



MEMORANDUM

TO: The Pennsylvania Senate Aging and Youth Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: January 14, 2022

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 [Fourth Amendment](#) to the United States Constitution and [Article I, Section 8](#) of the Pennsylvania Constitution require the government to show that it has probable cause before it can compel an individual to undergo a drug test, whether in the parent's home or the parent's blood or urine. HB 1737 ignores the probable cause requirement, thereby permitting 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. Notably, just last month, the [Pennsylvania Supreme Court unambiguously held](#) that the Fourth amendment applies to child welfare investigations. The Court affirmed that anonymous, unverified allegations that are not supported by competent evidence cannot justify forced entry into family homes. Specifically, the Court held that "nothing short of probable cause, guided by the traditional principles that govern its federal and state constitutional limitations, will suffice when a trial court makes a determination as to whether or not to authorize a home visit." The Court rejected arguments that a lower evidentiary threshold is permissible in child welfare cases, explicitly holding that there is no "social worker" exception to the Fourth Amendment's protection against unreasonable searches and seizures, and affirming that "the Fourth Amendment applies equally whether the government official is a police officer conducting a criminal investigation or a caseworker conducting a civil child welfare investigation."¹ **HB 1737 would directly violate the Supreme Court's holding that a legal showing of probable cause is necessary to breach a parent's right to privacy in the context of a child welfare investigation.**

¹ [In re Y.W.-B. 1 EAP 2021 \(Pa. Dec. 23, 2021\).](#)

Black families and families of color are disproportionately represented at every stage of child welfare intervention and experience disparate outcomes.

Nationally, families of color and particularly Black families are disproportionately represented at every level of child welfare intervention. Research has estimated that by age 18, more than one third of all American children will have experienced a CYS investigation. However, this probability is not randomly distributed. For Black children in America, it is much higher. More than half of Black children in America will experience a CYS investigation before the age of 18, and Black children are almost twice as likely to experience an investigation as white children. Beginning with the point of initial referral, Black children and families are more likely to be reported for suspected abuse or neglect than white children. Reports involving Black children and children of color are also more likely to proceed to an investigation than reports involving white children. Finally, reports of maltreatment involving Black children are more likely to be “substantiated” at the conclusion of an investigation than those involving white children.²

Robust Fourth Amendment protections are necessary to prevent racial injustice, which is rife in the child welfare system, where Black and brown families face extraordinary levels of child welfare surveillance. Because Black families and families of color disproportionately experience contact with the child welfare system, and thus are more likely to become subject to investigation and more likely to experience poor outcomes following investigations, upholding the strength of the critical constitutional protections against unwarranted governmental intrusion into the family is an essential component of working towards achieving racial justice for marginalized communities.

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).”³

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.

² [In re: Y.W.-B. Amici Curiae Brief Of American Civil Liberties Union of Pennsylvania and Community Legal Services of Philadelphia](#), February 25, 2021 (pgs. 17-21).

³ 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).