



## MEMORANDUM

**TO:** The Pennsylvania House of Representatives

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** November 8, 2021

**RE: OPPOSITION TO HB 1737 P.N. 1968 (FLOOD)**

**Bill summary:** [HB 1737](#) (PN 1968) would amend [23 Pa.C.S. § 6368](#) to allow a county agency, during the course of an investigation of child abuse or neglect, to seek a court order to compel drug or alcohol testing of an individual when there is evidence that substance use may be a contributing cause of child abuse or neglect.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1737.**

### **HB 1737 would permit unconstitutional intrusions on parents' privacy rights.**

HB 1737 would allow county children and youth services (CYS) agencies to obtain court orders to compel parents to undergo drug and alcohol testing during child welfare investigations if there is evidence that impairment due to drug or alcohol use is a contributing cause of alleged abuse or neglect. CYS investigations are initiated by caseworkers and typically occur without any court involvement unless the agency files a dependency petition.

Because drug testing is considered a search, both the Pennsylvania and United States Constitutions require the government to show that it has probable cause before it can compel an individual to undergo a drug test. HB 1737 would permit unconstitutional intrusions on parents' privacy rights because it does not contain a requirement that a CYS agency have probable cause to believe that an act of child abuse or neglect has occurred and that drug testing the parent will reveal evidence relating to such abuse.

### **Probable cause is required to conduct a search in child welfare investigations.**

Pennsylvania courts have held that probable cause is required to conduct a search in child welfare investigations. In *In re Petition to Compel*, the Superior Court vacated a trial court order compelling parents to allow a home visit by Susquehanna County Services for Children and Youth as part of an investigation into a ChildLine report of alleged medical neglect.<sup>1</sup> The Superior Court held that in order to comport with the Fourth Amendment and Article I, § 8, a compelled home visit requires "probable cause to believe that an act of child abuse or neglect has occurred and evidence relating to such abuse will be found in the home."<sup>2</sup> This analysis applies equally to drug and alcohol testing.

The [Fourth Amendment](#) to the United States Constitution and [Article I, Section 8](#) of the Pennsylvania Constitution require probable cause to believe that a child has been abused or neglected and that evidence of such abuse or neglect will be found before a court can compel parents to submit to a search, whether it is the parent's home or the parent's blood or urine. HB 1737 ignores the probable cause requirement and would permit discretion to compel drug screens that are both vague and overly broad. **In so doing, HB 1737 would fall short of the evidentiary threshold needed to remain constitutional.** Moreover, there is no recognized "special needs" exception to the Fourth Amendment in the context of a child welfare investigation, and the legislature is not free to create one.

<sup>1</sup> *In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365, 368 (Pa. Super. Ct. 2005).

<sup>2</sup> *Id.* at 377.

**Drug and alcohol testing will not reveal evidence of abuse.**

According to the U.S. Department of Health and Human Services: “A drug test alone cannot determine the existence or absence of a substance use disorder. In addition, drug tests do not provide sufficient information for substantiating allegations of child abuse or neglect or for making decisions about the disposition of a case (including decisions regarding child removal, family reunification, or termination of parental rights).”<sup>3</sup>

A drug or alcohol test is unlikely to reveal any information about whether a child is being abused or neglected. There is no need to amend the [Child Protective Services Law](#) to allow caseworkers to use the threat of a court order to coerce parents into relinquishing their privacy rights when the information gleaned from drug and alcohol testing will not provide any meaningful information about whether a child has been abused or neglected. If there is sufficient evidence of abuse or neglect for a court to adjudicate a child dependent, then the court can order that the parent undergo a drug and alcohol evaluation—which is far more comprehensive than a single drug test—to determine whether an alcohol or drug disorder may be a contributing factor in the abuse or neglect.

**For these reasons, we urge you to oppose House Bill 1737.**

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<sup>3</sup> Substance Abuse & Mental Health Servs. Admin., U.S. Dep’t of Health & Human Servs., [Drug Testing in Child Welfare: Practice and Policy Considerations](#) 1 (2010).