

*Effective immediately, clarification changes have been made to the state's new law (Act 153 of 2014) regarding background clearances for employees and volunteers who have direct and routine contact with children. Under Act 15 of 2015, formerly House Bill 1276, these clarification changes officially will help thousands of organizations better determine who needs to have background clearance when working with children.*

## **What Do the New Background Check Laws Mean For Me?**

### ***As a parent...***

- Background checks, either previously or newly required, are conducted to determine whether a prospective or current volunteer who has direct **and routine** contact with children or oversees someone with direct **and routine** contact with children, has been convicted of any serious felonies or sex crimes, or has been identified as a perpetrator in a substantiated case of child abuse.

### ***As an educator...***

- The separate standards that exist for school employees with respect to substantiating and reporting child abuse are eliminated. This ensures that the same standards will be applied in school incidents as in any other case.
- Suspected abuse must be reported directly to ChildLine and the school administrator must be notified.
- Public and private schools and their contractors are required to conduct a thorough employment history review prior to offering employment to any applicant for a position involving direct **and routine** contact with children. Each applicant must provide detailed background information in order to be considered, and previous employers must provide a school entity with all requested background information regarding a former employee.
- If an existing employee already has obtained the required clearances prior to Dec. 31, 2014, then those clearances will be valid for **five** years from the time they were most recently certified. If an existing employee's clearances are older than **five** years old, or if they never before obtained clearances, but now will be required to get them, they have until Dec. 31, 2015, to obtain the clearances.
- For the first time, educators must re-certify every **five** years.
- The new background check clearance requirements for all employees went into effect Dec. 31, 2014.
- **These background clearances are portable, meaning you do not have to duplicate this process for each and every employment position you hold. However, someone cannot use the free volunteer background clearances for employment purposes.** Employees at institutions of higher education are exempt from the background checks, unless their students participate in dual enrollment programs.

### ***As someone whose profession involves direct **and routine** contact with children...***

- You will be required to obtain both criminal background check clearances and child abuse clearances, and to have those clearances recertified every **five** years.
- The clearances include the PA State Police criminal background check; a child abuse clearance from the PA Department of Human Services (formerly the Department of Public Welfare); and an FBI criminal background check clearance, which includes fingerprinting.
- If you already have obtained the required clearances prior to Dec. 31, 2014, then those clearances will be valid for **five** years from the time they were most recently certified. If your clearances are older than **five** years old, or if you never before obtained clearances, but now will be required to get them, you have until Dec. 31, 2015, to obtain the clearances.
- The new background check clearance and recertification requirements for all employees go into effect Dec. 31, 2014.
- **These background clearances are portable, meaning you do not have to duplicate this process**

for each and every employment position you hold. However, someone cannot use the free volunteer background clearances for employment purposes.

- For co-op, work-study and internship programs, one adult supervisor of the program must be designated to obtain the required clearances and to be in the student's immediate vicinity at regular intervals during the program.

### **As a volunteer...**

- Under the new law (Act 15), volunteers must obtain the clearances if they have direct volunteer contact, meaning that they have care, supervision, guidance or control AND routine interaction with children. This is the standard that will apply to determining whether an adult volunteer must get the background checks.
- If you have resided in the Commonwealth continuously for at least the past 10 years, you will be required to obtain only the PA State Police criminal background check clearance and the child abuse clearance. If you have resided in Pennsylvania for less than 10 years, you will be required to obtain an FBI criminal background check clearance, **only once until the 10-year threshold has been reached.**
- These requirements for volunteers will go into effect **Aug. 25, 2015.**
- If you obtained these clearances prior to July 1, 2015, they will be valid for **five** years from the time they were most recently certified. If you are an existing volunteer and your clearances are older than **five** years old, or if you never before obtained clearances, but now will be required to get them, you have until July 1, 2016, to obtain the clearances. Any prospective adult volunteer must have the clearances obtained before beginning volunteer service.
- These background clearances are portable, meaning you do not have to duplicate this process for each and every volunteer position you hold.
- You must provide written notice to your organization within 72 hours of any new arrests or convictions for an offense that would prohibit you from working with children, or if you have been named as a perpetrator in a report of substantiated child abuse.
- Convictions of a drug offense within the past five years would disqualify you from serving as a volunteer who works with children.
- The new law does not subject the one-time volunteers, such as parents who visit school for a career day or as a guest reader, to these requirements.

**Please Note:** The vast majority of organizations, schools and churches that use volunteers already have their own stringent background check clearance policies in place. The new law sets minimum requirements, but nothing in this law prohibits organizations from establishing or continuing even more stringent internal policies.

## **What will this cost me?**

The fees for employees are: child abuse clearance, \$8; state police criminal background check clearance, \$8; and FBI clearance, \$27.50. The fees for the child abuse clearance and the state police criminal background check will be waived for volunteers only, beginning July 25, 2015.

## **Mandated Reporters of Child Abuse**

Act 33 of 2014 (formerly Senate Bill 21) is one of more than 20 pieces of legislation enacted as part of the landmark Child Protection legislative package that moved through the General Assembly in 2013 and 2014. Its provisions, like the other components of the package, are based on recommendations of the Task Force on Child Protection, which was convened in 2012 at the direction of the Legislature.

Collectively, this package represents the first comprehensive update and improvement of Pennsylvania's Child Protective Services Law (Chapter 63 of Title 23 of the Pennsylvania Consolidated Statutes) in nearly two decades.

### **Mandated Reporters List:**

Act 33, which went into effect December 31, 2014, broadens the category of mandated reporters (those required by law to report suspected child abuse) and provides a definitive list of those who are considered mandated reporters. The following persons (limited to adults) are legally required to report suspected child abuse:

- Licensed professionals in health-related fields.
- Medical examiners, coroners and funeral directors.
- Employees of health care facilities/providers licensed by the Department of Health who are involved with patient admission, examination, care or treatment.
- School employees.
- Employees of a child-care service who have direct contact with children.
- Clergy and other religious leaders.
- Individuals (paid or volunteer) who accept responsibility for a child as part of a regularly scheduled program, activity or service.
- Employees of social service agencies who have direct contact with children.
- Peace officers or law enforcement officials.
- Employees at public libraries who have direct contact with children.
- Emergency medical services providers.
- Persons supervised by any of the above, and who have direct contact with children.
- Independent contractors of organizations that care for children.

Another piece of legislation in the package, Act 32 of 2014 (formerly House Bill 436), added to this list attorneys who are affiliated with an agency, organization or institution that is responsible for the care, supervision, guidance or control of children. However, confidential communications made to an attorney are protected, if they are within the scope of Sections 5916 or 5928 of the Judicial Code, the attorney work product doctrine, or the rules of professional conduct.

### **Reporting Requirements:**

Mandated reporters are legally required to report when they have reasonable cause to suspect child abuse under the following circumstances:

- The mandated reporter comes into contact with the child through their work or volunteer service.
- The mandated reporter or the organization they are affiliated with is directly responsible for the child.
- A person makes a specific disclosure about the abuse of an identifiable child.
- A person (14 or older) makes a specific disclosure that the person has committed child abuse.

All mandated reporters are required to report suspected child abuse directly to the PA Department of Human Services (DHS) (formerly Department of Public Welfare) by phone via **Childline: 1-800-932-0313**.

The new law also allows for electronic reporting via e-mail. If a report is made electronically, the reporter is required to submit medical summaries, photographs and other relevant medical information within 48 hours.

Mandated reporters who are members of the staff of a medical or other public or private institution, school facility or agency will be required to report suspected child abuse directly to DHS **and** to the person in charge of the organization, who then assumes responsibility for facilitating the cooperation of the organization with the investigation of the report.

To reiterate, any adult who, in the course of employment, occupation or practice of a profession, comes into contact with children is required to report suspected child abuse if they have cause to suspect it on the basis of medical professional or other training and experience. The child in question could be under their direct care, supervision, guidance or training, or under the care, supervision, guidance or training of an entity with which the adult is affiliated. Except with regard to confidential communications to clergy or attorneys that are protected under the Judicial Code, privileged communications between professionals and clients do not apply to cases of child abuse.

### **Penalties for Failure to Report:**

The penalties for mandated reporters who willfully fail to report suspected child abuse have been increased under Act 32 of 2014. A first offense has been upgraded from 3<sup>rd</sup> degree misdemeanor to 2<sup>nd</sup> degree misdemeanor. If the child abuse is a 1<sup>st</sup> degree felony (i.e. murder, rape, aggravated assault or involuntary deviate sexual intercourse), the offense of failure to report is a 3<sup>rd</sup> degree felony.

A second or subsequent offense of failing to report has been upgraded from a 2<sup>nd</sup> degree misdemeanor to 3<sup>rd</sup> degree felony. If the child abuse is a 1<sup>st</sup> degree felony, a second offense of failure to report is now a 2<sup>nd</sup> degree felony.

Also, a new offense has been created for mandated reporters whose failure to report continues while the person knows or has reasonable cause to believe that the child is being actively subjected to abuse. This offense is a 1<sup>st</sup> degree misdemeanor unless the child abuse is a 1<sup>st</sup> degree felony, in which case the offense is a 2<sup>nd</sup> degree felony.

A mandated reporter who makes a report to law enforcement or a county children and youth agency in a good-faith attempt to comply with the reporting obligation is not guilty of an offense simply for failing to report to DHS's Childline.

The statute of limitations for failure to report suspected child abuse is the greater of either the statute of limitations for the crime committed against the child, or five years.

**Training Requirements:**

Another piece of the Child Protection legislative package establishes required training for mandated reporters. Act 31 of 2014 (formerly House Bill 431) requires child abuse recognition and reporting training for professional licensees who are mandated reporters of suspected child abuse and for operators and employees of facilities and agencies regulated or supervised by DHS (i.e., day-care centers, foster parents, and caregivers in family day-care homes).

While school employees must receive this training under current law, Act 31 ensures that other groups of mandated reporters (doctors, nurses, psychologists, social workers, child care workers, etc.) are properly trained to report suspected child abuse.

The required child abuse recognition and reporting training or continuing education will have to address, but not be limited to, recognition of the signs of child abuse and the reporting requirements for suspected child abuse in Pennsylvania.

A person may be exempted from the training requirement if the person documents that he or she already has completed equivalent child abuse recognition and reporting training as required by either the Public School Code or Public Welfare Code.

**Training for Operators or Employees under the Jurisdiction of DHS:**

Operators (i.e., executive or facility directors) and caregivers are required to receive three hours of training prior to the issuance of a license or approval and three hours every five years thereafter.

- Employees who have direct contact with children and foster parents will receive three hours of training within 6 months of the issuance of a license and three hours every five years thereafter.
- New employees and new foster parents will receive three hours of training within 90 days of hire or approval as a foster parent and three hours every five years thereafter.

**Training for Professional Licensees:**

Each licensing board under the Department of State with jurisdiction over professional licensees who are identified as mandated reporters will require training and continuing education on child abuse recognition and reporting.

Prior to the issuance of a license or certification, applicants will be required to submit documentation of the completion of at least three hours of DHS-approved child abuse recognition and reporting training.

Prior to the biennial renewal of a license or certification, professional licensees are required to submit documentation of at least two hours of DHS-approved continuing education per licensing cycle. The two hours of continuing education will count as a portion of the total continuing education required for license renewal.

A licensing board may exempt a licensee who is identified as a mandated reporter from the training or continuing education requirement, if either of the following apply:

- The licensee submits documentation acceptable to the board which documents that the individual already has completed equivalent child abuse recognition and reporting training as required by either the Public School Code or Public Welfare Code.
- The licensee submits documentation acceptable to the board which documents that the licensee does not come in direct contact with children in the course of his or her professional practice.

Upon biennial renewal of a professional license, a licensing board shall provide to professional licensees who are identified as mandated reporters information related to mandatory reporting requirements and penalties for failure to do so.

Act 31 also took effect December 31, 2014 and is applicable to persons applying for or renewing a license, certification, approval or registration on or after January 1, 2015.

For more information on Mandated Reporting of Child Abuse, please [click here](#) or call (717) 346-4253.