

**Atlantic Northeast District Church of the Brethren**  
**Frequently Asked Questions Regarding Changes to Pennsylvania's Child Protection Services Law**  
**January 2015**

**Question :**

Which recent changes to the Law will have the greatest impact on churches?

**Answer :**

Of the many changes made to Pennsylvania's Child Protective Services Law (hereafter, "the CPSL" or "the Law,") the most important ones for church workers to be informed about include these:

- How is child abuse now defined?
- Who are mandated reporters of child abuse, under what circumstances must they report suspected abuse, and how/where are they to make such a report?
- Who must undergo background checks, which ones must they undergo, and how often must those checks be repeated?

**Question:**

How is "child abuse" now defined, and how does the new definition differ from the old one?

**Answer:**

The new Law defines nine separate types of child abuse. Mandated Reporters should be familiar with all nine. They include, but are not limited to, bodily injury, serious mental injury, sexual abuse or exploitation and serious physical neglect. Regarding physical abuse, a significant change was the intentional lowering of the threshold from "serious physical injury" to "bodily injury." "Serious physical injury," the old definition, was defined as an injury that causes the child to experience "**severe** pain" or which "**significantly** impairs a child's physical functioning, either temporarily or permanently." (my emphases) Determining whether a child's injuries caused "severe pain" or "significantly impaired" his or her functioning was problematic. The new Law defines "bodily injury" as "**impairment of** physical condition or **substantial** pain." (my emphases). Another significant change to the way child abuse is defined was the addition of "per se" acts of abuse. "Per se" acts of child abuse are actions deemed to be child abuse when committed against a child, regardless of whether the child suffers injury or pain as a result of those actions. Such "per se" acts include kicking or biting or throwing a child in a manner which endangers the child, and a variety of actions done to a child under one year of age.

**Question :**

Does the Law recognize any scenario in which a child may suffer injury but not as the result of abuse?

**Answer:**

Yes, for one thing, state of mind matters. The standard of culpability for child abuse, formerly "accidental," is now changed to "intentionally, knowingly or recklessly" doing any of the nine actions defined as child abuse. The Law also enumerates a number of exclusions -- circumstances and reasons why an action or result that might otherwise be classified as "child abuse" is recognized to not be child abuse. For example, there is an exclusion for parents or an adult in charge of a child to use reasonable force for purposes of controlling or keeping the child safe. There is an exclusion for adults who participate in a sport or recreational or extracurricular activity involving contact with a child, and there is

an exclusion for a child who suffers harm or injury at the hands of another child when the two children entered into a fight or a scuffle by mutual consent.

**Question :**

I still don't really understand what a "mandated reporter" is or what it means.

**Answer:**

The Law defines a "mandated reporter" as "A person who is required by this chapter to make a report of suspected child abuse." ("This chapter" refers to Chapter 63 of Title 23 of Pennsylvania's Consolidated Statutes, where the CPSL is found). A Mandated Reporter is someone whose role or responsibilities trigger a reporting duty. Even if you are not a Mandated Reporter, the Law encourages you to report suspected abuse.

**Question:**

Well, who *is* a Mandated Reporter of suspected child abuse?

**Answer:**

There are now fifteen categories of Mandated Reporters. The three most relevant for the church context are these:

- (6) Clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious institution
- (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
- (12) An individual supervised or managed by [any of the first 11 types of mandated reporter] who has direct contact with children in the course of employment.

**Question :**

Is "regularly scheduled program, activity or service" defined?

**Answer:**

A "program, activity or service" is defined as "A public or private educational, athletic or other pursuit in which children participate. The term includes, but is not limited to, the following:

- A youth camp or program.
- A recreational camp or program
- A sports or athletic program
- An outreach program
- An enrichment program
- A troop, club or similar organization

**Question:**

So if a person fits one or more of those categories of Mandated Reporter, what does that actually mean?

**Answer:**

It means that individual must report to state and local authorities if she or he "has reasonable cause to suspect that a child is a victim of child abuse under any of the following four circumstances:"

- The Mandated Reporter comes into contact with the child in the course of employment, occupation and the practice of a profession or through a regularly scheduled program, activity or service.
- 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 or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.
- A person makes a specific disclosure to the Mandated Reporter that an identifiable child is the victim of child abuse.
- An individual 14 years of age or older makes a specific disclosure to the Mandated Reporter that the individual has committed child abuse.

**Question:**

How does the Law define “reasonable cause to suspect?”

**Answer:**

Unfortunately, it does not define this term. Each Mandated Reporter must use his or her judgment to determine whether facts and circumstances give rise to “reasonable cause to suspect” child abuse. “Reasonable cause to suspect” lies somewhere between a bare hunch and full certainty.

**Question:**

Some church volunteers will not feel comfortable reporting suspected abuse without first discussing the situation with a pastor or another church leader. Are they allowed to do so?

**Answer:**

One of the most significant changes the Law makes is that it puts the burden of directly reporting suspected abuse on every Mandated Reporter, including those working or volunteering within institutions like churches. The old Law endorsed a “chain of command” style of reporting for institutions (e.g. churches or schools.) Persons within such institutions who suspected abuse were to tell “the person in charge,” or his or her “designated agent,” who then bore legal responsibility to make the report. The new Law intentionally imposes on all Mandated Reporters who conclude they have “reasonable cause to suspect” child abuse a duty to directly report suspected abuse to state and local authorities. The old Law included the option to “make a report *or cause a report to be made.*” That language will be removed to make clear that no Mandated Reporter can fulfill her or his reporting duty by simply telling another individual and entrusting that that individual to ensure the report is made.

**Question:**

Are you saying that Law forbids or discourages church volunteers from telling a church leader or staff person that they have made a report of suspected child abuse?

**Answer:**

No. The new Law requires an institutional reporter (e.g. a church staffer or volunteer) to notify the person in charge of their institution, or his or her designated agent, that they have made a report. The difference is that the report is to be made to child welfare authorities first, and then the Mandated Reporter is to “immediately thereafter” notify the person in charge of their institution. The point of the change is to make clear that “the person in charge” of the institution may not act as a gatekeeper to determine what and when reports are made, nor may he or she dissuade, deter or delay the Mandated Reporter from reporting the suspected abuse.

**Question:**

Does the new Law change how and where a Mandated Reporter must make a report of suspected abuse?

**Answer:**

An individual reporting suspected abuse should still do so by telephoning ChildLine (1-800-932-0313) and must then complete, within 48 hours, a CY47 form to be faxed to their County Children and Youth agency. A new means of reporting suspected abuse is to use ChildLine's electronic reporting portal (available after 12/31/14). If an individual makes a report in this way, she or he will not need to complete a CY 47 form because the online reporting process will capture the needed data.

**Question:**

What if I really feel I have "reasonable cause to suspect" child abuse and so make a report, but the investigation concludes no abuse had occurred? Could I be sued?

**Answer:**

Anyone who makes a report of suspected child abuse is immune from civil and criminal liability as long as the report was made in good faith.

**Question:**

What is the potential consequence for a Mandated Reporter who does not report suspected child abuse?

**Answer:**

The penalties for a Mandated Reporter who willfully fails to report child abuse range from a misdemeanor of second degree to a felony of the third degree (e.g. if a person "willfully" fails to report abuse and has "direct knowledge" of the abuse).

**Question:**

I have heard that the new Law requires all Mandated Reporters to undergo state-approved training. Is this true?

**Answer:**

Some, but not all, Mandated Reporters must undergo trainings approved by the Department of Human Services. Professional licensees who are Mandated Reporters, for example, must undergo a certain number of hours of approved child abuse recognition and reporting training. There is to date no requirement that volunteers who are Mandated Reporters must undergo a state-approved training course. Of course, they must have some training if they are to understand and fulfill their responsibility as Mandated Reporters of suspected abuse, but it need not be a state-approved training. In coming weeks, the website [www.keepkidssafe.pa.gov](http://www.keepkidssafe.pa.gov) is expected to include educational videos, printable materials and training exercises. (As of 12/28/14, the URL takes you to the DHS website).

**Question:**

I thought church volunteers already had to undergo background checks – what’s changed?

**Answer:**

Many churches were aware that these changes coming, or else they felt it was important to have volunteers working with children undergo background checks; however, there was no requirement in the old Law that they do so. The new Law however, requires three background checks for “an adult applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children.” The three checks required are the same ones paid church staff must undergo: the PA State Police Criminal History Record Information, the Child Abuse Clearance obtained through the Department of Human Services, and the Federal Criminal History Record Information.

The FBI check may be waived for an unpaid volunteer who has been a resident of Pennsylvania continuously for the past ten years and who “swears or affirms in writing” that she or he has not been convicted of any crime, in another state or jurisdiction, similar to the convictions that would disqualify him or her from working with children in Pennsylvania.

**Question:**

What types of Pennsylvania convictions disqualify a person from working in a paid or unpaid position with children?

**Answer:**

1. Being named in the statewide database maintained by DHS as the perpetrator of a founded child abuse report committed within the five-year period immediately preceding verification.
2. Being convicted of one or more offenses under Title 18 of the Pennsylvania Crimes Code, or an equivalent crime under federal law or the law of another state (includes, but is not limited to, such crimes as stalking, kidnapping, rape, sexual assault, statutory sexual assault, indecent exposure, etc.)
3. Being convicted of a felony drug offense committed within the five –year period immediately preceding verification.

**Question:**

So if you were convicted of certain offenses in the past five years, you cannot work with children, but if you were convicted of certain other offenses, you are subject to a lifetime ban on working with children? What about a person’s ability to change and transform?

**Answer:**

The General Assembly took a different approach to individuals who were included on the child abuse registry as named perpetrators of child abuse in a founded case and persons convicted of certain drug offenses (five-year ban), vs. persons convicted of certain offenses seen as sexual or violent in nature (lifetime ban). This part of the Law took longer than any other piece to pass because of concerns about what should disqualify people from employment or volunteering with children. Lawmakers commissioned two government departments and the PA Commission on Crime and Delinquency to analyze and make recommendations on employment bans for those having contact with children. The study is due to the General Assembly no later than December 31, 2015.

**Question:**

Can we continue to use “Protect My Ministry” or another on-line background check service, or must we now use the Pennsylvania-specific checks?

**Answer:**

You can no longer use Protect My Ministry or another on-line service for church staff or volunteers. Your staff and volunteers must obtain the three required Pennsylvania checks unless the volunteer waiver of the FBI Criminal Check described above applies.

**Question:**

We have church volunteers who are public school teachers or social workers and so have had to undergo all of these background checks for their employers. Can those individuals use their existing background checks to meet the background check requirements for volunteers?

**Answer:**

Yes, they can use them. The intent of the Law was to permit volunteers who had already obtained checks for employment purposes to use those same checks for volunteer purposes. However, the Law does require that any employee who begins employment with a new agency, institution, organization or entity where they will be responsible for children must undergo new checks.

**Question:**

What are the background check deadlines for church employees and church volunteers, and how often must they be repeated?

**Answer:**

The Law has an “effective date” of December 31, 2014 for employees and an “effective date” of July 1, 2015 for volunteers, but those dates do not tell the whole story. As part of their approval for employment or volunteer positions, newly-hired paid staff and newly-approved volunteers should have all background checks completed by 12/31/14 and 7/1/15, respectively. However, the Law contains “grandfathering” language applicable to employees. Existing employees have 36 months from the date of their “most recent certification” to get the required checks. If an employee’s checks are older than 36 months old (obtained prior to 12/31/11), the employee has one year from the Law’s effective date to obtain the checks; that is, until **12/31/15**. If the employee has comprehensive checks issued after 12/31/11, those checks remain valid up to 36 months from the date of certification. It is expected that DHS will issue guidance clarifying that current volunteers with clearances older than 36 months, or who lack comprehensive checks, will also have one year from the effective date of the law applicable to volunteers to obtain their checks; that is, until **7/1/16**.

All checks must be repeated every 36 months.