding potential amendments to the Delaware Criminal Code. The Oklahoma "enabling child abuse" statute was discussed.

It was noted that the Delaware, felony level "Endangering the Welfare of a Child" statute ("EWC") is currently as low as a class G felony. The crime is also classified as a "non-violent" felony, with more limited sentencing recommendations under current sentencing guidelines. A majority of the Joint Committee agreed that this could be changed to a higher class of felony, in order to provide more appropriate sentencing options for serious cases.

There was discussion with the Department of Justice representatives present regarding the more significant challenges faced in the prosecution of child abuse. Challenges identified included inconsistent statements, crime scene investigation/preservation issues, lack of uniformity in the investigation phase, lack of resources, lack of training, failures to report, nonverbal children, "two caregivers, nobody talking," juror attitudes (disbelief), and judicial interpretation of the law.

C. The Meeting of May 29, 2012.

At its meeting of May 29, 2012, the Joint Committee continued with its examination of prosecution outcomes. The Joint Committee also received information regarding police agency practices.

CDNDSC presented the results of its analysis of criminal dispositions of cases falling within its jurisdiction, consisting of cases in which children were killed or seriously injured (so-called "death and near death" cases). Data on criminal dispositions was made available by the DSP, NCCPD, and the WPD via their access to the DELJIS and LEISS information databases. The Joint Committee commended the efforts of law enforcement as this data was collected and provided to the Joint Committee in a very short timeframe.

The Department of Justice, once provided with the data, was then able to perform some analysis.

The data collected captured 95 cases of child abuse involving the death or near death of a child, reflecting a date of occurrence from 2001 to the present.⁴ The data showed:

- 70% of the cases were investigated by either DSP, NCCPD, or WPD
- No charges were filed in approximately 10% of the cases.
- In the cases in which charges were filed, 10% were "Nolle Prossed"
- There was a conviction on the original charge in 15% of the cases where charges were filed (meaning that an additional charge was not added OR the original charge was not lessened)
- "Assault" was charged in fewer than 50% of the cases in which charges were filed.
- EWC was charged in 44% of cases in which charges were filed.

⁴ Percentages enumerated herein are based on a manual count of data from the 95 CDNDSC cases tracked, which was collected by law enforcement agencies from DELJIS and LEISS. The Department of Justice has argued that conclusions based on an analysis of only the 95 "death and near death" cases would not be statistically sound. The argument is noted here by the Joint Committee, but given the inability of the Department of Justice to produce data regarding its caseloads and conviction rates (due to the lack of an automated case management system), the Joint Committee sought out the best information available. In that regard, the CDNDSC is charged by statute with reviewing all cases involving the death or near death of a child in Delaware.

- "Reckless Endangering" ("RE") was charged in approximately 8% of the cases where charges were filed.

The Department of Justice was asked at the meeting of May 29, 2012 to conduct further analysis of cases in which EWC and/or RE were charged to determine what percentage of these cases involved the felony level version of those crimes, and what percentage involved the misdemeanor level charge. The Joint Committee also asked for data showing the percentage of felony level charges of "EWC" that were dropped to misdemeanor levels, in exchange for a plea.

In a subsequent meeting, the Department of Justice reported that of the EWC cases analyzed above, 38% were felony level and 62% were misdemeanor level. Approximately 93% of these convictions resulted from a plea agreement. DOJ reported that these results are on par with national averages. Felony EWC in Delaware has a sentencing range of 0-2 years imprisonment (for the class G level felony). Misdemeanor EWC, a Class A misdemeanor, generally does not result in a sentence of incarceration.

Concerns were expressed by members of the Joint Committee regarding the finding that only 15% of the cases studied resulted in conviction on the original charge. The apparently low rate suggests inefficiency in the system by which charges are initially determined, or that meritorious charges are being compromised in the litigation phase. Such may be attributable to numerous factors including, for example, a lack of resources (prosecutors, staff, investigators), inadequacies in the record, failure of witnesses to cooperate, or (as suggested in the Ammons Report) a prosecution environment that is risk averse. It was also noted (in a subsequent Joint Committee meeting) that original charges are sometimes dropped in connection with a plea to a more serious charge. The Joint Committee is currently without the data or resources necessary to further evaluate these factors, due in part to a system wide inability to produce adequate data on caseloads and outcomes.

It is believed, however, that the new case tracking system that is being established under House Substitute 1 for House Bill 371 (discussed below) should help in the collection of data sufficient to allow more informed monitoring of outcomes. Similarly, acquisition by the Department of Justice of case tracking technology should be of substantial assistance in the identification and elimination of inefficiencies that may currently exist in the charging and litigation phases.

During the preparation of this Report, Joint Committee members expressed concern regarding the fact that assault charges were brought in fewer than 50 percent of these most serious child abuse cases. Specifically, the 96 cases surveyed all involved serious physical injury to a child ("near death"), or death. Assault in the second degree (which may be charged in appropriate cases involving "serious physical injury") is a class D "violent" felony, for which a sentence of up to 8 years at Level V incarceration may be imposed. Assault in the first degree (which may be charged where "reckless" conduct creates a "substantial risk of death", and causes "serious physical injury") is a class B "violent" felony, carrying a sentence of not less than 2 years, and up to 25 years, at Level V incarceration. By contrast, felony level EWC is not classified (for sentencing purposes) as a "violent felony" under 11 *Del. C.* § 4201, and is designated as either a class E ("up to 5 years") or class G ("up to 2 years") felony. In addition to the more limited sentencing options, the lack of "violent felony" status makes probation much more likely for

felony level EWC, under current sentencing guidelines, than would be the case for felony level assault.

Reasons offered for charging less than felony level assault more than half the time included inadequate development of the record in the investigation phase, problems of proof in the prosecution phase, and perceived juror attitudes.

Police Agencies also made presentations at the meeting of May 29, 2012. DSP Troop 4 handles cases of serious child abuse and neglect through its Major Crimes Unit. The unit is comprised of seven experienced detectives who have worked their way through the ranks. DSP will aid municipalities in their investigations only if assistance is requested. Law enforcement representatives present at the meeting advised the Joint Committee that there can be resistance at the local level when DSP assistance is offered. Currently there is no uniform manner in which child abuse cases are coded and tracked; however, DSP does manually track open cases.

NCCPD has a Family Services Unit that handles all cases of physical and sexual child abuse for those under 16 years of age as well as all child death investigations. Patrol units handle the more common child abuse cases. The Family Services Unit handles any suspicious injuries to a child such as burns, overdoses or unexplained broken bones. If the suspect is 16 years of age or older, and there is no domestic relationship, then NCCPD Major Crimes Unit will handle the case. The NCCPD Family Services Unit also handles all domestic related crimes, elder abuse and cases where the victim has a physical or mental disability. The Family Services Unit consists of 7 detectives who carry an average caseload of 6 cases per month per detective. One out of ten cases is considered serious physical abuse. NCCPD manually tracks each of its open cases.

At WPD, cases of child abuse are assigned to the Special Investigations Unit. This unit is responsible for sexual assaults, child abuse and domestic violence cases. Cases of child death are also assigned to this unit along with Major Crimes. There are five detectives within this unit, three sex crime investigators and two domestic violence investigators. Caseloads of detectives in the Special Investigations Unit who specifically deal with sex crimes average approximately 4 to 7 cases per detective per month. Caseloads, of detectives responsible for child abuse and domestic violence cases, average between 63 and 88 cases per detective per month. WPD has been routinely getting 10-12 new child abuse cases per week. WPD has no formal case tracking system for child abuse cases.

Smaller jurisdictions often attempt to assign child abuse cases to a specific detective. However, the Joint Committee was advised that (especially in Sussex County) local towns are losing experienced detectives due to the economic downturn. Therefore, cases of child abuse and/or child death are being assigned to officers who lack education, training and experience which in turn directly affects the ability to effectively prosecute the case. The lack of effective evidence preservation within the first 48 hours also continues to be a struggle, particularly in small police jurisdictions.

1. Addendum to the Summary of the May 29, 2012 Meeting

In preparing this report, CDNDSC staff was asked to review again the data collected regarding the 95 cases surveyed. One case was added, raising the total reviewed to 96. In addition,

disposition data was reviewed to more closely track the distinction between violent felony dispositions (of all types, including murder, manslaughter, and other crimes) and EWC. The data demonstrates that in the 63 cases in which convictions were obtained, the majority (approximately 71 percent of the 63 convictions) were resolved with violent felony convictions. This represents an overall "violent felony conviction" rate, however, of approximately 50 percent of all cases in which charges were filed. Specifically,

- Approximately 10% of the 96 cases resulted in no criminal charges filed;
- Approximately 8% of the 86 cases in which criminal charges were filed were "Nolle Prossed" in their entirety⁵;
- 18% of the 86 cases are still pending criminal disposition;
- 15% of the 86 cases resulted in a conviction on the original charge;

Of the 63 cases in which criminal convictions were obtained:

- 27% were resolved via EWC;
- 1% were resolved via Reckless Endangering;
- 49% were resolved with a Felony Assault;
- 1% were resolved with a Misdemeanor Assault or Offensive Touching;
- 22% were resolved by means of other felony level charging (i.e. Murder by Abuse/Neglect, Murder 1st, Murder 2nd, Attempted Murder, Manslaughter, Criminal Negligence, Conspiracy 2nd).⁶

D. The Meeting of August 29, 2012.

The Joint Committee considered at its meeting of August 29, 2012 recent legislative efforts to address challenges to the effective prosecution of criminal child abuse. The Joint Committee also received further information regarding prosecution outcomes.

The new criminal "Child Abuse Statute" (Senate Bill 234) was reviewed. The Joint Committee was informed, however, that the bill may not effectively address situations where child abuse occurs on the watch of two (or more) caregivers, where neither (or none) will cooperate in the investigation. The Joint Committee reviewed and discussed legislation enacted in 2000 in Oklahoma to establish the crime of "enabling child abuse." The Department of Justice agreed to research case law and to make recommendations in this regard.

The Joint Committee also discussed House Substitute 1 for House Bill 371, which establishes a case tracking structure within DSCYF. The system will oversee coordination and collaboration in every case involving sexual abuse, or serious physical injury to (or the death of) a child. The system will track both intra-familial and extra-familial child abuse cases, and will include both criminal and civil cases. The system will be overseen by an Investigation Coordinator. House

⁵ To "Nolle Prossed" the case typically means that criminal prosecution is dropped.

⁶ At the request of the Department of Justice, the Joint Committee incorporates by reference footnote 4 at page 13, above, regarding the statistical limitations of this analysis.

Substitute 1 for House Bill 371 appears to directly address many of the issues raised in the Ammons Report, and to lay the groundwork for system wide coordination in these very serious child abuse cases.

The Joint Committee received a further presentation of information from the Department of Justice. It was reported that in the cases analyzed where EWC or RE were charged, 45% resulted in a conviction of EWC or RE. In 32% of the cases where EWC or RE were charged, the charge was dropped in connection with a plea to a more serious charge. Four percent of the EWC cases analyzed were "Nolle Prose'd", however in some of these the defendant entered a plea to other, unrelated charges. Two percent were dismissed and four percent had an unknown criminal disposition. It was noted that there are numerous factors that may explain apparently adverse outcomes, including a lack of evidence, defect in the evidence, global pleas, and/or multiple charges in the same case where conviction was obtained on the more serious charge.

During discussion, it became apparent that the system may not properly track cases in which criminal charges arising from child abuse are dropped. There was discussion that the new case tracking system and Investigation Coordinator established by House Substitute 1 for House Bill 371 may fill this need.

Areas for improvement (leading to better criminal system outcomes) identified by the Department of Justice included (i) quality of the evidence, (ii) speed of investigation processing/forensic evidence, (iii) lack of cooperation by family (iv) availability of expert witnesses (v) need for additional resources (including additional child abuse prosecutors and child abuse experts), (vi) training for first responders, law enforcement and prosecutors, and (vii) improvement of statutes.

It was reiterated that in New Castle County there is only one child abuse prosecutor. In Kent and Sussex there is no designated child abuse prosecutor, although serious cases are diverted to a Criminal Division prosecutor in each county who has asked to handle such cases. All misdemeanor child abuse cases are handled by Deputies in the Domestic Violence and Child Abuse Unit, although these Deputies handle other criminal cases in addition to child abuse cases. Felony level child abuse cases in Kent and Sussex are handled by the Criminal Division and assigned to a senior attorney who has expressed an interest in handling these cases.

There was discussion of training for investigators who handle child abuse death and near death cases. The Joint Committee discussed that current training available to Delaware investigators may be less than adequate.

During the meeting of August 29, 2012 the Joint Committee asked the Department of Justice to provide caseload statistics for its New Castle County child abuse prosecutor, as well as for those who handle criminal child abuse cases in Kent and Sussex Counties. The Joint Committee also requested information regarding caseload statistics nationally.

During discussion, it was noted by law enforcement that there is no designated Deputy downstate to consult or collaborate with on evidence preservation in child abuse cases although there is a Sussex Deputy that has become the informal "go to" person. It was generally agreed that the first 48 hours of a case are the most critical and that proper protocol must be observed during that

time. It was noted by DSP, however, that it has a good working relationship with the Department of Justice downstate, that Kent DOJ will come to the scene and that first responders are being trained to preserve and secure the crime scene.

There was a consensus among Joint Committee members, however, that there is a lack of uniformity state-wide regarding the protocol to be followed in the initial stages of investigation, in such matters as scene and evidence preservation, witness and victim interviews, the involvement of experts and other specialists, and related matters. Concerns were expressed with "constant turnover" among investigatory personnel, and that it was hard to get experienced investigators to specialize in criminal child abuse. Several members of the Joint Committee supported the idea of a statewide, independent investigatory body, with special expertise in the investigation of child abuse. There was also a consensus among the Joint Committee members that "best practice" protocols for the investigation of criminal child abuse need to be developed and implemented uniformly, statewide.

The Joint Committee discussed inviting a representative of the local police jurisdictions to join the Joint Committee, in order to share information and concerns from the perspective of smaller police jurisdictions.

E. The Meeting of October 3, 2012.

Chief McDerby of the New Castle City Police joined the Joint Committee at the meeting of October 3, 2012, in response to requests for greater local police force representation on the Joint Committee. The Joint Committee also reviewed information gathered regarding "best practice" protocols for the investigation of child abuse.

The Joint Committee discussed information gathered at the International Conference on Abusive Head Trauma held on September 30 through October 2, 2012 in Cambridge, Massachusetts. Representatives of the Department of Justice, the Office of the Child Advocate, CDNDSC, DFS, and Delaware police agencies attended. The conference provided ideas for improvement of Delaware's investigative and prosecutorial phases, including the development of "best practices" models addressing such subjects as the use of dolls and video, prompt and thorough crime scene investigation, appropriate interviewing techniques, the taking of confessions and the collection of corroborative evidence, the taking of witness statements, and the establishment of timelines. The recommendation was made that Delaware send a multi-disciplinary team to the International Conference on Abusive Head Trauma, biennially.

The Joint Committee was presented with a form that is used by the Queens, New York Special Victims Unit for the investigation of child abuse. The form is entitled "*Infant Health Questionnaire*" and is based on a model developed by the CDC. The form provides a comprehensive checklist of specific subjects to cover in the investigation of child deaths. There was substantial discussion regarding whether such a form would be appropriate for Delaware investigators (with modifications for use in Delaware). Concern was expressed that the use of a form may limit flexibility in the investigation phase, but in general the Joint Committee saw a benefit to ensuring adherence to a uniform baseline, statewide. A general consensus was reached that such a form would be useful, if it incorporated best practice concepts and was required by the Department of Justice. Such a form may also be helpful in dealing with training and turnover

issues, since new investigators would have guidance from the outset. It was suggested that a revised version of the form be prepared (revised to suit Delaware's needs) and that it be piloted within a Delaware law enforcement agency.

The Joint Committee was presented with information regarding a "little black book" of best practice guidelines used by child abuse investigators in the State of Washington. The booklet collects in one ready reference best practice checklists for first responders and investigators in cases involving child deaths and serious physical injuries. There was discussion among Joint Committee members that well meaning but less than properly trained first responders can compromise criminal investigations in child abuse cases by not following proper protocol. The Washington State booklet includes checklists for preservation, observation, documentation, and general protocol. Also included is a checklist for Sudden Unexplained Infant Death Investigations (SUIDI). Members of the Joint Committee were not familiar with a tool of this sort being in use in Delaware. There was a general consensus expressed that a similar "little black book" tailored for use in Delaware could promote uniformity in the use of best practices in child abuse investigations, statewide.

The Joint Committee also reviewed a manual approved by the National Steering Committee on Sudden, Unexplained Infant Death, the development of which was funded by the Centers for Disease Control and Prevention in 2007. The manual provides detailed guidelines for child death scene investigators, and includes checklists of required tools and equipment, investigation scene forms and the sample questionnaire on which the Queens NY questionnaire was apparently based. The Joint Committee was not aware of similar tools in use in Delaware. Again, a consensus was expressed that uniform implementation of such models could be of substantial assistance in Delaware.

The Joint Committee further reviewed and discussed materials distributed by Patti Toth, J.D. of the Washington State Criminal Justice Training Commission, during her presentation at Delaware's Protecting Children conference in 2011. Entitled "*WA State's First Responder Guidelines: The CPOD - Responding to Serious Injuries and Death*" the materials set out protocols for first responders in cases of unexplained child death and near deaths, generally involving the "COPD" system, which stands for "Collaboration, Preservation, Observation and Documentation." These protocols have been used successfully in a wide variety of serious criminal child abuse investigations, including cases involving sudden unexpected infant death ("SUID"), sudden infant death syndrome ("SIDS"), abusive head trauma ("shaken baby syndrome"), death due to neglect, and other categories of abuse.

During the meeting of October 3, 2012, the Joint Committee also discussed the general scope and content of a committee report. It was discussed that input should be sought from the local police chiefs regarding the needs of local jurisdictions in the investigation of child abuse. Additional information was solicited from the Department of Justice and the major police jurisdictions regarding their needs, together with current child abuse statistics. The Department of Justice was asked to provide specific information regarding criminal child abuse caseloads, by County and per deputy. Information was requested regarding national standards (if any) for caseload allocation.

F. The Meeting of December 5, 2012.

During its meeting of December 5, 2012, the Joint Committee reviewed a variety of issues relating to the information received in prior meetings, and discussed the scope and substance of a committee report.

It was again discussed that the new Child Abuse Statute (Senate Bill 234) does not fully address the "enabling child abuse" scenario, involving two primary care givers where neither cooperates with law enforcement. Specifically, while the new statute permits prosecution of those who "recklessly or intentionally" cause "physical injury to a child through an act of abuse and/or neglect . . ." the "physical injury" requirement presents a unique challenge where the child is pre-verbal. Expressions of pain in a pre-verbal child may be confused with something else (hunger), or pain may not be expressed at all (as in some abusive head trauma cases). In such cases, prosecution for enabling ("recklessly or intentionally" causing injury by failing to act) may not be possible, because evidence sufficient to establish "*mens rea*" ("reckless or intentional" state of mind) may be lacking.

Possible amendments to the Child Abuse Statute were discussed that may give prosecutors more latitude when considering charges against those who enable child abuse. The Joint Committee considered whether the statute could be changed to include those who "by act or omission cause or contribute" to criminal child abuse, with "criminal negligence." (11 *Del. C.* § 231(a)). It was also suggested that the mandatory reporting statute be examined to determine whether a felony level failure to report might be appropriate, where the failure to report amounts to criminal neglect and the underlying crime is a felony. The current "failure to report" statute imposes only civil penalties.

It was further suggested that the charge of providing a false statement to a law enforcement officer (11 *Del. C.* § 1245A) could be used more often in these types of cases, given recent amendments to that statute.

During subsequent discussions with the Department of Justice it was suggested that current EWC statute (11 *Del. C.* § 1102) be reviewed to determine whether a "criminal negligence" standard should be added. The initial response of the Department of Justice to this proposal was favorable.

Following discussion with Department of Justice representatives it was concluded that resource limitations preclude the Department of Justice from providing reliable statistics regarding the caseloads of prosecutors. Anecdotal information pertaining to Deputy caseloads leads the Joint Committee to conclude that Deputies handling child abuse matters are very stretched, statewide.

For example, the one Deputy handling criminal child abuse "intakes" in New Castle County handled more than 200 child abuse case intakes in 2011, and more than 450 in 2012. These "intakes" involve intensive review of the evidence collected in order to make charging decisions, including scene investigation, interviews with law enforcement, review of medical records and follow up with experts (among other tasks). Notably, while the number of Department of Justice intakes in New Castle County more than doubled over the period 2011-2012 (and DFS hotline

calls have increased by nearly 50 percent), the Department of Justice reported at the December 5, 2012 meeting that convictions for endangering the welfare of a child ("EWC")--the most frequently charged "child abuse" crime--were reportedly down over the period by an estimated 10 percent (based on the manual count undertaken at the Joint Committee's request). This disparity raised concerns among members of the Joint Committee that the ability of the Department of Justice to properly screen, charge and prepare its cases is being adversely impacted by an apparent spike in criminal child abuse referrals.

It has since been reported to the Joint Committee that child abuse reports received by the Division of Family Services Hotline have increased from 9,527 reports in 2009 to 16,668 reports in 2012. More than 17,000 child abuse reports are anticipated in 2013. The substantial increase in reports is seen as resulting from the increased focus on child abuse reporting obligations, and from the restructuring of the DFS hotline as the primary portal of entry for both intra and extra familial child abuse reports.

It was reported to the Joint Committee at the meeting of December 5 that there is no formal system within the Department of Justice that tracks caseloads. Concern was raised that without the ability to track caseloads (per deputy, staff member or otherwise) it is difficult to determine whether resources are properly allocated, and/or whether additional resources or reallocation of cases is required. It was suggested that an analysis of Department of Justice caseloads be conducted in order to determine how cases are currently managed, with particular attention paid to how cases are allocated to staff in each county. Joint Committee members expressed concern that there appears to be limited structure in place within the Department of Justice to facilitate Department-wide centralization and coordination of resources and expertise in the prosecution of criminal child abuse.

It was emphasized, however, that the Department of Justice as a whole is suffering due to a lack of resources, and that similar challenges are being confronted in other areas of the Department.

The Joint Committee was in general agreement that a specialized unit should be established and housed in the Department of Justice, focused on the prosecution of serious cases of child abuse. The unit should have statewide jurisdiction, and should have access to and be supported by a specialized team of investigators. This team of investigators should be properly trained in the special skills and techniques required for the investigation of serious criminal child abuse cases. The Joint Committee was in general agreement that the combined team should be on call to respond to cases arising in any jurisdiction, statewide provided that local police would be permitted to work jointly with the unit, on cases arising in their jurisdictions. Involvement of the combined unit should be required, for cases falling within its subject matter jurisdiction.

The Joint Committee also agreed that a workgroup should be established to review best practice protocols and training for the investigation and prosecution of criminal child abuse and neglect. It was expressed that the training should be mandatory and recurring in nature. The sense was expressed that the workgroup should review current training provided to law enforcement (in the Delaware State Police Academy and elsewhere) and consider expanding the examination/certification of officers to include more detailed and current curricula on child abuse and neglect.

G. The Meeting of March 1, 2013.

At its meeting of March 1, 2013, the Joint Committee received comments on its draft Joint Committee report, primarily from the Department of Justice. Additional information was subsequently provided by the Department of Justice, and a follow up meeting was held with Department of Justice representatives on April 15, 2013. At this latter meeting, the Department of Justice provided additional, detailed comment on the Joint Committee's draft report.

The draft Joint Committee Report was subsequently revised and circulated to Joint Committee members for review.

Findings and Recommendations

The Joint Committee has identified six, broad "areas for improvement" that should be addressed in order to meet identified challenges in the investigation and prosecution of criminal child abuse in Delaware. Specifically, the Joint Committee finds that:

- a. The investigation and prosecution of crimes against children is an area of specialty that requires a high level of expertise in the law, investigative techniques, and forensic science that is not uniformly accessible throughout the State of Delaware.
- b. These specialists must work in a coordinated fashion, as a team, in order to achieve proper outcomes, but often do not or cannot.
- c. Resources are not now effectively organized and coordinated on a State wide basis in Delaware, with smaller and more resource constrained jurisdictions generally left without ready access to the necessary, special expertise.
- d. There is not a uniform understanding or use of "best practices" in the investigation and prosecution of child abuse in Delaware. This may reflect a lack of proper, mandatory and recurrent training.
- e. Delaware does not have a criminal statute that allows for the effective prosecution of those who, with criminal negligence, unlawfully enable child abuse.
- f. The Department of Justice faces organizational challenges in the prosecution of child abuse that likely derive from internal resource constraints, including unmet prior requests for an internal case tracking system that would allow for the generation of data regarding (i) case status, (ii) caseloads of prosecutors and staff, and (iii) case outcomes.

In an effort to address these challenges, the Joint Committee recommends the following system reforms.

- 1. Establish a special victims unit with statewide jurisdiction within the Department of Justice specializing in the investigation and prosecution of felony level, criminal child abuse cases including those involving the death, near death or sexual abuse of a child. Implementation of this recommendation need not involve the reassignment of Deputies and cases from other units (such as, for example, the Sex Crimes Unit), but would encourage and enhance ongoing efforts to recruit and develop felony child abuse specialists, who may bring special expertise developed as members of other units and who would concurrently belong to this unit. These may (and should) include Criminal Division prosecutors experienced in prosecuting homicides and the most serious assaults, as well as experienced Family Division prosecutors. The special victims unit (and the culture) should encourage the development of felony child abuse specialists through cross collaboration, regardless of divisional structure.**

The prosecution of serious child abuse is a highly specialized field, requiring properly trained and experienced investigators, prosecutors and staff. Currently, there is no coordinated, statewide structure sufficient to ensure consistent delivery of the necessary expertise in all areas of the State. Depending on the crime and the jurisdiction, cases are assigned to agencies with varying levels of experience (from very little to substantial), and are handled by personnel who may not have the necessary training or experience to ensure best outcomes. Moreover, even in cases where experienced prosecutors and other professionals are assigned, there is evidence to suggest that high (and growing) caseloads, as combined with limited and static levels of support, may be combining to impede the prompt, thorough and effective investigation and prosecution of serious criminal child abuse cases.

The establishment of a special victims unit within the Department of Justice, focused on more serious child abuse cases, would promote more effective coordination of existing resources. The unit should have statewide jurisdiction, to ensure uniform access to necessary expertise throughout the State. Coordination of existing resources under a single, special unit would promote the sharing of experience, the development and delivery of essential and recurrent training, and the development of specialists. It is anticipated that collaboration and information sharing would lead to the more efficient use and deployment of Delaware's child abuse resources. A vertical prosecution model, in which one prosecutor serves as the "lead" in a case from inception to conclusion, working in collaboration with investigators, experts and other system partners, could be more readily implemented. Staffing decisions could be made within the context of the unit, focused on what is needed to effectively prosecute child abuse. Caseloads and outcomes could be more effectively monitored, to ensure that proper results are achieved and that workloads are evenly (and properly) distributed. Centralization of existing resources would also facilitate timely identification of resource needs.

During the preparation of this Report, the Department of Justice expressed concern regarding the impact of this recommendation on its Sex Crimes Unit. That unit currently handles all sex crimes, including crimes committed against both adult and child victims. But implementation of this recommendation need not involve reassignment of Deputies or cases currently assigned to that unit (or any other). Rather, the recommendation is intended to encourage, facilitate and enhance ongoing efforts to recruit and develop felony child abuse specialists, who may bring special expertise developed as members of other units and who would concurrently belong to the felony child abuse unit. These may (and should) include Criminal Division prosecutors experienced in prosecuting homicides and the most serious assaults, as well as experienced Family Division prosecutors. The special victims unit (and the culture) should encourage the development of felony child abuse specialists (and cross collaboration) regardless of the current divisional structure.

- 2. A team of criminal investigators with expertise in the investigation of child abuse should be established within the Department of Justice. The investigations team should work directly with the special victims unit described in Recommendation 1 in the investigation and prosecution of felony level, criminal child abuse. Referral to the investigations team should be mandatory in all such cases, statewide. The investigations team should have authority to seek the assistance of police agencies with appropriate expertise, when necessary to support resource constrained, local**

police jurisdictions in the investigation phase, although local police should be permitted to partner in the investigation.

Smaller police jurisdictions struggle to develop and maintain expertise in a wide range of criminal specialties. Resource constraints have made it difficult for some jurisdictions to maintain staffing with expertise in child abuse matters. Child abuse investigations require prompt response by experienced and properly trained specialists, in order to ensure the preservation of evidence that will support a prosecution. Notably (and commendably) State, County and Municipal level police agencies with substantial expertise in child abuse investigations have offered support and assistance to local jurisdictions, particularly in the investigation of more serious and complex cases. This recommendation would permit the more effective coordination of and access to such resources. The Joint Committee has been advised that the Police Chiefs' Council agrees with this recommendation, with the stipulation that the local jurisdictions would have the right to work alongside the specialized unit to gain knowledge and experience.

- 3. Develop and pass a criminal statute that will allow for the effective prosecution of caregivers who, with criminal negligence, enable felony level, criminal child abuse involving the death, serious physical injury, or sexual abuse. In addition, the felony level "Endangering the Welfare of a Child" statute is currently a non-violent, lower classification felony. Given the manner in which it is used, consideration should be given to changing the statute to a higher level felony, in order to provide more appropriate sentencing options.**

The Joint Committee has been made aware of very tragic cases in which children were horribly abused, but effective prosecutions were not possible due to the structure of our criminal code. Specifically, law enforcement and prosecutors are sometimes confronted with cases in which there are multiple caregivers who may commit or enable the commission of child abuse, but in the absence of direct evidence (an eyewitness report or an admission) cannot mount successful prosecutions--particularly where the child is pre-verbal. Further, while the new Child Abuse Statute permits prosecution of those who "recklessly or intentionally" cause "physical injury to a child through an act of abuse and/or neglect" the "physical injury" requirement presents a unique challenge where the child is pre-verbal. For example, expressions of pain in a pre-verbal child may be confused with something else (hunger), or pain may not be expressed at all (as in some abusive head trauma cases). In such cases, prosecution for enabling ("recklessly" causing injury by failing to act) may not be possible under the new statute.

Additional legislation is required. The Joint Committee recommends that consideration be given to expanding the new child abuse statute to address situations where a defendant "intentionally, recklessly, or *with criminal negligence, by act or omission, causes or contributes to* physical injury to a child" In addition, or in the alternative, consideration should be given to including the "criminal negligence" standard as a "state of mind" element in cases of felony level Endangering the Welfare of a Child, under 11 *Del. C.* § 1102. Other statutory options include expansion of the "duty to report" to include felony level criminal penalties for cases in which (i) there is serious physical injury (as defined in 11 *Del. C.* § 1100 (8)) or death, and (ii) there has been a failure to report as required by 16 *Del. C.* § 903 under circumstances amounting to

criminal negligence. It also has been suggested that more frequent use be made of the charge of Providing a False Statement to a Law Enforcement Officer (11 *Del. C.* § 1245A).

Finally, given the frequency with which it is used in serious cases, and the fairly limited sentencing options available for lower classification, non-violent felonies, consideration should be given to changing the current "Endangering the Welfare of a Child" statute to a higher level felony. This may serve to expand sentencing options available to prosecutors and judges.

4. SENTAC should review the adequacy of Delaware's sentencing guidelines as they pertain to criminal child abuse cases involving serious injury, including (but not limited to) guidelines applicable to the crime of Endangering the Welfare of a Child, where violence or physical injury are involved.

Joint Committee members, CAN panel members and others have expressed the view that sentences for criminal child abuse involving serious physical injury may not be consistent, in some cases, with the severity of the crime and the impact on the victim. Members of the Joint Committee questioned the adequacy of Delaware's sentencing guidelines as they pertain to criminal child abuse cases involving serious physical injury to a child. SENTAC should review the guidelines to ensure that where a child is seriously injured the range of recommended penalties fairly accounts for the severity of these serious assaults. Further, given the manner in which the charge is currently used, the review should include (but not be limited to) consideration of the recommended sentencing range for the crime of Endangering the Welfare of A Child where the crime involves serious physical injury.

5. Develop and publish "best practice" guidelines for the investigation of child sexual abuse, death and near death cases.

Standardized "best practice" guidelines should be developed, to provide guidance to those who investigate, prosecute or otherwise respond to reports of child abuse. These should include, but not be limited to, "Delaware" specific versions of:

- a. The Center for Disease Control *Infant Health Questionnaire*, for use in responding to crime scenes;
- b. The "little black book" established for use in the State of Washington;
- c. Protocols for scene re-enactments, including (as appropriate) the use of dolls and other forensic tools;
- d. Protocols for scene preservation and evidence collection; and
- e. Practices and procedures for taking witness and alleged perpetrator statements.

The Joint Committee recommends that these materials be developed and disseminated via a new workgroup under the CPAC Training Committee, to be chaired by law enforcement with significant participation from the Department of Justice and law enforcement agencies.

- 6. Provide regular training opportunities and demonstrative tools for professionals involved in the investigation or prosecution of serious child abuse cases. It is further recommended that Delaware send a multi-disciplinary team to the International Conference on Abusive Head Trauma, annually.**

Building upon recommendation number 5, the Joint Committee believes that ongoing, comprehensive training must be provided to those who investigate and prosecute child abuse. Current training programs should be reviewed to determine conformity with current best practices, and built upon. Regular training must include developments in the law, as well as the latest advances in investigative and forensic techniques. Statutory and certification requirements for training in both law enforcement and the Department of Justice should be reviewed, and compliance ensured. Consideration should be given to expanding the examination and certification requirements for detectives to include curriculum on child abuse and neglect. CPAC and CDNDSC should continue to offer basic and advanced training courses on investigation and prosecution of child abuse. CPAC and CDNDSC should continue to include appropriate training programs within the Protecting Delaware's Children Conference to meet the needs of law enforcement and prosecutors.

The Joint Committee recommends that the CPAC Training Committee be given responsibility to ensure current training curricula are examined, and that appropriate ongoing training is provided. There should be significant representation from law enforcement and the Department of Justice in this effort. Further, given the focus on current and updated "best practices" in the investigation and prosecution of serious, criminal child abuse, it is recommended that Delaware send a multidisciplinary team to the International Conference on Abusive Head Trauma, annually.

- 7. Deputy Attorney General specializing in the prosecution of felony level child abuse should be assigned to the appropriate CDNDSC review panel(s), in order to facilitate the review and analysis of issues relating to criminal investigation and prosecution in such cases. This position would be in addition to the current Family Division Director, who serves at the Commission level.**

The CDNDSC and its review panels repeatedly encounter cases in which prosecution decisions have been made that raise questions for Commissioners and panel members. Reports arising from such reviews were a fundamental reason the Joint Committee was established. The criminal system is a significant player in the overall child protection system in Delaware. Informed examination of investigation and prosecution outcomes and practices is within the scope of the jurisdiction of CDNDSC and its review panels. Criminal law and prosecution expertise on these matters at the panel review stage (in addition to the current expertise available on the Commission) would materially assist the CDNDSC in the identification of systems issues and needed reforms.

- 8. Support the immediate acquisition and implementation of a comprehensive case management system within the Department of Justice. The system must be capable of producing current information regarding the status of any individual case. The system must also be capable of producing comprehensive (system wide) reports on case outcomes. The system must allow the Department of Justice to track the**

caseloads of its Deputies and staff, so that informed resource allocation decisions can be made, and must ensure cross-referencing of all cases within the DOJ which share similar interested parties.

The Joint Committee has concluded that the Department of Justice faces organizational challenges in the prosecution of child abuse that likely derive from resource constraints. For example, the Department of Justice (despite prior, unmet funding requests) still has no internal case tracking system that would allow for the maintenance (and production) of reliable data regarding the caseloads of its prosecutors and support staff. The Department of Justice was thus unable to provide the Joint Committee with information regarding the size of the criminal child abuse caseloads (the number of cases) being managed by any or all of its lawyers (in addition to other cases they may be handling), or with comprehensive statistical information regarding case outcomes. In the absence of reliable statistical evidence on caseloads and outcomes it is difficult to ensure proper allocation of staff (or to make the case for added resources), but anecdotal evidence suggests the need is great.

During the preparation of this report, the Joint Committee was advised that the Department of Justice anticipates acquisition and implementation of such a case management system within the next 18 months. The Joint Committee recommends that the Department of Justice be supported in these efforts, as effective management and resource allocation are likely impeded in the absence of accurate data regarding caseloads and outcomes.

9. Evidence submitted to the Joint Committee indicates that the Department of Justice is facing significant resource constraints that must be addressed. Among other things, the evidence suggests that the recent emphasis on mandatory reporting has contributed to an almost two fold increase in the number of child abuse complaints received by the State, apparently resulting in a substantial increase in the volume of criminal referrals. There is evidence that prosecutors are carrying caseloads substantially in excess of the national average. An analysis of Department of Justice criminal child abuse caseloads and outcomes must be conducted, with particular attention paid to the caseload volume currently being managed by each, individual prosecutor. CPAC should support appropriate Department of Justice budgetary requests for additional resources, to include the recruitment, addition and development of felony level prosecutors with expertise in the prosecution of felony level child abuse cases.

Reports of child abuse in Delaware have recently increased, given the current public focus on the duty to report. Since 2009, calls to the DFS child abuse hotline have nearly doubled, from approximately 9500 to nearly 17,000. It is estimated, however, that only 1 in 10 incidents of child abuse are ever reported.

It appears likely that Delaware's prosecutors are carrying caseloads significantly in excess of national averages. Best outcomes require proper case investigation and preparation, opportunities for which are limited when prosecutors are overburdened. It is anticipated that both the Department's proposed case management system, and the case tracking structure being implemented pursuant to last year's House Substitute 1 for House Bill 371, will enable the prompt collection and analysis of statistical data regarding criminal child abuse case outcomes,

and caseloads. The collection and analysis of these data, with an eye toward efficient resource allocation and needs, must be a priority.