Changes to Pennsylvania’s Child Abuse Laws
Relevant to Churches
Effective January 1, 2015

As of January 1, 2015, Pennsylvania significantly broadened the scope of several provisions of its child abuse statutes in ways that will impact church staff and volunteers who have contact with children.

Mandatory Reporting of Child Abuse

The first important change relevant to churches is the addition of clergy, staff, and volunteers who regularly work with children to those who must report suspected child abuse under penalty of law. Reports must be made directly by the person who suspects that abuse has occurred. Reports may be made electronically at http://www.compass.state.pa.us/cwis/public/home or by calling 1-800-932-0313. If a report is made by telephone, the reporter must file an electronic or written report within 48 hours of making the oral report. A discussion of “frequently asked questions” about the mandatory reporting provision follows.

Background Checks and Clearances

The statute also broadened mandatory background check and clearance requirements previously applicable only to employees to adult volunteers as well. Employees aged 14 and older and adult volunteers who are responsible for the welfare of a child or who have “direct contact” with children, defined as “the care, supervision, guidance or control of children or routine interaction with children.” are required to submit:

1. Pennsylvania State Police Criminal History Record Information
2. Pennsylvania Child Abuse History Clearance
3. Federal Criminal History Background Check (with submission of fingerprints) FBI checks are not required for volunteers if they have been residents of Pennsylvania for the prior 10 years.
Detailed information on how to obtain clearances, including cost and acceptable forms of payment, is available on the Pennsylvania Department of Human Services website at:

http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm

A set of frequently asked questions regarding volunteer clearance requirements prepared by the Pennsylvania Department of Human Services is attached hereto.

These clearances must be updated every three years. There is a phase-in provision allowing until July 1, 2015 to make volunteer clearances current and until December 31, 2015 to bring certifications current for those employed as of December 31, 2014.

**Mandatory Training Requirements for Child Care Workers**

A final change is the requirement for training in child abuse recognition and reporting for child care workers in all state-licensed facilities. Employees of such facilities must have three hours of training no later than June 30, 2015. Three hours of training is required every five years thereafter. New employees must have three hours of training within 90 days of hire.

**Resources**

For further information, forms, and links, the most comprehensive source is

www.keepkidssafe.pa.gov.
Frequently Asked Questions about Mandatory Reporting

Who at a church must report?

The statute now specifically includes clergy and other spiritual leaders, employees of child care services, and:

An individual paid or unpaid, who, on the basis of the individual's role as an integral part of a regularly scheduled program, activity or service, accepts responsibility for a child.

The statute also extends to those “supervised or managed” by mandatory reporters listed in the statute and further specifically provides that independent contractors are included. Mandatory reporting requirements are only applicable to adults.

What about the clergy privilege?

The statute exempts clergy from being compelled to disclose information obtained from “any person secretly and in confidence”. Note that the Book of Order expressly permits revelation of confidential information when a teaching elder or ruling elder commissioned to pastoral service “reasonably believes that there is a risk of imminent bodily harm to any person.” (Book of Order G-4.0301) Moreover, the Book of Order mandates disclosure by those in ordered ministry or certified Christian educators to ecclesiastical and civil legal authorities even if the information was gained via confidential communication when “she or he reasonably believes that there is a risk or future physical harm or abuse.” (Book of Order G-4.0302)

How do we determine who is a volunteer under the statute?

The key factor under the statute is accepting responsibility for a child as part of a “regularly-scheduled program, activity or service”. Thus a volunteer who teaches Sunday school weekly or accompanies the youth group on all of its mission trips would be included while one who assists with a one-time or occasional activity would not.
**When is the duty to report triggered?**

A mandatory reporter must make a report when in the course of employment or volunteering, he or she comes to have “reasonable cause” to suspect that a child is victim of child abuse. The necessary suspicion need not be based on first-hand knowledge and the mandatory reporter need not be able to definitively identify who perpetrated the abuse. The mandatory reporter need not make an effort to discover additional facts prior to reporting.

Child abuse means acting or failing to act in a way that “intentionally, knowingly or recklessly”:

- causes bodily injury,
- causes or contributes to serious mental injury,
- causes or contributes to a likelihood of sexual abuse or exploitation,
- causes physical neglect.

The prior version of the statute required “serious bodily injury.” The statute also enumerates a list of specific acts that constitute child abuse and lists situations that are **NOT** deemed to be child abuse, including:

- child-on-child contact\(^1\);
- environmental factors such as inadequate housing that are beyond the parents’ control;
- practice of religious beliefs;
- participation in sports involving physical contact;
- use of “reasonable force” for supervision, safety or control; and self defense.

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\(^1\) Unless the child who commits the act is defined as a “perpetrator” under the statute by being over the age of 14 and residing in the same household as the victim or being “responsible for the child’s welfare”. Children under the age of 14 are not liable for failing to act.
Must the abuse have happened within our facility or have been perpetrated by someone on staff or a volunteer for the duty to report to be triggered?

No. The mandatory reporter need only develop reasonable suspicion that abuse has occurred in the course of his or her employment or volunteer experience. The mandatory reporting provision applies if someone discloses that abuse has happened to an identifiable child during the course of the reporter’s work or volunteer activities even if the reporter has not had contact with the child.

Must the mandatory reporter take any other steps?

After making the report, a mandatory reporter must notify the person in charge of the church or agency. Only one report per institution is necessary.

As noted above, if the report is made by telephone, the reporter must follow up with an electronic or written report within 24 hours. The written report, form CY-47, is sent to the Children and Youth office in the county where the alleged abuse will be investigated. The reporter should keep a copy of the written form CY-47 or of the email confirmation of an electronic report for his or her own records in a separate confidential file.

The statute has a number of provisions applicable to schools. Must our nursery school meet those?

Nursery schools are not included in the definition of a school under the statute and thus need not comply with provisions particular to schools. A nursery school is clearly “a regularly scheduled program, activity or service, [that] accepts responsibility for a child” so the mandatory reporting and clearance provisions do apply.

Will the mandatory reporter’s identity be disclosed?

While the identity of a reporter is to be kept confidential, except for disclosure to law enforcement and to prosecutors, should the matter move to judicial process, the reporter’s identity will be disclosed to the defendant.
Are mandatory reporters protected from criminal or civil liability?

Yes, provided the report was made in good faith. The statute assumes that a report is made in good faith.

What is the penalty for failing to report?

Penalties for “willful” failure to report range from a second degree misdemeanor to a second degree felony. The degree of the penalty varies according to the severity of the abuse, whether the reporter had direct knowledge of it, and whether the failure is a first or subsequent offense.
Volunteer
Frequently Asked Questions

Who needs clearances?
Beginning July 1, 2015, an adult applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children.

What is the definition of child?
For purposes of clearances, a child is an individual under 18 years of age.

How is direct contact with children defined?
Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children.

How do I determine who in my agency or organization needs clearances?
In order to determine who in your agency or organization is required to obtain clearances as a condition of volunteering with children, you must first confirm that the applicant is an adult, as only adult volunteers are required to obtain clearances.

You should then carefully consider whether the volunteer is responsible for the welfare of a child or has direct contact with children.

Determining whether a volunteer is responsible for the welfare of a child means that the volunteer is acting in lieu of or on behalf of a parent. If a determination is made that the volunteer is not responsible for the welfare of a child, you then move on to the second avenue for consideration; whether they have direct contact with children.

The second avenue for consideration is whether the volunteer has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. As the terms are not defined in the statute we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If the answer to this question is that they do not provide care, guidance, supervision or control of children, you consider whether they have routine interaction with children.

With regard to routine interaction with children, consideration should be given to what the volunteer’s role is within the agency and based on that role, is their contact with children regular, ongoing contact that is integral to their volunteer responsibilities?

If a determination is made that the volunteer is not responsible for the welfare of a child and does not have direct contact with children, clearances are not required. Please be sure to consult your legal counsel when making these determinations. You should also discuss with your insurers possible insurance coverage implications.
Which clearances are needed?
All prospective volunteers must obtain the following clearances:
- Report of criminal history from the Pennsylvania State Police (PSP); and
- Child Abuse History Clearance from the Department of Human Services (Child Abuse).

Additionally, a fingerprint based federal criminal history (FBI) submitted through the Pennsylvania State Police or its authorized agent is required if:
- The position the volunteer is applying for is a paid position; and
- The volunteer has lived outside the Commonwealth of Pennsylvania in the last 10 years.

Volunteers who are not required to obtain the FBI Clearance because they are applying for an unpaid position and have been a continuous resident of Pennsylvania for the past 10 years must swear or affirm in writing that they are not disqualified from service based upon a conviction of an offense under §6344.

When are clearances needed?
Beginning July 1, 2015, prospective volunteers must submit clearances prior to the commencement of service.

What is the renewal requirement for clearances?
Beginning July 1, 2015, all volunteers will be required to obtain clearances every 36 months. Timelines for renewed clearances are based upon the date of each individual clearance. If an individual or agency elected to renew all clearances at the same time, the date of the oldest clearance rather than the most recent would be used.

Volunteers are required to obtain updated clearances as follows:
- Within 36 months of the date of the most recent clearance;
- By July 1, 2016, if thee clearance is older than 36 months; or
- By July 1, 2016, if they were approved as a volunteer before July 1, 2015, and had not received a clearance because they previously were not required to obtain clearances.

How do I obtain my clearances?
The Child Abuse, PSP and FBI clearances can all be applied and paid for electronically. The FBI clearance also requires a fingerprint submission. All necessary instructions and links to apply for these clearances can be found at http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm

Is the use of a third-party vendor to process clearances acceptable?
Third-party vendors may be used to process Child Abuse, PSP and FBI clearances using the steps established above. They are not permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, persons responsible for the selection of volunteers remain responsible for selection decision based upon the information obtained.
How much do the clearances cost?
- The Pennsylvania State Police Criminal Record Check costs $10.
- The Pennsylvania Child Abuse History Clearance costs $10.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs $27.50 through the Department of Human Services.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs $28.75 through the Department of Education.

Who pays for clearances?
The volunteer is responsible for paying the cost of the required clearances. However, some agencies choose to pay for clearances for their volunteers and are able to establish business accounts to pay for clearances. The only time an agency is required to bear the cost of the clearance is when there is reasonable belief that the volunteer was arrested or convicted of an offense that would deny participation or named as a perpetrator in an indicated or founded report. In these situations, the agency must immediately require the volunteer to obtain their clearances.

Can an agency or organization pay for clearances?
**Child abuse clearances:**
Yes, agencies and businesses can pay for child abuse history clearances by registering for a Business Partner User account using the “Organization Account access” link on the Child Welfare portal, [www.compass.state.pa.us/cwis](http://www.compass.state.pa.us/cwis), which goes live on December 31, 2014. The business account will allow organizations to purchase child abuse history clearance payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the child welfare portal to apply for the clearance using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant’s child abuse history clearance results once those results are processed.

**FBI clearances:**
An agency pay agreement/business account can also be created between an organization and the FBI, or its authorized agent, for payment of FBI clearances. Information on creating an agency pay agreement for FBI clearances through the Department of Human Services can be found at [https://www.pa.cogentid.com/index_dpwnNew.htm](https://www.pa.cogentid.com/index_dpwnNew.htm).

**PSP Clearances:**
An agency business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling the Criminal Records Section Supervisor at 717-787-9092. Organizations are, also able to pay an for applicant’s PSP clearance on an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

Do I still need to submit a copy of my PSP or FBI clearance results when applying for my child abuse clearance?
Beginning December 31, 2014, volunteers are no longer required to submit a copy of their PSP or FBI clearances with their child abuse application. If the department receives copies attached to the child abuse application we will not return those...
copies and they will be shredded due to the confidential nature of the information contained on the clearances.

**Are there any other requirements?**
If a volunteer is arrested for or convicted of an offense that would constitute grounds for denying participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the volunteer must provide the administrator or their designee with written notice not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator in the statewide database.

A volunteer who willfully fails to disclose information as required above commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of a volunteer position.

**What is the provisional clearance requirement for volunteers?**
Volunteers may serve on a provisional basis for a single period not to exceed 30 days if the volunteer is in compliance with the clearance standards under the law of the jurisdiction where the volunteer is domiciled.

**Is the person responsible for acceptance of volunteers required to keep a copy of my clearances?**
Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for employment decisions or acceptance of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information and require the individual to produce the original documents prior to employment or acceptance to serve in any such capacity, except provisional employees for limited periods as described in § 6344.2 (f) and outlined above. An employer, administrator, supervisor or other person responsible for selection of volunteers that intentionally fails to require an applicant to submit the required clearance before the applicant’s hiring commits a misdemeanor of the third degree. Agencies are reminded that the child abuse history clearance information is confidential and may not be release to other individuals.

**Can an agency or organization institute additional standards?**
Yes, nothing prohibits an organization from requiring additional information as part of the clearance process.

**Can my clearances be transferred?**
Yes, any person who obtained their clearances within the previous 36 months may serve in a volunteer capacity for any program, activity or service.

**As a volunteer, do I obtain my Federal Bureau of Investigation Criminal History check through the Department of Education or the Department of Human Services?**
The agency under which an applicant should submit their FBI clearance application is based on the agency or organization for which they intend to volunteer. If the
applicant intends to volunteer in a school or at a school related function, they would apply for their FBI clearance through the Department of Education. If the applicant intends to volunteer with children in any other capacity outside of a school setting or function, such as a group home for children, in a church, as a Little League or soccer coach, etc., they would apply for their FBI clearance through the Department of Human Services.