



## Children's Justice & Advocacy Report

To promote community responsibility so every Pennsylvania child is protected from child abuse, including sexual abuse.

### **Act 153 of 2014: Requiring comprehensive criminal and child abuse background checks *Broader, regularly updated background checks applicable to paid employees and volunteers***

On October 22<sup>nd</sup> House Bill 435 (PN 4225) was signed into law becoming [Act 153 of 2014](#).

The final version of this legislation, which addresses background checks for employees and volunteers arrived on Governor Corbett's desk following a unanimous vote in the Pennsylvania Senate ([RCS# 760](#)) and a 175 to 18 vote ([RCS# 1764](#)) in the Pennsylvania House of Representatives.

Act 153 of 2014, which was spearheaded by [Representative Dan Moul](#) (R-Adams and Franklin), will have a direct impact on paid employees working with children and unpaid volunteers in Pennsylvania, including those volunteering in churches and faith-based organizations.

The law outlines the eight types of "employees" that are subject to comprehensive and regularly updated criminal and child abuse background checks (see Table 1).

This new PA law extends beyond paid employees so that it is applicable to those unpaid volunteers "responsible for the welfare of a child or having direct contact with children." The Child Protective Services Law (CPSL) defines "direct contact with children" as "The care, supervision, guidance or control of children or routine interaction with children."

While many community-based programs (e.g., Girl and Boy Scouts, school chaperones, youth sports programs) and religiously-affiliated organizations have long required background checks for volunteers, Pennsylvania law provides a specific directive on the timing and type of checks now required.

These new legal requirements will force many community-based organizations and churches to rework the way they screen potential volunteers.

Over the years, many organizations and churches utilized the services of a third party vendor to determine whether a prospective volunteer had any criminal arrests or convictions. This proved a less expensive route for community-based and religiously-affiliated organizations, but it also limited the background information captured about the prospective employee or volunteer.

Such third party checks, for instance, were not able to check a statewide child abuse registry to determine if a person was named as a perpetrator of an indicated or founded report of child abuse.

Statewide child abuse databases or registries are established in state laws, across the United States, in order to provide an added layer of information when a person is seeking to work or volunteer with children. It is possible for a person to have escaped criminal conviction (potentially never even had

criminal charges filed), but still have been determined to be a perpetrator of child abuse following a child abuse investigation was completed by child welfare authorities either alone or jointly with law enforcement. Certain cases like child sexual abuse (e.g. involving younger children who are less verbal) may result in a person being placed on the child abuse registry as a perpetrator of child abuse, even if they were not criminally convicted.

This confidential child abuse database/registry is not made available to the public. It is accessible to certain limited parties during the course of future investigations (e.g., law enforcement) or toward determining a person's suitability as an employee or volunteer in a child-serving setting.

Going forward, PA law will now require that prospective employees and volunteers obtain the following background checks:

1. **Criminal History Record Information obtained from the PA State Police (\$10 fee)**
2. **Child Abuse Clearance obtained through the PA Department of Public Welfare** (now known as the Department of Human Services) certifying if the applicant is named in the statewide database "as the alleged perpetrator in a pending child abuse investigation or as the perpetrator of a founded report or indicated report" of child abuse. (\$10 fee)
3. **Federal Criminal History Record Information obtained by submitting a full set of fingerprints to the PA State Police or its authorized agent for submission to the Federal Bureau of Investigation** "for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions." (\$28.75 fee)

Certain volunteers (those living in PA consistently for ten years) can be exempted from the Federal Criminal History Record Information check (#3 above).

In the wake of the new PA law, there is some misunderstanding that churches, for example, are exempt from the comprehensive (and regularly updated) background checks for volunteers.

Beyond reading the actual language of Act 153, the Fiscal Note accompanying House Bill 435 released by The Pennsylvania House Committee on Appropriations is instructive. In its legislative analysis, Committee staff wrote: "Adults applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children will be required to submit the FBI, State Police and DPW clearances unless the person has been a PA resident for the entirety of the previous ten-year period or swears or affirms in writing that the prospective volunteer is not disqualified from service or has not been convicted of a similar offense in another jurisdiction, then only the State Police and DPW clearances are required."

This updated PA law did not include exemptions for volunteers, in any particular program or organization. Instead, it will be consistently applied to all volunteers "responsible for the welfare of a child or having direct contact with children."

In addition, for the time being, House Bill 435 did not alter the CPSL with regard to "grounds for denying employment or participation in a program, activity or service."<sup>1</sup> The CPSL outlines what constitutes grounds for denying employment or becoming a volunteer with children. A person is to be barred from working or volunteering with children under any of the following circumstances:

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<sup>1</sup> The CPSL defines a Program, Service or Activity as "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, or (6) A troop, club or similar organization."

1. The person is “named in the statewide database maintained by the Department of Human Services (formerly Department of Public Welfare) as the perpetrator of a founded child abuse report committed within the five-year period immediately preceding verification.
2. 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).
  - 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. 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.

House Bill 435 took much longer than most child protection bills to reach Governor Corbett's desk, in part, because of outstanding concerns about what should prove a disqualifier for employment or volunteering with children.

In the end, lawmakers directed the Department of Human Services (DHS), Department of Education (PDE) and the PA Commission on Crime and Delinquency (PCCD) to “analyze and make recommendations on employment bans for those having contact with children in the Commonwealth.” This collaborative study must offer recommendations on changes in permanent and temporary employment bans and the appeals process. This report is due to the PA General Assembly no later than December 31, 2015.

**Table 1: Criminal and child abuse background checks for employees and volunteers**

CPSL Applicability	Required Checks
<p><b>Employees having contact with children; adoptive and foster parents with 6344 (A) applicable to the following individuals:</b></p> <ol style="list-style-type: none"> <li>1. Employee of child care services<sup>2</sup></li> <li>2. Foster parent</li> <li>3. Prospective adoptive parent</li> <li>4. Self-Employed family day care provider</li> <li>5. Person 14 years of age or older applying for a paid position as an employee responsible for the welfare of a child or having direct contact with children</li> <li>6. Individual seeking to provide child care services under contract with a child care facility or program</li> <li>7. Individual 18 years of age or older residing with a foster parent or prospective adoptive parent for at least 30 days in a calendar year</li> <li>8. School employees (those governed by the Public School Code and those outside of that Code)</li> </ol> <p><b>Provisional employment:</b> An employer, administrator, supervisor or another person making employment decisions "may employ" an applicant on a provisional basis "for a single period not to exceed 90 days" so long as the applicant can document:</p> <ol style="list-style-type: none"> <li>i. They have applied for the background checks/clearances,</li> <li>ii. The employer has "no knowledge of information pertaining to the applicant which would disqualify" employment; and</li> <li>iii. The applicant "swears or affirms in writing" that they have not been convicted, in another state, of an offense similar to those disqualify employment in PA's CPSL.</li> <li>iv. The person "shall be immediately dismissed" if the background checks reveal they are disqualified.</li> <li>v. The applicant, pending returned background checks, is "not permitted to work alone with children" and the applicant "work in the immediate vicinity of a permanent employee."</li> </ol>	<ol style="list-style-type: none"> <li>1. <b>Criminal History Record Information obtained from the PA State Police (\$10 fee)</b></li> <li>2. <b>Child Abuse Clearance obtained through the PA Department of Public Welfare</b> (now known as the Department of Human Services) certifying if the applicant is named in the statewide database "as the alleged perpetrator in a pending child abuse investigation or as the perpetrator of a founded report or indicated report" of child abuse. (\$10 fee)</li> <li>3. <b>Federal Criminal History Record Information obtained by submitting a full set of fingerprints to the PA State Police or its authorized agent for submission to the Federal Bureau of Investigation</b> "for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions." (\$28.75 fee)</li> </ol> <p><b>Effective Date:</b> These individuals will be required to obtain required background checks beginning December 31, 2014 with updated checks required every 36 months.</p>
<p><b>Section 6344.1 -- Information relating to certified or registered day-care residents.</b></p> <p>In addition to the requirements of Section 6344 (A), an individual who applies "for a certificate of compliance or a registration certificate to provide child day care in a residence" will be required to include background checks for "every individual 18 years of age or older who resides in the home for at least 30 days in a calendar year."</p>	<ol style="list-style-type: none"> <li>1. <b>Criminal History Record Information obtained from the PA State Police (\$10 fee)</b></li> <li>2. <b>Child Abuse Clearance obtained through the PA Department of Public Welfare</b> (now known as the Department of Human Services) certifying if the applicant is named in the statewide database "as the alleged perpetrator in a pending child abuse investigation or as the perpetrator of a founded report or indicated report" of child abuse. (\$10 fee)</li> </ol> <p>The department "shall refuse to issue or renew a certificate of compliance or registration certificate or shall revoke a certificate of compliance or registration certificate if the day-care home provider or individual 18 years of age or older</p>

<sup>2</sup> Child-care services is defined as the following: Child day-care centers, Group day-care homes, Family day-care homes, Foster homes, Adoptive parents, Boarding homes for children, Juvenile detention center services or programs for delinquent or dependent children, Mental health services for children, Services for children with intellectual disabilities, Early intervention services for children, Drug and alcohol services for children, Day-care services or programs that are offered by a school, Other child-care services that are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or that are provided pursuant to a contract with the Department of Public Welfare or a county social services agency.

CPSL Applicability	Required Checks
<p><b>Section 6344.2 -- Volunteers having contact with children.</b>  This section applies to an adult applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children.<sup>3</sup></p>	<p>who has resided in the home for at least 30 days in a calendar year" is named in the statewide database "as the perpetrator of a founded report committed within the immediately preceding five-years period; or has been convicted of an offense enumerated in Section 6344 (C)."</p> <ol style="list-style-type: none"> <li>1. <b>Criminal History Record Information obtained from the PA State Police (\$10 fee)</b></li> <li>2. <b>Child Abuse Clearance obtained through the PA Department of Public Welfare</b> (now known as the Department of Human Services) certifying if the applicant is named in the statewide database "as the alleged perpetrator in a pending child abuse investigation or as the perpetrator of a founded report or indicated report" of child abuse. (\$10 fee)</li> <li>3. <b>Federal Criminal History Record Information obtained by submitting a full set of fingerprints to the PA State Police or its authorized agent for submission to the Federal Bureau of Investigation</b> "for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions." (\$28.75 fee)</li> </ol> <p><b>Exception on #3:</b> Section 6344.2 (B.1) permits an exception related to the federal background check. The FBI check may be waived for a prospective unpaid volunteer if they have been a resident of this Commonwealth during the entirety of the previous ten-year period" and the volunteer "swears or affirms in writing" that they have not been convicted of any crime, in another state, similar to the convictions disqualifying a person in PA.</p> <p><b>Effective Date:</b> Prospective volunteers will be required to obtain required background checks beginning July 1, 2015 with updated checks required every 36 months.</p>

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<sup>3</sup> "Direct contact with children" is defined within the CPSL as "The care, supervision, guidance or control of children or routine interaction with children."