

## **July 1, 2015 Revisions to Pennsylvania's Child Protection Laws**

On July 1, 2015 Governor Wolf signed into law further revisions to Pennsylvania's child protection laws, effective immediately. These changes clarify some provisions of the sweeping changes enacted effective January 1, 2015. The portions of the child protection statutes particularly applicable to churches are summarized below, with significant updates noted.

### **I. Background Checks and Clearances**

A primary focus of this new legislation was "clarify and make more explicit" provisions regarding background checks and clearances for employees and adult volunteers who work with children. The goal especially is to strike a balance between protecting children and not making the background check requirements for volunteers so onerous that programs beneficial to children are adversely affected. Below is a summary of the clearance requirements and process.

#### **A. Who Needs Them?**

##### **1. Adult employees**

Adults who in the course of their paid employment are responsible for the welfare of a child or who have "direct contact" with children are required to have:

- **Pennsylvania State Police Criminal History Record Information**
- **Pennsylvania Child Abuse History Clearance**
- **Federal Criminal History Background Check (with submission of fingerprints)**

Direct contact with children is defined as "the care, supervision, guidance or control of children or routine interaction with children." The revised statute now adds a definition of "routine interaction" as "[r]egular and repeated contact that is integral to a person's employment or volunteer responsibilities." Under this definition, administrative staff may not be included, although custodial staff members who work during hours when children occupy a building likely would be. Many churches are opting to err on the side of caution

and have all employees who are present when children are in the building obtain the clearances.

## **2. Minor employees**

Minors between the ages of 14 and 17 who are responsible for the welfare of a child or who have direct contact with children as defined above must have the Pennsylvania criminal history record check and child abuse clearances.

Unlike adult employees, however, minor employees need not have the federal criminal history check if:

they have been residents of Pennsylvania for the entire ten-year period prior to their employment; or

they have previously received the federal criminal history background check and supply a copy to the employer; **AND,**

the minor's parent or legal guardian swears or affirms in writing that the individual is not disqualified from service under the statute or has not been convicted of an offense listed in or similar to those listed in the statute under the law or former law of the Commonwealth or any other jurisdiction, including foreign nations.

## **3. Adult Volunteers**

All adults applying for or holding an unpaid position who are responsible for the child's welfare or who have "direct volunteer contact with children" must obtain the same clearances as adult employees, except that the federal criminal history background check is not required if the volunteer:

they have been residents of Pennsylvania for the entire ten-year period prior to their employment; or

they have previously received the federal criminal history background check and supply a copy to the employer; **AND,**

the prospective volunteer swears or affirms in writing that the individual is not disqualified from service under the statute or has not been convicted of an offense listed in or similar to those listed in the statute under the law or former law of the Commonwealth or any other jurisdiction, including foreign nations.

The new legislation provides for permanent waiver of the fees for the Pennsylvania criminal history record check and child abuse clearance for

volunteers for one set of clearances every 57 months. The fees associated with the federal criminal history background check, if required, have not been waived.

Provisional clearances are available for **non-resident volunteers** who may serve as volunteers within the Commonwealth for up to a total of 30 days in one calendar year provided that the volunteer is in compliance with the clearance standards of the jurisdiction where the volunteer is domiciled and provides documentation of this compliance to the person responsible for selection of volunteers.

#### **4. Temporary Employment of Foreign Nationals**

An individual holding a nonimmigrant Visa commonly called a J-1 Visa is not required to submit any of the clearances or background checks provided that all of the following apply:

the individual is applying for or holds a paid position for a period of 90 days or less within one calendar year; and,

the individual has not been employed previously within the Commonwealth, any other state, the District of Columbia or Puerto Rico; and,

the individual swears or affirms in writing that he or she is not disqualified from service under the statute or has not been convicted of an offense listed in or similar to those listed in the statute under the law or former law of the Commonwealth or any other jurisdiction, including foreign nations.

#### **B. How to Obtain Clearances?**

A brief explanation of how to obtain the required clearances, with links to the websites whenever possible, follows. Please note that that sharp increase in the number of applicants for these clearances and background checks has slowed the processing time.

##### **1. Pennsylvania State Police Criminal History Record Information**

The most-expedient way to obtain this certification is to apply online, using a credit card to pay the \$10 fee if applicable. A user must first establish an account (at no cost) for the PATCH (Pennsylvania Access to Criminal History) system at <https://epatch.state.pa.us/Home.jsp>. After registering, users can use the system to apply for the certification and to check the status of a pending request.

In order to apply on paper, download the application form at [http://presbyphl.org/wp-content/uploads/2015/01/PASStatePolice\\_Reg\\_for\\_CriminalRecord.pdf](http://presbyphl.org/wp-content/uploads/2015/01/PASStatePolice_Reg_for_CriminalRecord.pdf). Note that the fee must be paid via certified check or money order and that the estimated time for return is longer.

## **2. Pennsylvania Child Abuse History Clearance**

You must also create an account to apply online for the Child Abuse History Clearance via the Commonwealth's Child Welfare Portal at <https://www.compass.state.pa.us/cwis/public/home>. Online applicants may pay the required fee, if applicable, via credit card. Paper applications are permitted, but payment must be made by money order. Download the form at: [http://www.dhs.state.pa.us/cs/groups/webcontent/documents/form/s\\_001762.pdf](http://www.dhs.state.pa.us/cs/groups/webcontent/documents/form/s_001762.pdf) Note that the application for this clearance requires listing all addresses where the applicant has resided since 1975 and the names and current ages of all household members since 1975.

Churches may set up a business account by first registering for a "Business Partner User" account using the "Organization Account Access" link on the Child Welfare Portal. An organization account will allow a church to purchase child abuse history clearance payment codes and distribute those codes to applicants. When an applicant uses a code given to them by a church, the church will have access to the applicant's child abuse history clearance results once those results are processed.

## **3. Federal Criminal History Background Check**

Prior to having fingerprints taken, an applicant must first register online through 3M Cogent at: [https://www.pa.cogentid.com/index\\_dpwNew.html](https://www.pa.cogentid.com/index_dpwNew.html). Walk-in registrations are not available at the fingerprint sites. To register by telephone, call 1-888-439-2486 Monday through Friday, 8am to 6pm.

When registering online, payment may be made by credit card. Money orders or cashier's checks payable to 3M Cogent will be accepted on site for those applicants who do not have the means to pay electronically. Churches may establish billing accounts at: [www.pa.cogentid.com](http://www.pa.cogentid.com).

Once registered, an applicant has 90 days to have his or her fingerprints taken. A list of sites where fingerprints will be taken electronically is available at: [https://www.pa.cogentid.com/index\\_dpwNew.html](https://www.pa.cogentid.com/index_dpwNew.html). The website also provides information for applicants whose prints cannot be taken electronically or those presently located out of state who must have ink cards made and submitted.

### **C. Deadlines**

**New volunteers and employees must have the clearances prior to the start of their employment or volunteer activity.**

A current employee who previously was not required to obtain clearances, but now is must have them, must comply by December 31, 2015. A current volunteer who previously was not required to have the clearances, but who was approved as a volunteer prior to July 1, 2015, must comply by July 1, 2016.

Any employee or volunteer who has current clearances (referred to as certifications in the statute) issued prior to July 1, 2015 must obtain new clearances within 60 months from the date of the person's oldest certification, or, if their certifications are older than 60 months, by July 1, 2016.

### **D. Renewal Requirement for Clearances**

Under the revised statute, all clearances must be renewed every 60 months. This is an increase from the 36-month time period in the earlier statute.

### **E. Portability of Clearances**

Those who obtain clearances as an employee may use them to volunteer with another agency or organization, however, clearances obtained for volunteering may not be used for employment. Clearances obtained to volunteer with one organization may be used to volunteer with another.

An employee who has obtained clearances may transfer those clearances to another subsidiary or branch established and supervised by the same organization. Thus, an employee who obtains clearances to work as a paid employee in a church's child care center may transfer those clearances to work in its nursery school.

An employee with current clearances may use them to apply for or serve with a new employer provided that the employee swears or affirms in writing that he or she has not been disqualified from employment under this statute or has not been convicted of an offense listed in or similar to those listed in the statute under the law or former law of the Commonwealth or any other jurisdiction, including foreign nations.

#### **F. Record Keeping Requirements**

The employer, administrator, supervisor or other person responsible for employment decisions or the acceptance of individuals to serve in any capacity, including volunteers, must require a new employee or volunteer to produce the original documents prior to service and must maintain copies of the documents for all employees and volunteers as they obtain clearances or renewals. These documents are to be kept strictly confidential.

#### **G. Presumption of Good Faith and Criminal Liability**

The revised statute explicitly provides that for purposes of criminal liability, the "employer, administrator, supervisor or other person responsible for the selection of volunteers" is presumed to have acted in good faith when identifying individuals who are required to submit background checks and clearances and maintaining records. However, if such a person commits a misdemeanor of the third degree if he or she "intentionally fails to require" the submission of the required background checks and clearances prior to approving that person as an employee or volunteer.

## II. Mandatory Reporting of Child Abuse

### A. Who is a Mandated Reporter?

Another 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. The statute also extends to those "supervised or managed" by mandatory reporters listed in the statute "who has direct contact with children in the course of employment. The revisions effective July 1, 2015 specifically provide that "administrative and support personnel" are not mandatory reporters unless the individual has "direct contact with children." Independent contractors are specifically included within definition of mandated reporters as well. Mandatory reporting requirements only apply to adults, not minor employees or volunteers. A discussion of "frequently asked questions" about the mandatory reporting provision follows.

### B. How to Make a Report?

Reports must be made directly by the person who suspects that abuse has occurred. It is no longer sufficient to merely report suspicion of abuse to a supervisor, however, only one report per institution is necessary. Reports may be made electronically at <http://www.compass.state.pa.us/cwis/public/home> or by calling 1-800-932-0313. After making the report, a mandatory reporter must notify the person in charge of the church or agency.

If a report is made by telephone, the reporter must file an electronic or written report within 48 hours of making the oral report. 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.

Please note that those seeking to report abuse have encountered significant delays during the first six months of the broadened statute's effectiveness. If you

have any concern that a child is in danger and you are unable to make an immediate report, please dial 911.

### **III. Mandatory Reporter 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 had 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.

### **IV. Resources**

For further information, forms, and links, the most comprehensive source is [www.keepkidssafe.pa.gov](http://www.keepkidssafe.pa.gov). Two sets of frequently asked questions regarding both employee and volunteer clearance requirements prepared by the Pennsylvania Department of Human Services are attached.

## **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 “who has direct contact with children in the course of employment. The revisions effective July 1, 2015 specifically provide that “administrative and support personnel” are not mandatory reporters unless the individual has “direct contact with children.” Independent contractors are specifically included within definition of mandated reporters as well. 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<sup>1</sup>;
- 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.

---

<sup>1</sup> 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.