



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: February 22, 2021

RE: OPPOSITION TO SB 78 P.N. 73 (BAKER) —"Kayden's Law"

[SB 78](#) (PN 65) would require an evidentiary hearing during child custody proceedings to vet allegations—new or old—of abuse. If the court finds *any* history of abuse, the law would create a presumption that the accused parent would only be allowed supervised visits. SB 78 would also provide that any parent found to have abused anyone in the household pay the attorney fees of the other parent, as well as paying other costs, including for supervised visitation. This bill would expand the types of criminal convictions that must be considered against a parent, now including simple assault against any person. SB 78 would also encourage Pennsylvania courts to train judges and court personnel on how to identify child abuse.

Drafted in response to the tragic murder of Kayden Mancuso by her biological father, there is no question that the intent of this bill is to protect children and avoid future tragedies. Unfortunately, as filed, SB 78 will likely harm the children and mothers it is designed to protect.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 78.

SB 78 will have dire, unintended consequences, especially for children of Black and Brown women.

The definition of child abuse in Pennsylvania is already extremely broad and encompasses all sorts of behavior, including any neglectful behavior that causes a 'reasonable likelihood of bodily injury,' which could be almost anything, like leaving a curling iron on, or failing to put up a baby gate. And current law *already requires* that judges in custody proceedings consider past criminal conduct and findings of abuse and empowers the court to impose conditions on visitation to protect the child and the former parent from harm. Abuse need only be found by a 'preponderance of evidence' to divest a parent of their right to physical custody and create a presumption for supervised contact.

The primary change proposed by SB 78 is to create a presumption that a parent with *any history* of abuse (no matter how old) against *any household member* will *only* be allowed supervised visitation. SB 78 specifically removes the requirement that a threat be ongoing. So, for example, a mother with a finding of neglect five years ago for failing to put up a baby gate could trigger a finding that would result in losing primary physical custody of her child and require *only* supervised contact with her child.

SB 78 also expands what the court must consider in making its determination by adding "simple assault" (against anyone) to the crimes list. It is not unusual for women to be charged with simple assault; often those charges arise in the context of defending themselves in abusive relationships. It is critical to understand that mothers are the people most likely to be accused of and found responsible for child abuse and SB 78's expanded provisions will likely lead to custodial mothers losing the right to custody and contact with their children because they are deemed "abusers."

Given the reality of the intense surveillance and punishment that poor, disproportionately Black and brown mothers experience via mandated reporting and the child abuse registry, there is a significant likelihood that

SB 78 will trigger traumatic suspensions of contact between mothers and their children, with nearly impossible barriers to reestablish contact, both because the presumption of supervised visitation has no expiration date and because of the enormous financial penalties that can accompany a finding of a history of abuse.

SB 78's financial penalty provision will disproportionately punish and further marginalize poor mothers.

If a judge finds that a parent has "perpetrated abuse" — against any person in the household, at any time in the past — the judge may order that person to pay all of the costs of the proceeding, including paying for lawyers for the child and paying the other parent's lawyer, on top of paying someone to supervise their time with their child. Only wealthy people could afford that — or afford to pay an attorney to put on a hearing to rebut the law's presumption that they can never again be left alone with their child.

In addition, SB 78 will punish parents by allowing the court to make them pay all of the costs associated with the decision, including paying for a lawyer for the child, evaluations, counselling, someone to supervise their visits and even the other parent's lawyer. This bill threatens to separate poor parents from their children without any finding that they are a danger to the children, and exacerbates the imbalance between parents who can afford counsel for custody proceedings and those who cannot.

It is a sad truth that parents in custody battles use allegations of child abuse to gain leverage in those battles. Unfortunately, SB 78 risks turning that weapon into an arsenal, making it extremely likely that a poor — or merely not-wealthy — parent accused of child abuse will never see their child again. And it is certainly a terrible weapon to put into the hands of divorce lawyers who may see this as a way to get paid by someone other than their client.

For these reasons, we urge you to oppose Senate Bill 78.