

To: Pennsylvania Conference Ministers

From: Office of General Counsel

Date: March 3, 2015

CONTINUING TESTAMENT  
EXTRAVAGANT WELCOME  
CHANGING LIVES

*God is still speaking,*  
**UNITED CHURCH  
OF CHRIST**



## PENNSYLVANIA CHILD ABUSE PREVENTION LAWS UPDATE

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The Pennsylvania legislature enacted a number of new child abuse prevention laws in 2014. This memorandum is a summary of the provisions that most directly affect clergy, churches, and other religious organizations in the United Church of Christ.

### **I. Duty to Report Suspected Child Abuse**

The new child abuse prevention laws include changes in who is required to report suspected child abuse and how that suspected abuse must be reported.

#### **A. Who has the duty to report suspected child abuse?**

We all have a moral duty to protect the most vulnerable members of our society. In the United Church of Christ, we encourage anyone who suspects that a child is being abused,<sup>1</sup> at any time and under any circumstances, to report<sup>2</sup> that information immediately to the appropriate authorities, regardless of whether an individual is required to do so under the law. Pennsylvania also encourages anyone who suspects child abuse to report the abuse. 23 Pa. C.S. § 6312. So long as a person makes the report in good

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<sup>1</sup> For the definition of child abuse, see Exhibit A.

<sup>2</sup> For details on how to make a report, see Exhibit B.

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faith, the law protects the reporter from legal liability if the report is ultimately deemed to be unfounded.<sup>3</sup> 23 Pa. C.S. §§ 6318(a) and 6303(a).

Certain individuals are required by law to report suspected child abuse immediately to the appropriate authorities. The law refers to these individuals as mandated reporters. Clergy are mandated reporters in Pennsylvania. 23 Pa. C.S. § 6311(a)(6). Individuals who accept responsibility for a child as part of the individual's role in a regularly scheduled program, activity, or service are also mandated reporters. This includes both paid workers and volunteers. *Id.* at § 6311(a)(7).<sup>4</sup> Some examples of programs, activities, and services include, but are not limited to youth camps or programs, recreational camps or programs, sports or athletic programs, outreach programs, enrichment programs, troops, and clubs. *Id.* at § 6303(a). Sunday school, youth group, youth retreats, summer camps, regional youth gatherings, community youth activities sponsored by churches or Conferences, parents' night out programs, and preschools and daycares are all examples of common church activities that come under the definition of "program, activity, or service." Many other church- or Conference-related activities are also likely to be included. ***This means that many Local Church volunteers who are involved in regular youth programming are mandated reporters under the new laws.***

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<sup>3</sup> An "unfounded report" is one in which substantial evidence of abuse is not indicated or no official finding of abuse in accordance with the definition of "founded report" has occurred. 23 Pa. C.S. § 6303(a).

<sup>4</sup> This memorandum is not intended to be a complete discussion of all categories of individuals who are mandated reporters in Pennsylvania. For a complete list of categories of individuals who are mandated reporters, see 23 Pa. C.S. § 6311(a), attached as Exhibit C.

**B. When does the duty to make a report arise? Don't I actually have to see the child or know who the abuser is?**

The duty to make a report can arise in several different ways, but the following points should be kept in mind: the mandated reporter does not *ever* have to see the child for the duty to report to arise, and the mandated reporter *need not* identify the person responsible for the abuse. *Id.* at § 6311(b)(2) and (3).

First, a mandated reporter must make a report if he or she comes into contact with a child in the course of the mandated reporter's employment, occupation or practice of a profession, or through a regularly scheduled program, activity, or service, and suspects that the child is a victim of abuse. Pa. C.S. § 6311(b)(1)(i). One example of this would be a youth group trip chaperone or a Sunday school teacher who suspects that a child participating in the program is being abused. Another example would be a confirmation camp counselor who suspects that a child is being abused. This would also include a Local Church pastor who suspects that a child in the congregation is being abused.

Second, the duty to report can also arise if the mandated reporter is directly responsible for the care, supervision, guidance, or training of the child, or is affiliated with an agency, institution, church, or religious organization that is directly responsible for the care, supervision, guidance, or training of the child, and suspects that a child is the victim of abuse. *Id.* at § 6311(b)(1)(ii). For example, a Local Church pastor may suspect that a child who is enrolled in the church's preschool may be the victim of abuse; the pastor is required to report the suspected abuse.

Third, a mandated reporter must also report suspected abuse if another person tells the mandated reporter that a specific child is the victim of abuse. *Id.* at § 6311(b)(1)(iii). This provision includes a child disclosing to a mandated reporter that

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the child himself or herself is being abused. Note that the law does not provide a particular set of circumstances under which this duty arises, nor is there any case law interpreting this provision in Pennsylvania. A broad interpretation of this law may not restrict the provision to applying in circumstances in which an individual is acting in the capacity that defined the individual as a mandated reporter. It is possible that this provision could be interpreted to require a Local Church pastor whose neighbor tells the pastor that a specific child on the next street over is being abused to report the abuse, if the pastor suspects that it might be true, even if the pastor has no contact with the child or his or her family in the pastor's professional capacity. This is also true of any person, paid or volunteer, who is a mandated reporter under § 6311(a)(7).

Finally, a mandated reporter must make a report if an individual, aged 14 years or older, tells the mandated reporter that the individual has committed child abuse. *Id.* at § 6311(b)(1)(iv).

A mandated reporter must make the report *immediately* upon suspecting the abuse. It is not enough for the mandated reporter to tell his or her supervisor, if one exists, about the suspected abuse. In fact, if a mandated reporter is working or volunteering for an institution or organization, the mandated reporter is required to make the report *first*, and then notify the person in charge of the institution. The person in charge of the institution is required to facilitate the cooperation of the institution in the investigation. *Id.* at § 6311(c).

**C. Does the mandated reporter have to be certain that the child is the victim of abuse? What if it turns out the child is not being abused?**

No reporter of suspected child abuse, whether mandated or not, needs to be certain that a child is the victim of abuse. An individual reporting suspected child abuse,

regardless of whether the individual is a mandated reporter, does not need to have proof that a child is being abused. All that is required is that the individual have a reasonable suspicion that a child is being abused. The reporter does not need to, and should not, investigate the suspicion independently; any investigation should be left to the appropriate authorities. So long as the report is made in good faith, a reporter is immune from civil and criminal liability for making such a report. 23 Pa. C.S. § 6318(a).

**D. Doesn't the clergy-penitent privilege prevent a clergy person from making a report?**

No, the clergy-penitent privilege does not prevent a clergy person from making a report, regardless of how the clergy person learned of the suspected abuse. The Office of General Counsel routinely receives questions regarding what some perceive as a conflict between a duty to report child abuse and a clergy person's duty to treat certain information as confidential. In the United Church of Christ, we distinguish between secrets and confidences. Secrets are not intended for further disclosure to any person at any time. We do not keep secrets. We define confidentiality as telling people who need to know, what they need to know, when they need to know it. We do honor confidences. Should a clergy person suspect that a child is the victim of abuse, even if that information was given to the clergy person confidentially, the best course of action is to report the information to the authorities, who need to know so that the child can be protected from further harm.

The clergy-penitent privilege applies in very limited circumstances in Pennsylvania. It applies only to confidential communications between a penitent and a clergy person in his or her role as confessor or spiritual counselor. *Commonwealth v. Stewart*, 547 Pa. 277, 283 (1997). The privilege functions to prohibit a clergy person

from disclosing information that the clergyperson has received “secretly and in confidence” from another person in a “legal proceeding, trial, or investigation before any government unit.” 42 Pa. C.S. § 5943. Pennsylvania law provides immunity from civil and criminal liability, however, for a person who reports suspected child abuse in good faith. 23 Pa. C.S. § 6318(a). A clergyperson thus has significant protection against a claim that he or she disclosed privileged information in making such a report. While clergypersons are not required to report suspected abuse if they learn of the abuse in the very limited context of confidential communications as a spiritual counselor or confessor, a clergyperson’s first consideration should be the welfare of the child, and not whether he or she will face liability for making the report. 23 Pa. C.S. § 6311.1(b). Moreover, the pastoral ethic of confidentiality is best understood as a moral imperative intended to assist all people in getting help for their problems, but it is not intended as a shield that precludes some people from being held accountable for their actions. As ethicist Sissela Bok has noted, the premises supporting confidentiality are important, but they do not justify practices of secrecy that undermine, if not contradict, the respect for human beings that clergy confidentiality, like all aspects of ministry, is meant to promote.

## **II. Required Clearances**

Pennsylvania requires certain clearances to be obtained by paid employees and volunteers having direct contact with children.

### **A. Do these laws apply to churches and other religious or charitable organizations?**

Yes. No exceptions exist under the law for churches and other religious or charitable organizations. Churches and religious and charitable organizations are required to comply with the law.

**B. Are employees and volunteers required to obtain clearances?**

Employees hired on December 31, 2014 or later are required to obtain certain clearances if they have routine interaction with children. The law requires that individuals who are 14 years old or older applying for a paid position as an employee who is responsible for the welfare of a child, *or* as an employee having direct contact with children, submit the following clearances to the person responsible for employment decisions:

- A Pennsylvania State Police Background Check;
- A Pennsylvania Child Abuse History Clearance; and
- A Federal Bureau of Investigation Clearance.

Pa. C.S. § 6344(a) and (b).<sup>5</sup> An employee has “direct contact with children” if the employee engages in the care, supervision, guidance, or control of children *or* has routine interaction with children. Employees meeting this definition are required to obtain these clearances. Most clergypersons who are Local Church pastors have routine interaction with children.

These same requirements apply to adult volunteers selected on or after July 1, 2015 who are responsible for the welfare of a child or have direct contact with children. *Id.* at § 6344.2(a). Volunteers, however, need not submit a Federal Bureau of Investigation Clearance if the volunteer position is unpaid, the volunteer has been a continuous resident of Pennsylvania for the 10 years prior to applying for the position,

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<sup>5</sup> For comprehensive information and instructions on how to complete these background checks please visit <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>.

and the volunteer swears in writing that he or she is not disqualified from service.<sup>6</sup> *Id.* at § 6344.2(b.1)(1)(i-iii). Disqualification from service is discussed in Section II.E.

Clearances for employees and volunteers must be obtained every 36 months. *Id.* at § 6344.4. Employers and organizations that select volunteers must maintain records of the clearances. Failing to require an employee or volunteer to obtain the required clearances before hiring the employee or selecting the volunteer is a criminal offense for the employer. *Id.* at § 6344(b.2); § 6344.2(b). The employer will also be subject to a civil penalty for failing to comply with any provision of § 6344.

**C. My ministerial profile includes a background check obtained through Oxford Document Management Company, Inc. Additionally, our church uses the United Church of Christ Insurance Board background check provider, Praesidium, to do background checks on potential employees and volunteers. Do we really need to do more?**

Yes. The Oxford background check in a clergy person's ministerial profile does not include a Pennsylvania Child Abuse History Clearance or a Federal Bureau of Investigation Clearance. It does include a Pennsylvania State Police Background Check. Clergypersons should be aware that they may still have to obtain the Pennsylvania State Police Background Check if the Oxford background check attached to the ministerial profile becomes outdated in accordance with the law requiring clearances to be performed every 36 months.

Praesidium, the background check service provided through the United Church of Christ Insurance Board, offers the Praesidium Pennsylvania Background Check Package, which includes the Pennsylvania State Police Background Check, but does not include a

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<sup>6</sup> For an example of a statement that a volunteer can sign that meets the requirements of § 6344.2(b.1)(1)(iii), see Exhibit D.

Pennsylvania Child Abuse History Clearance or a Federal Bureau of Investigation Clearance.

Individuals using Oxford or Praesidium must still obtain the Pennsylvania Child Abuse Clearance and the Federal Bureau of Investigation Clearance on their own. See footnote 5 for a link to complete instructions on how to obtain all of the necessary clearances.

**D. Do employees who were hired and volunteers who were selected prior to December 31, 2014 have to obtain the clearances?**

Employees and volunteers responsible for the welfare of a child or having direct contact with children hired or selected prior to December 31, 2014 must also obtain the clearances every 36 months, though the effective dates for employees and volunteers are different. *Id.* at § 6344.4(1)(i) and (2). If an employee hired prior to December 31, 2014 obtained these clearances more than 36 months ago, the employee has until December 31, 2015 to obtain new clearances, and must obtain new clearances every 36 months. *Id.* at § 6344.4(1)(iii). A volunteer selected before July 1, 2015 must obtain clearances by July 1, 2016, and must obtain new clearances every 36 months. *Id.* at § 6344.4(2). Additionally, if a volunteer has clearances that are older than 36 months, the volunteer has until July 1, 2016 to obtain new clearances.<sup>7</sup>

**E. What if the clearances reveal a criminal history or other negative information?**

If the clearances reveal that an individual has committed child abuse within the five years immediately preceding, the individual cannot be hired or selected as a

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<sup>7</sup> The grace period until July 1, 2016 for volunteers is not part of the statute but is provided in official guidance from the Department of Human Services at [http://keepkidssafe.pa.gov/cs/groups/webcontent/documents/document/c\\_135249.pdf](http://keepkidssafe.pa.gov/cs/groups/webcontent/documents/document/c_135249.pdf), attached as Exhibit E.

volunteer, regardless of whether the individual's clearances show a conviction related to the report or any other criminal history. *Id.* at § 6344(c)(1); § 6344.2(c).

The individual is also disqualified from employment or from being selected as a volunteer if the clearances reveal that the individual has committed certain crimes under Pennsylvania law, federal law, or the law of another state. These crimes include, but are not limited to: criminal homicide, aggravated assault, stalking, kidnapping, rape and other sexual assault offenses, statutory sexual assault, indecent exposure, incest, child trafficking, prostitution, obscenity, corruption of minors, sexual abuse of children, and certain felonies under Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act.<sup>8</sup> *Id.* at § 6344(c). Employers and volunteer supervisors should carefully review the list of disqualifying offenses.

If the individual is already serving as an employee or volunteer and the clearances reveal information that disqualifies a person from serving in his or her position, the individual must immediately be terminated. *Id.* at § 6344(c.1).

**F. But we are a church and we believe in redemption and second chances! Besides, this felony conviction for drugs was three years ago and didn't have anything to do with children. Can we hire the individual as an employee or volunteer to work with children?**

No. It is a violation of Pennsylvania law to hire an individual or select an individual as a volunteer to be responsible for the welfare of a child or to have direct contact with children, if that individual is disqualified under § 6344(c). Churches and religious organizations are required to comply with this law. The individual can serve the church in another way, but not in a capacity in which he or she is responsible for the welfare of a child or has direct contact with children.

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<sup>8</sup> For a complete list of crimes that prohibit a person from being an employee or volunteer who is responsible for the welfare of a child or having direct contact with children, see Exhibit F.

**G. What if the individual abuses a child or is convicted of a crime in the 36-month period between obtaining clearances?**

Employees and volunteers who have contact with children are required to notify their employer or administrator within 72 hours of being arrested or convicted of a disqualifying offense or being named as a perpetrator in a report of child abuse. *Id.* at § 6344.3(g)(2). Failing to do so is a separate criminal offense. *Id.* at § 6344.3(h). And employers or administrators who have reason to believe that that an employee or volunteer was arrested or convicted of a crime, or named as a perpetrator in a report of child abuse, must immediately require the individual to provide updated clearances. *Id.* at § 6344.3(g)(2).

If the information provided by the employee or volunteer, or indicated in the updated clearances, disqualifies an individual under § 6344(c), the individual must be terminated immediately. If the information provided does not clearly disqualify an individual under § 6344(c), such as if the individual has been arrested but not yet convicted, the employer or administrator should contact a qualified attorney to discuss the best course of action. ***In no event should the employee or volunteer be permitted to have contact with children until the employer or supervisor consults with an attorney.***

**H. We need to hire someone who can start now—we can't wait for clearances! What can we do?**

Under the law, an employer can employ an individual on a provisional basis for up to 90 days if the individual has applied for the clearances and provides proof of such application to the employer. *Id.* at § 6344(m). This may not be appropriate for every position, as the employee is not permitted to work alone with children and must be in the immediate vicinity of a permanent employee at all times while working. *Id.* at

§ 6344(m)(5). Additionally, the employer must not be aware of any information that would disqualify the individual from employment and the individual must swear in writing that he or she is not disqualified from employment under § 6344(c) and has not been convicted of any similar offenses in any other foreign or domestic jurisdiction.<sup>9</sup> If the clearances subsequently reveal information that disqualifies the individual from service, he or she must be terminated immediately. *Id.* at § 6344(m)(4).

***Note that no provisional status exists for volunteers—volunteers selected after December 31, 2014 must have the proper clearances completed prior to starting service.***

**I. We want to sponsor a service project here in Pennsylvania but want to invite volunteers from other states to participate. Must those volunteers obtain Pennsylvania clearances?**

Consider first whether the service project must involve out-of-state volunteers having direct contact with children. Under the law, an individual who lives in a jurisdiction other than Pennsylvania may volunteer in a capacity in which he or she has direct contact with children in Pennsylvania for up to 30 days without obtaining Pennsylvania clearances, so long as the individual has the proper clearances under his or her home state. *Id.* at § 6344.2(f). Note, however, that the Pennsylvania organization sponsoring the project is tasked with ensuring that the out-of-state volunteers are in compliance with their home states' laws. *Id.*

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<sup>9</sup> For an example of a statement that a provisional employee can sign that meets the requirements of § 6344(m)(3), see Exhibit G.

- J. We normally require these clearances for our volunteers who work with children, but also require much more information, such as references and a criminal background check from every state in which the prospective volunteer has lived. Can we continue to require this extra information for our volunteers?**

Absolutely. Nothing in the law prohibits requiring additional information as part of the process of selecting volunteers. *Id.* at § 6344.2(e).

### **III. Training**

The new Pennsylvania child abuse prevention laws also require that certain mandated reporters undergo training. While not all mandated reporters are required to undergo training, inexpensive training options such as virtual training make mandated reporter training an achievable and desirable goal.<sup>10</sup>

- A. Are clergypersons required to take mandated reporter training?**

It depends. Clergypersons are not required to take mandated reporter training simply because they are clergypersons. Training requirements apply if an individual is an operator of an institution, facility, or agency that cares for children and is also subject to supervision by the Department of Human Services under Article IX of the Public Welfare Code or an employee of such an institution, facility, or agency who has direct contact with children. 23 Pa. C.S. § 6383(c)(1)(i). Training requirements also apply if an individual is an operator of a facility or agency that cares for children and is also subject to licensure by the Department of Human Services under Article X of the Public Welfare Code or an employee of such a facility or agency who has direct contact with children. *Id.* at § 6383(c)(1)(iii). Foster parents and certain caregivers in family day care homes also must take the training. *Id.* at § 6383(c)(1)(ii) and (iv). If a clergyperson falls into

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<sup>10</sup> Mandated Reporter training is available through a number of providers. For information on one provider of mandated reporter training see [http://www.pa-fsa.org/mandated\\_reporters/about\\_mandated\\_reporters.aspx](http://www.pa-fsa.org/mandated_reporters/about_mandated_reporters.aspx).

one of these categories, he or she must take the mandated reporter training. Even if a clergyperson is not required to take mandated reporter training, he or she should strongly consider taking the training.

Institutions, facilities, and agencies that are subject to supervision or licensure by the Department of Human Services will typically be familiar with their obligations under the Public Welfare Code as these organizations receive approvals, licenses, or registrations from the Department. Examples may include a church-run day-care center or nursery school that requires licensing or registration with the state. Operators and certain employees of these organizations are required to take mandated reporter training. Questions as to whether a particular institution, agency, or facility is subject to supervision or licensing requirements under Pennsylvania's Public Welfare Code should be directed to an attorney or to the Department of Human Services.

**B. Are volunteers required to take mandated reporter training?**

No. The statute is limited to operators or employees of certain institutions, facilities, and agencies, and does not include volunteers. Volunteers, however, should strongly consider taking the mandated reporter training even though it is not required.

**IV. Additional Questions**

This memorandum is not intended to cover all possible circumstances that may arise under the new Pennsylvania child abuse prevention laws. This memorandum is also not a substitute for seeking legal advice. Contact the Office of General Counsel with if you have specific questions or particular circumstances for which you require guidance.

**EXHIBIT A**

**DEFINITION OF CHILD ABUSE 23 Pa. C.S. § 6303**

**(b.1) *Child abuse.*** -- The term "child abuse" shall mean intentionally, knowingly or recklessly doing any of the following:

- (1)** Causing bodily injury to a child through any recent act or failure to act.
- (2)** Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (3)** Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (4)** Causing sexual abuse or exploitation of a child through any act or failure to act.
- (5)** Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (6)** Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (7)** Causing serious physical neglect of a child.
- (8)** Engaging in any of the following recent acts:
  - (i)** Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
  - (ii)** Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.
  - (iii)** Forcefully shaking a child under one year of age.
  - (iv)** Forcefully slapping or otherwise striking a child under one year of age.
  - (v)** Interfering with the breathing of a child.
  - (vi)** Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.
  - (vii)** Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

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(A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.

(B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(9) Causing the death of the child through any act or failure to act.

## **EXHIBIT B**

### **HOW TO REPORT SUSPECTED CHILD ABUSE**

**If the child is in immediate danger:**

- Call 911 regardless of whether you are a mandated reporter

**If you are a mandated reporter:**

- Call ChildLine at 1-800-932-0313; or
- Report online at [www.compass.state.pa.us/cwis](http://www.compass.state.pa.us/cwis)
  - Note that you must have an account to make a report electronically; consider setting up an account ahead of time.

**If you are not a mandated reporter:**

- Call ChildLine at 1-800-932-0313

## EXHIBIT C: MANDATED REPORTERS

### [23 Pa.C.S. § 6311](#)

Pa.C.S. documents are current through 2014 Regular Session Act 204, Enacted October 31, 2014 P.S. documents are current through the end of the 2014 Regular Session

*Pennsylvania Statutes, Annotated by LexisNexis > PENNSYLVANIA CONSOLIDATED STATUTES > TITLE 23. DOMESTIC RELATIONS > PART VII. ABUSE OF FAMILY > CHAPTER 63. CHILD PROTECTIVE SERVICES > SUBCHAPTER B. PROVISIONS AND RESPONSIBILITIES FOR REPORTING SUSPECTED CHILD ABUSE*

### **§ 6311. Persons required to report suspected child abuse. [Effective December 31, 2014]**

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- (a) **Mandated reporters.** -- The following adults shall make a report of suspected child abuse, subject to subsection (b), if the person has reasonable cause to suspect that a child is a victim of child abuse:
- (1) A person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State.
  - (2) A medical examiner, coroner or funeral director.
  - (3) An employee of a health care facility or provider licensed by the Department of Health, who is engaged in the admission, examination, care or treatment of individuals.
  - (4) A school employee.
  - (5) An employee of a child care service, who has direct contact with children in the course of employment.
  - (6) A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization.
  - (7) 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.
  - (8) An employee of a social services agency, who has direct contact with children in the course of employment.
  - (9) A peace officer or law enforcement official.
  - (10) An emergency medical services provider certified by the Department of Health.
  - (11) An employee of a public library, who has direct contact with children in the course of employment.
  - (12) An individual supervised or managed by a person listed under paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11), who has direct contact with children in the course of employment.
  - (13) An independent contractor.
  - (14) An attorney affiliated with an agency, institution, organization or other entity, including a school or regularly established religious organization that is responsible for the care, supervision, guidance or control of children.
  - (15) A foster parent.
- (b) **Basis to report.**
- (1) A mandated reporter enumerated in subsection (a) shall make a report of suspected child abuse in accordance with section 6313 (relating to reporting procedure), if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:
    - (i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of a profession or through a regularly scheduled program, activity or service.
    - (ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child,

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or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

- (iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.
  - (iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.
- (2) Nothing in this section shall require a child to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse.
- (3) Nothing in this section shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.
- (c) **Staff members of institutions, etc.** -- Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall report immediately in accordance with section 6313 and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall facilitate the cooperation of the institution, school, facility or agency with the investigation of the report. Any intimidation, retaliation or obstruction in the investigation of the report is subject to the provisions of [18 Pa.C.S. § 4958](#) (relating to intimidation, retaliation or obstruction in child abuse cases). This chapter does not require more than one report from any such institution, school, facility or agency.
- (d) (Deleted by amendment).

## History

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[Act 1990-206](#) (H.B. 1023), P.L. 1240, § 2, approved Dec. 19, 1990, eff. in 90 days; [Act 1994-151](#) (H.B. 1001), P.L. 1292, § 3, approved Dec. 16, 1994, eff. July 1, 1995; [Act 2006-179](#) (S.B. 1054), P.L. 1581, § 3, approved Nov. 29, 2006, eff. in 180 days; [Act 2014-32](#) (H.B. 436), , § 1, approved Apr. 15, 2014, eff. in 60 days; [Act 2014-33](#) (S.B. 21), , § 2, approved Apr. 15, 2014, eff. Dec. 31, 2014; [Act 2014-34](#) (S.B. 33), , § 1, approved Apr. 15, 2014, eff. Dec. 31, 2014; [Act 2014-44](#) (S.B. 31), , § 2, approved May 14, 2014, eff. Dec. 31, 2014; [Act 2014-153](#) (H.B. 435), , § 3, approved Oct. 22, 2014, eff. Dec. 31, 2014.

**EXHIBIT D**

**AFFIRMATION OF CONTINUOUS RESIDENCE IN PENNSYLVANIA  
FOR VOLUNTEERS IN LIEU OF FBI CLEARANCE**

I, (insert name), swear or affirm that I have been a continuous resident of Pennsylvania for the 10 years preceding today's date.

I have provided the results of a Pennsylvania State Police Background Check and a Pennsylvania Child Abuse History Clearance to (title of person charged with selecting volunteers).

I swear or affirm that I am not disqualified from service under 23 Pa. C.S. § 6344.2 in that no cause exists under 23 Pa. C.S. § 6344(c) for denying my participation as a volunteer in (program name). Specifically, I swear or affirm that:

- I have not been named in the Statewide database as the perpetrator of a founded report committed within the five-year period immediately preceding the date on my Pennsylvania Child Abuse History Clearance referenced above.
- I have not been convicted of any of the following offenses under Pennsylvania Title 18 (relating to crimes and offense) or an equivalent crime under Federal law or the law of another state:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

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Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

The attempt, solicitation or conspiracy to commit any of the offenses set forth above.

- I swear that I have not been convicted of a felony offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, committed within the five-year period immediately preceding the date on my Pennsylvania State Police Background Check, referenced above.

I agree that I must inform (title of person charged with selecting volunteers) of any change in the above circumstances within 24 hours of such change occurring.

\*This document must be signed in the presence of a Notary Public.\*

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Signature

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Print Name





## 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 will need clearances.

### **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.

When determining whether a volunteer is responsible for the welfare of a child consider whether the volunteer is acting in lieu of or on behalf of a parent. If they are acting in lieu of or on behalf of a parent, they will need clearances. 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 provide care, guidance, supervision or control of children, they need clearances. If, however, you determine they do not provide care, guidance, supervision or control of children, you then must 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. Is their contact with children regular, ongoing contact that is integral to their volunteer responsibilities?

If you determine they do have direct contact with children, they need clearances. If, however, you determine that they do 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 not required if:

- The position the volunteer is applying for is unpaid; and
- The volunteer has been a Pennsylvania resident continuously for the past 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. Timeframes 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 the 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 PSP clearance costs \$10
- The Child Abuse clearance costs \$10
- The FBI clearance costs \$27.50 through the Department of Human Services
- The FBI clearance 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). The business account will allow organizations to purchase Child Abuse 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 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\\_dpwNew.htm](https://www.pa.cogentid.com/index_dpwNew.htm).

#### **PSP clearances:**

An agency business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling 1-888-783-7972 and selecting option 6. 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?**

Individuals who reside in another state or country may serve as a volunteer for no more than 30 days as long as they provide clearances from their state or country of residence. If the individual will be volunteering for more than 30 days, they must obtain clearances as outlined above under "Which clearances are needed."

Volunteers who reside in Pennsylvania do not have a provisional period and must obtain clearances as outlined above under "Which clearances are needed."

**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 clearance information is confidential and may not be released 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.

**EXHIBIT F**

**GROUND FOR DENYING EMPLOYMENT OR PARTICIPATION AS A  
VOLUNTEER 23 Pa. C.S. §§ 6344(c) and 6344.2(c)**

**(c) *Grounds for denying employment or participation in program, activity or service.***

(1) In no case shall an administrator hire or approve an applicant where the department has verified that the applicant is named in the Statewide database as the perpetrator of a founded report committed within the five-year period immediately preceding verification pursuant to this section.

(2) In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of one or more of the following offenses under Title 18 (relating to crimes and offenses) or an equivalent crime under Federal law or the law of another state:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

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Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

The attempt, solicitation or conspiracy to commit any of the offenses set forth in this paragraph.

**(3)** In no case shall an employer, administrator, supervisor or other person responsible for employment decisions hire or approve an applicant if the applicant's criminal history record information indicates the applicant has been convicted of a felony offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, committed within the five-year period immediately preceding verification under this section.

**EXHIBIT G**

**AFFIRMATION FOR PROVISIONAL EMPLOYEES WHO HAVE NOT  
OBTAINED COMPLETED CLEARANCES**

I, (insert name), understand that I am being offered employment on a provisional basis for up to 90 days pending the successful completion of a Pennsylvania State Police Background Check, a Pennsylvania Child Abuse History Clearance, and a Federal Bureau of Investigation Clearance as well as an assessment of satisfactory performance.

I have requested the above-referenced clearances and have provided a copy of the completed request forms to (title of person responsible for employment decisions).

I swear or affirm that I have not been disqualified from employment under 23 Pa. C.S. § 6344(c). Specifically, I swear or affirm that:

- I have not been named in the Statewide database as the perpetrator of a founded report committed within the five-year period immediately preceding the date on my Pennsylvania Child Abuse History Clearance request referenced above.
- I have not been convicted of any of the following offenses under Pennsylvania Title 18 (relating to crimes and offense):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

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Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

The attempt, solicitation or conspiracy to commit any of the offenses set forth above.

- I have not been convicted of an offense similar in nature to those crimes listed above under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of Pennsylvania.
- I have not been convicted of a felony offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, committed within the five-year period immediately preceding the date on my Pennsylvania State Police Background Check, referenced above.

I understand that upon the completion of any or all of the Pennsylvania State Police Background Check, the Pennsylvania Child Abuse History Clearance, and the Federal Bureau of Investigation Clearance, if information obtained reveals that I am disqualified from employment pursuant to 23 Pa. C.S. § 6344(c), I will be terminated immediately.

I understand that I will not be permitted to work alone with children and that I must work in the immediate vicinity of a permanent employee at all times until the successful completion of the clearances referenced above. Failure to abide by this provision shall result in my immediate termination regardless of the status of my requested clearances.

