

## Pennsylvania Law Changes

### New Requirements for Organizations Serving Children

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***What are ‘clearances’? Who needs to get them, and how often?***

***Who is a ‘mandatory reporter’ in Pennsylvania, and what does that mean?***

***What is an ‘employment history review’ and what process is required [for schools]?***

The Pennsylvania legislature was active during the 2014 legislative session. Governor Tom Corbett signed several new pieces of legislation aimed at protecting children, including several initiatives impacting *all* organizations serving Pennsylvania children. Other initiatives have specific application to named industries or situations (i.e. schools/higher education).<sup>1</sup>

Sweeping new requirements are found, for example, in House Bill 435 (Act 153), signed by Governor Corbett on October 22, 2014. Significant changes relate to newly required ‘clearances’ for volunteers in child-serving organizations, and a broadening of the definition of mandated reporters. To read the final act, click here: [Act 153](#).

### **New Terms Utilized in the New Legislation**

To follow the many changes in Pennsylvania law, it is important to understand new terms and phrases, which are meant to be broad and inclusive. One significant change is related to the definition of a ‘person responsible for the welfare of a child or having direct contact with children’. This definition now includes individuals (paid or unpaid) in virtually every circumstance where there is contact with a child.

***‘Person responsible for the welfare of the child’***

SB23 ([Act 117](#)) [*note: underlined portion is new code*]

“Person responsible for a child’s welfare.” A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term includes any such person who has direct or regular contact with a child through any program, activity or service sponsored by a school, for-profit organization or religious or other not-for-profit organization.

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<sup>1</sup> For a list of all 23 pieces of recently enacted legislation that impact child safety in Pennsylvania: <http://keepkidssafe.pa.gov/laws/index.htm>.

***‘Program, activity or service’***

SB21 (Act 33) *[note: underlined portion is new code]*

“Program, activity, or service.” A public or private educational, athletic or other pursuit in which children participate. The term includes, but is not limited to, the following:

- (1) A youth camp or program.
- (2) A recreational camp or program.
- (3) A sports or athletic program.
- (4) An outreach program.
- (5) An enrichment program.
- (6) A troop, club or similar organization.

***‘Direct contact with children’***

HB1868 (Act 168) *[note: underlined portion is new code]*

“Direct Contact with Children.” The possibility of care, supervision, guidance or control of children or routine interaction with children.

Clearly, these definitions include individuals (paid or unpaid) in virtually every circumstance contemplating contact with a child. Given the broad application related to those impacted, it is important to understand what is required by the new law, and under what circumstances.

## Clearance Requirements

Prior to House Bill 453 (Act 153), Pennsylvania’s Child Protective Services Law (23 Pa.C.S. §6301 *et seq.*) mandated criminal background check and clearance requirements for a narrow list of people who provided services to children. Act 153 broadens the background check and clearance requirements in several contexts, including, but not limited to, requiring clearances for volunteers who will have contact with children.

### Who Is Impacted?

All adults (paid or unpaid) who are responsible for the welfare of a child or have direct contact with a child are impacted by the new clearance requirements. Given the definitions above, it is difficult to imagine a position *not covered* by new Pennsylvania law, and this is what the Pennsylvania legislature intended. To better understand the new requirements for paid staff and volunteers (14 years of age or older), Sections 6344 and 6344.2 should be read together.

## What Is Required?

**Employees—Effective December 31, 2014** [see §6344 and §6344.4(1)]

Any individual 14 years of age or older who applies for a paid position (employment), and is responsible for the welfare of a child or will have direct contact with children (see definitions above) will be required to submit the following information to their prospective employer:

1. Pennsylvania Criminal History report from the Pennsylvania State Police (\$10);
2. Certification from the Pennsylvania Department of Human Services (\$10); and
3. Federal Criminal History report from the FBI, which includes submission of the individual's fingerprints to the Pennsylvania State Police (\$27.50).

**Renewal:** after employment commences, the certifications must be renewed every 36 months. [See §6344.4(1)]

**Volunteers—Effective July 1, 2015** [see §6344.2(a) and §6344.4(2)]

An individual 18 years of age or older who applies for an unpaid position (volunteer), and is responsible for the welfare of a child or will have direct contact with children (see definitions above) will be required to submit the following information to their prospective supervisor:

1. Pennsylvania Criminal History report from the Pennsylvania State Police (\$10);
2. Certification from the Pennsylvania Department of Human Services<sup>2</sup> (\$10); and
3. Federal Criminal History report from the FBI, which includes submission of the individual's fingerprints to the Pennsylvania State Police (\$27.50).

[See §6344.2(b) and §6344(b)(1)-(3)]

The Federal Criminal History report (Item No. 3, above) is waived for volunteers in circumstances wherein the applicant seeks to (1) serve in a position that is unpaid; (2) has been a resident of Pennsylvania for the entirety of the previous ten years; and (3) swears or affirms, in writing, that he or she has not been convicted of one or more of the disqualifying crimes.<sup>3</sup> [See §6344.2(b.1)(1)]

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<sup>2</sup> "Clearances" provided by the department will include 'founded' reports and any 'open and pending' investigation where the individual is the alleged perpetrator. [See §6335(e)]

<sup>3</sup> A volunteer applicant is disqualified from working with children if they:

- If they have been named in the statewide database as the perpetrator of a founded report of child abuse within the last five years (§6433(c)(1));
- If they have been convicted of a felony offense under the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, *et seq.*, within the last five years (§6344(c)(3)); or
- If they have ever committed one of the designated crimes listed in §6344(c)(2), which generally includes homicide, assault, stalking, kidnapping, sexual offenses, prostitution or child endangerment (and similar crimes) (§6344.2(b.1)(2)).

“Swearing or affirming in writing” is language generally related to an affidavit. For access to a form affidavit,<sup>4</sup> click here: [[Form Affidavit](#)]. It is recommended that all organizations that rely on volunteers have one or more representatives become a Notary Public to streamline this element of screening for volunteers.

**Renewal:** after acceptance as a volunteer, the certifications referenced above must be renewed every 36 months. [See §6344.4(2)]

## **Common Clearance Questions**

The new legislation related to the Pennsylvania Child Abuse History Clearance has created many questions and issues, primarily for volunteers and organizations relying on volunteers.

The Pennsylvania Department of Human Services (DHS)<sup>5</sup> is working to address questions and issues. In addition to existing resources, DHS is creating a webpage providing online clearance tools for volunteers impacted by the new clearance requirements. This webpage is scheduled to be available beginning July 1, 2015.

As well, the Pennsylvania Association of Nonprofit Organizations (PANO) and other government and private organizations are attempting to assist organizations with compliance.

## **Resources for Frequently Asked Questions**

Below is a useful list of resources for guidance:

- ChildLine Verification Unit: 717.783.6211 or 1.877.371.5422
- [Child Abuse History Clearance Online](#)
- [Clearance Forms](#)
- [Pennsylvania Association of Non-Profits](#)
- [Pennsylvania Clearances, additional resources](#)

## **Certifications are Transferable**

The legislature recognizes that many individuals serving children in Pennsylvania are doing so in multiple contexts or may change places of employment or service. Section 6344.3(f) provides guidance regarding contexts where certifications are transferable, and when certifications must be renewed.

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<sup>4</sup> Special thanks to George Krebs for his work on this and other forms referenced herein.

<sup>5</sup> Formerly Department of Public Welfare (DPW).

An **employee** who has been cleared to work with children can transfer or provide services to another subsidiary or branch established and supervised by the same organization during the length of time the person's certification is current, pursuant to §6344.4.

[See §6344.3(f)(1)]

An **employee** who begins employment with a new agency, institution, organization or other entity that is responsible for the care, supervision, guidance or control of children is required to obtain a new certification of compliance.

[See §6344.3(f)(2)]

An **employee** who has been cleared to work with children can provide volunteer services to any other program, service or activity during the length of time the person's certification is current, pursuant to §6344.4.

[See §6344.3(f)(1)]

A **volunteer** who has been cleared to work with children can provide volunteer services to any other program, service or activity during the length of time the person's certification is current, pursuant to §6344.4.

[See §6344.3(f)(1)]

## Provisional Clearance

Section 6344.2(f) gives employers, administrators, supervisors or other persons responsible for selecting volunteers permission to allow a volunteer to serve on a provisional basis without complying with the procedures described above. To do so, the volunteer serves on a provisional basis for a single period not to exceed thirty (30) days **and** the volunteer must be in compliance with the clearance requirements of the jurisdiction where the volunteer is domiciled.

[See §6344.2(f)]

Note: Section 6344.2(f) does not provide guidance or define what is meant by 'the clearance requirements of the jurisdiction where the volunteer is domiciled'. By implication, it appears *some* effort should be made to understand the provisional volunteer's criminal history in his or her place of domicile.

## Additional Clearances

Nothing in the new Pennsylvania legislation prohibits or discourages *additional* employment or volunteer screening. Before this new legislation, many organizations were performing some level of criminal background check for paid staff and volunteers. In most

cases, the background search performed included a nationwide, multi-jurisdictional electronic database search. Notwithstanding the limitations of this type of search,<sup>6</sup> the national database search accesses a variety of records from all fifty states. The new clearance requirements in Pennsylvania drill deep into the criminal history of a person that engaged in criminal behavior in *Pennsylvania only*. The only 'national' component of the new clearance requirements is connected to the Federal Criminal History report from the FBI.<sup>7</sup> Further, if a volunteer meets the criteria for waiver of the FBI check, there is no search being performed that would gather criminal records outside of Pennsylvania.

Given the expense associated with new clearance requirements, many organizations (especially those relying heavily on volunteers) will struggle to budget for these new costs. The prospect of adding an additional \$10.00 to \$15.00 per volunteer or employee for a national database search (cost depends on search type and depth) is burdensome. Notwithstanding the cost, an additional nationwide search component is imperative—particularly if the applicant has resided outside the state of Pennsylvania.

## Penalties for Noncompliance

Child and youth serving organizations must ensure compliance with these new requirements, as the penalties for noncompliance are severe. Specifically, any employer, administrator, supervisor or other person responsible for the selection of volunteers who intentionally fails to comply with the law may be found guilty of a third-degree misdemeanor, punishable by a fine or up to a year in state prison or county jail.

## Volunteer Arrested or Convicted During Tenure as Volunteer / Self-Reporting

If any employee or volunteer who works with children is (1) arrested for or convicted of a disqualifying event, or (2) is named as a perpetrator in a Founded Report or Indicated Report,<sup>8</sup> the employee or volunteer must notify the appropriate administrator in writing within 72 hours. It is a third-degree misdemeanor for an employee or volunteer to knowingly fail to do so.

If the administrator receives notice or suspects that an employee or volunteer who works with children has been (1) arrested for or convicted of a disqualifying offense, or (2) named as a perpetrator in a Founded Report or Indicated Report, the administrator must require

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<sup>6</sup> To learn more about the strengths and weaknesses of a criminal background check, see:

<http://ministrysafe.com/2014/05/12/criminal-background-checks-what-you-should-know/>.

<sup>7</sup> It is unclear whether the FBI search is national in scope or whether the search relates to only 'federal' criminal history (federal crimes). Most crimes involving injury to a person or a child are investigated and prosecuted at the county level, not the federal level; possession and distribution of child pornography are notable exceptions.

<sup>8</sup> An 'Indicated Report' and a 'Founded Report' have been redefined by House Bill 726 ([Act 108](#)).

the employee or volunteer to re-certify, the cost of which must be borne by the organization.

[See §6344.3(g)(1) and §6344.3(g)(2)]

## Mandated Reporters

Many states are broadening code sections related to reports of actual and suspected abuse and neglect. Through Senate Bill 21 (Act 33), Pennsylvania broadened the list of those considered mandated reporters, the steps required for making a report, and more. To read the final act, see: [Act 33](#). To determine those individuals considered mandated reporters under the new law, these terms must be understood: ***‘person responsible for the welfare of a child’***, a ***‘program, activity or service’***, and ***‘direct contact with children’*** (see definitions, above).

Prior to Senate Bill 21 (Act 33), Pennsylvania’s Domestic Relations Code (23 Pa.C.S. §6303 *et seq.*) provided guidance for defining mandated reporters in Pennsylvania, as well as necessary steps for making a report. SB21 amends the definitions of §6303 and amends the list of persons required to report suspected child abuse in §6311, including a list of those ‘encouraged to report’ (see §6312).

## Mandated Reporters

Under §6311(a), mandated reporters now include these individuals:

(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.

Special attention must be paid to numbers (7), (12) and (13). Using the phrase 'program, activity or service' (as defined in §6303), this category of persons is extremely broad and directly impacts camps, non-profits, churches, youth sport organizations, and every other conceivable program in which children may be served in Pennsylvania. Further, number (12) covers any individual supervised or managed by a person listed in number (7). The definition of 'independent contractor' found in number (13) is also very broad and seemingly all-inclusive. The fact that a list of 'encouraged reporters' remains under §6312 is the only suggestion that the new list does not include everyone. In Pennsylvania, if you work with children, you are now a mandated reporter.

## **What is Child Abuse?**

Several essential definitions are found in §6303, as amended by House Bill 726 (Act 108). §6303(a) provides the definition of 'Serious physical neglect' and 'Sexual abuse or exploitation'. §6303(b.1) provides the definition of 'Child abuse', including a broad description of injuries to a child, incorporating a reference to sexual abuse and exploitation in §6303(b.1)(4). This code section and definitions may be accessed through House Bill 726 ([Act 108](#)). Again, the definitions are very broad, and the legislature intended it so.



## What to Report—When to Report—How to Report

Mandated reporters are required to report suspected child abuse (as defined above).

The timing and procedures for making a report of child abuse are outlined in §6313(b). A report is generally a two-step process:

**First: immediately make an oral report to DHS: *CHILDLINE: 800-932-0313*.**

**Second: provide a written report to DHS within 48 hours.**

The written report must include the information listed in §6313(b)(1) through (11), if known:

- (1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of each subject of the report.
- (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.
- (5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.
- (6) Family composition.
- (7) The source of the report.
- (8) The name, telephone number and e-mail address of the person making the report.
- (9) The actions taken by the person making the report, including those actions taken under section 6314 (relating to photographs, medical tests and X-rays of child subject to report), 6315 (relating to taking child into protective custody), 6316 (relating to admission to private and public hospitals) or 6317 (relating to mandatory reporting and postmortem investigation of deaths).
- (10) Any other information required by Federal law or regulation.
- (11) Any other information that the department requires by regulation.

The written report can be submitted to the department electronically. Additionally, the oral report is not required if the mandated reporter chooses to simply (and immediately) make a report of suspected abuse in writing (providing the information listed above).

[See §6305(b), as amended by Senate Bill 24 ([Act 29](#))]

## Outside Course and Scope of Employment or Service...Report Required?

One issue not addressed by the Legislature relates to whether an individual defined as a mandated reporter remains a mandated reporter in all walks of life, or only while serving in the capacity described in §6311(a). Clearly, a teacher is a mandated reporter while acting in the course and scope of school employment, but is he or she still a mandated reporter while not serving in the course and scope of school employment?

Prior to the amendment, the mandated reporter code read as follows:

§6311. Persons required to report suspected child abuse.

(a) General Rule. – A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made...

The pre-amended construction seemed to indicate that the person was a mandated reporter while acting in the capacity of the role listed in the code section (i.e., teacher).

The amended code is modified such that this is now unclear. §6311(a) now simply provides a list of individuals, which includes a volunteer church nursery worker, for example. §6311(b)(1) lists four circumstances triggering a mandatory report from this volunteer, following the process outlined above. §6311(b)(1)(iii) is the troubling subsection.<sup>9</sup> The church volunteer is now a mandated reporter, and the circumstance which gives rise to a mandated report is not limited to the course and scope of the volunteer's service as a volunteer. If the church volunteer goes home and a neighbor child makes a specific disclosure of child abuse, is the church volunteer (now at home) required to make a report?

Consider the new code:

### **§6311(b) Basis to report.—**

(1) A mandated reporter enumerated in subsection (a) shall make a report of suspected child abuse or cause a report to be made 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, or is affiliated with an agency, institution, organization, school, regularly established church

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<sup>9</sup> §6311(b)(1)(iv) presents the same difficulty.

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.

## Privileged Communications

House Bill 436 ([Act 32](#)) modified the mandated reporter requirements through §6311.1 such that only confidential communications to clergy and attorneys potentially exempt a mandated reporter from making a report under §6311(a).

### **§ 6311.1. Privileged communications.**

(a) General rule.—Subject to subsection (b), the privileged communications between a mandated reporter and a patient or client of the mandated reporter shall not:

(1) Apply to a situation involving child abuse.

(2) Relieve the mandated reporter of the duty to make a report of suspected child abuse.

(b) Confidential communications. —The following protections shall apply:

(1) Confidential communications made to a member of the clergy are protected under 42 Pa.C.S. §5943 (relating to confidential communications to clergymen).

(2) Confidential communications made to an attorney are protected so long as they are within the scope of 42 Pa.C.S. §§5916 (relating to confidential communications to attorney) and 5928 (relating to confidential communications to attorney), the attorney work product doctrine or the rules of professional conduct for attorneys.

Privileged communications between a mandated reporter and a patient or client shall not apply to a situation involving child abuse. That covers doctors and counselors (if otherwise a mandated reporter under §6311(a)).

Note: Although §6311(b) references communications with clergy and attorneys, not all communications with clergy or attorneys are confidential communications. Pay close attention to the code sections defining confidential communications for clergy (42 Pa.C.S. §5943) and attorneys (42 Pa.C.S. §5916 and §5928).

## Protections for Reporters

When an individual makes a good faith report of suspected child abuse, that person will enjoy immunity from civil and criminal liability, and *all* reports of suspected child abuse are presumed to be good faith reports. This is not new law, but was modified by Senate Bill 30 ([Act 119](#)). Protections were expanded for good faith reporters, providing protection from employment discrimination and retaliation through §6320, as amended by Senate Bill 33 ([Act 34](#)).

## Resources for Frequently Asked Questions

For additional resources related to reporting child abuse in Pennsylvania, see:

- ChildLine Verification Unit: 717.783.6211 or 1.877.371.5422
- [DHS/DPW Abuse Report Portal](#)
- [Keep Kids Safe](#)

## Mandatory Training for Professional Licensees

House Bill 431 ([Act 31](#)) amended §6383(b) and added §6383(c), requiring mandatory training for professional licensees identified as mandated reporters as well as certain persons ‘subject to department regulation.’”

These new code sections provide guidance related to the following:

- Specific training content required; (*What subject matters must training include?*)
- Individuals required to complete training; (*Who must be trained?*)
- Timing of training completion; (*When must training occur?*) and
- Training renewal requirements. (*How often must training be refreshed?*)

## Child Abuse Recognition and Reporting Training – Content

The new mandatory training covers child abuse recognition and reporting. The training must be approved by the Pennsylvania Department of Human Services.<sup>10</sup> At present, there are several approved Child Abuse Recognition and Reporting Training options available. Though approved, they vary greatly in quality. The training available through the

<sup>10</sup> The state of Pennsylvania has provided information relating training content, course submission and approval process: <http://keepkidssafe.pa.gov/training/index.htm> and [http://www.portal.state.pa.us/portal/server.pt/community/office\\_of\\_elementary\\_secondary\\_education/7209/office\\_for\\_safe\\_schools/1423046](http://www.portal.state.pa.us/portal/server.pt/community/office_of_elementary_secondary_education/7209/office_for_safe_schools/1423046).

University of Pittsburgh is well done and available at no cost: [University of Pittsburgh Mandated Reporter Training](#).<sup>11</sup>

## Who Must Be Trained, and When

**Professional Licensees.** Every professional licensee identified under §6311(a) as a mandated reporter is required to complete the new child abuse recognition and reporting training. [See §6383(b)]

If applying for a license, the applicant must submit proof of completing “at least **three** hours of approved child abuse recognition and reporting training”.

If renewing a license, the applicant must submit proof of completing “at least **two** hours of approved continuing education per licensure cycle. Continuing education shall address, but shall not be limited to, recognition of the signs of child abuse and the reporting requirements....” [See §6383(b)(3)(ii)]

**Persons Subject to Department Regulation.** §6383(c) describes another group required to complete the mandatory training:

(c) Training of persons subject to department regulation.—

(1) The following persons shall be required to meet the child abuse recognition and reporting training requirements of this subsection:

(i) Operators of institutions, facilities or agencies which care for children and are subject to supervision by the department under Article IX of the Public Welfare Code, and their employees who have direct contact with children.

(ii) Foster parents.

(iii) Operators of facilities and agencies which care for children and are subject to licensure by the department under Article X of the Public Welfare Code and their employees who have direct contact with children.

(iv) Caregivers in family day care homes which are subject to registration by the department under Subarticle (c) of Article X of the Public Welfare Code and their employees who have direct contact with children.

Primarily identified here are foster parents and operators of institutions, facilities or agencies that care for children, and are supervised by the department under Articles IX and X of the Public Welfare Code.

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<sup>11</sup> This training, however, does not provide a description of the grooming process used by a sexual abuser to prepare a child (and the child’s gatekeeper) for abuse of the child. To learn more about Sexual Abuse Awareness Training, visit [www.MinistrySafe.com](http://www.MinistrySafe.com) or [www.AbusePreventionSystems.com](http://www.AbusePreventionSystems.com).

With respect to timing, §6383(c)(2) provides:

Within six months of the effective date of this subsection, operators and caregivers shall receive **three** hours of training prior to the issuance of a license, approval or registration certificate and **three** hours of training every five years thereafter.

Employees who have direct contact with children and foster parents shall receive **three** hours of training within six (6) months of a license, approval or registration certificate and **three** hours of training every five years thereafter. New employees and new foster parents shall receive **three** hours of training within 90 days of hire or approval as a foster parent and three hours of training every five years thereafter. [See §6383(c)(3)]

For more information regarding deadlines and schedules for Child Abuse Recognition and Reporting Training, see: [Mandated Reporter Training Schedule](#).

### **Employment History Review [Schools]**

House Bill 1816 ([Act 168](#)) amends the Public School Code and introduces requirements for all new school employees who will have direct contact with children (see above definition of ‘direct contact with children’).<sup>12</sup> Act 168 has generated a number of questions; the state of Pennsylvania has provided several answers to frequently asked questions:

<http://archive.pasbo.org/Act%20168%20-%20FAQs%20-%20Final.pdf>.

Beginning December 22, 2014, all School Entities (including independent contractors) must conduct an ‘employment history review’ for any prospective employee prior to hiring. This requirement is *in addition* to other employment requirements outlined in the Public School Code and Child Protective Services Law.

Act 168 provides a detailed description of the forms and the process to be used in the employment history review.

### **Requirements of Act 168**

An employment history review is Pennsylvania’s attempt to create an open line of communication between an applicant’s prospective employer and all past employers regarding the applicant’s history of abuse or sexual misconduct.

When an Applicant seeks a position with a School Entity that involves direct contact with children, the new process is as follows.

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<sup>12</sup> “Direct contact” is defined as the “possibility of care, supervision, guidance, control or routine interaction with children.”

### **Applicant Provides Contact Information for Current and Past Employers**

The hiring School Entity must require the Applicant to provide contact information for the following:

- Current employer;
- All former employers that were school entities; and
- All former employers where the applicant served in a position that involved direct contact with children.

### **Applicant Completes the Sexual Misconduct/Abuse Disclosure Form**

The Applicant must complete the Department's form titled "Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release" form:

<http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS 0 148494 1464556 0 0 18/Form-DPTT.pdf>.

In the form referenced above, the applicant must respond affirmatively or negatively to the following questions:

*Have you (Applicant) ever:*

- Been the subject of an abuse or sexual misconduct investigation by any employer, state licensing agency, law enforcement agency or child protective services agency?*
- Been disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from employment while allegations of abuse or sexual misconduct were pending or under investigation or due to adjudication or findings of abuse or sexual misconduct?*
- Had a license, professional license or certificate suspended, surrendered or revoked while allegations of abuse or sexual misconduct were pending or under investigation or due to an adjudication or findings of abuse or sexual misconduct.*

A separate form must be filled out for each current and former employer. Volunteer provides the completed forms to the hiring School Entity. Applicant must also consent to the current and former employer's disclosure of *any information* regarding abuse and/or sexual misconduct.

### **Submit Completed Forms to Applicant's Current and Former Employers**

Upon receipt, the hiring School Entity must submit one of the completed forms to the Applicant's current employer and one of the completed forms to each of the Applicant's former employers.

Upon receipt of the form, the Applicant's current and former employers have 20 days to respond to the request made by the hiring School Entity. The current and former employers respond by completing Section 2 of the Sexual Misconduct/Abuse Disclosure Release form to verify the information provided by the Applicant.



### **Penalty for Failure to Respond by Applicant's Current or a Former Employer**

If one of Applicant's current or former employers fails to respond within the 20-day period, the current or former employer can be subject to civil penalties and/or may be in violation of the Educator Misconduct Act.

### **An Affirmative Response by Applicant's Current or a Former Employer**

An "affirmative response" is an indication by Applicant's current or a former employer that Applicant has encountered one of the three items identified on the Sexual Misconduct/Abuse Disclosure Release (see questions in italics, above).

Any affirmative response by the Applicant's current or a former employer is enough to end Applicant's employment consideration with the hiring School Entity. If this occurs, the process is complete.

If the hiring School Entity decides to continue its consideration of Applicant for employment, the hiring School Entity must submit the "Commonwealth of Pennsylvania's Sexual Misconduct/Abuse Disclosure Information Request" form to the affirmatively responding current or former employer. Sexual Misconduct/Abuse Disclosure Information Request form:

[http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us:80/portal/server.pt/gateway/PTARGS\\_0\\_148494\\_1464555\\_0\\_0\\_18/Form%20-%20DPTT%20-%20employer%20follow%20up.pdf](http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us:80/portal/server.pt/gateway/PTARGS_0_148494_1464555_0_0_18/Form%20-%20DPTT%20-%20employer%20follow%20up.pdf).

Upon receipt of a Sexual Misconduct/Abuse Disclosure Information Request, the affirmatively responding current or former employer must disclose all information and documentation related to the allegations within 60 days.

### **Provisional Hiring Period**

A hiring entity may hire an applicant on a provisional basis pending receipt of the information requested, **as long as:**

- the applicant has provided all relevant information on the form(s);
- the hiring School Entity administrator has no knowledge of information related to the applicant that would disqualify the applicant from employment;
- the applicant swears or affirms that he/she is not disqualified from employment; and
- the applicant is not permitted to work alone with children and is required to work in the immediate vicinity of a permanent employee.

If Applicant meets these requirements, Applicant can be provisionally employed by the hiring School Entity for up to 90 days.

### **Additional Verifications When Applicant Holds a School Certification**

Additional verifications are necessary when Applicant is an educator who holds a school certification (public or private) or has been assigned a Professional Personnel Identification Number (PPID). The hiring School Entity must:

- ensure that Applicant has a valid and active certification appropriate for the position;
- determine whether Applicant has been the subject of public professional discipline; and,
- ascertain whether Applicant has pending criminal charges.<sup>13</sup>

Information concerning Applicant’s certification status, public professional discipline, and pending criminal charges can be accessed through the Teacher Information Management System (TIMS). It is important to note that the information available through TIMS is provided only for educators holding a Pennsylvania public or private teaching certification or a PPID number.

### **Pending Criminal Charges**

A hiring School Entity that is a provisioned user of TIMS can determine whether an Applicant has pending criminal charges by searching the Applicant’s name or PPID, and clicking on “View Complete Profile”. A hiring School Entity that is not provisioned can access the same information by searching the Applicant by PPID from the public access site: <http://www.teachercertification.pa.gov/Screens/wfSearchEducators.aspx>.

If the hiring School Entity receives a notation in the Educator Complete Profile that Applicant has Pending Criminal Charges, the hiring School Entity will be directed to contact the Pennsylvania Department of Education Office of Chief Counsel at **717-787-5500**, for information regarding charge information, the date of the charges and the county where the charges were incurred. The information provided by TIMS regarding pending criminal charges is communicated to the Department by the Pennsylvania Justice Network (“JNET”), which provides the Department with limited public information concerning criminal charges.

Hiring School Entities may also verify pending criminal charges by accessing the Pennsylvania Judiciary Web Portal, a free database of publicly available criminal information. The Pennsylvania Judiciary Web Portal can be accessed here: <https://ujportal.pacourts.us>.

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### **Love & Norris, Attorneys at Law**

Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, Love & Norris provide consulting services to secular and ministry organizations providing services to children. Representative clients include the United States Olympic Committee, Awana International, Church of the Nazarene, the North Texas Conference of the United Methodist Church, Gladney Center for Adoption, and many church and para-church schools, camps and ministries.

### **MinistrySafe and Abuse Prevention Systems**

In addition to an active law practice, Love and Norris are co-founders and Directors of **MinistrySafe** and **Abuse Prevention Systems**, entities dedicated to sexual abuse awareness and prevention. **MinistrySafe** and **Abuse Prevention Systems** provide Sexual Abuse Awareness Training (live and online) and assist child-serving organizations in the design and implementation of safety systems that reduce the risk of child sexual abuse. Love and Norris are frequent speakers before ministries, educational entities, adoption and foster care organizations, and youth camps. They have addressed

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<sup>13</sup> A “Pending Criminal Charges” indicator means that the educator has been criminally charged with a misdemeanor or felony crime.

national and regional audiences for organizations such as the National Association of Church Business Administrators (NACBA), National Council for Adoption (NCFA), American Camp Association (ACA), and the Christian Camp and Conference Association (CCCA).

MinistrySafe and Abuse Prevention Systems are endorsed by Philadelphia Insurance Companies and the American Camp Association. MinistrySafe and Abuse Prevention Systems' Sexual Abuse Awareness Training is approved by the Texas Department of State Health Services and the Departments of Insurance for Texas, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe's Sexual Abuse Awareness Training is an approved CEU for the Association of Christian Schools International (ACSI).